

ORDER SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
JUDICIAL DEPARTMENT

Intra Court Appeal No. 32 of 2024

Mst. Haleema and three others **Vs.** Executive Director (C & CD),
Securities and Exchange Commission
of Pakistan, Islamabad and another.

S.No. of order/ proceeding	Date of order/ proceeding.	Order with signatures of Judge, and that of parties or counsel, where necessary.
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01.04.2024 Mr. Aejaz Ahmad Ansari, Advocate for the appellants.

This Intra Court Appeal has been filed against the order dated 28.02.2024, passed by the learned Single Judge in Chambers in the Writ Petition No.8594 of 2016, whereby the Petition filed by the appellants under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 was dismissed and the order dated 30th of August,2016 passed by the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of "*M/s ISAKHEL ESTATE FARMS LTD.*" was held to be valid.

2. The brief facts, necessary for the disposal of the instant appeal are that Sardar Ghazanfar Ullah Khan, the predecessor of the appellants, along with others

formed a public limited company in the name and style of “*M/s ISAKHEL ESTATE FARMS LTD.*”, mouza Basti Isakhel Estate, Tehsil & District Rahim Yar Khan duly incorporated under the provisions of the Companies Act, 1913 and later functioning as a public limited company in terms of the Companies Ordinance, 1984. Subsequently, Sardar Arshad Ullah Khan (Late), the predecessor of respondent No.2 (i) to (iv), filed a petition under sections 152 and 290 of the Companies Ordinance, 1984, before this Court. The said petition as filed by Sardar Arshad Ullah Khan (Late), the predecessor of respondent No.2 (i) to (iv), bearing C.O.01 of 1995, was decided by this Court vide order dated 10.04.2015 and it was ordered that a copy of that petition along with all its annexures be transmitted to the Securities and Exchange Commission of Pakistan with a direction to treat it as an application and decide the same strictly in accordance with the law. The Securities and Exchange Commission of Pakistan, after receiving the order of this Court , issued show-cause notices to the Chief Executive and Directors of the “*M/s ISAKHEL ESTATE FARMS LTD.*” under Section 265 of the Companies Ordinance, 1984. After getting the replies to the show-cause notices and providing the opportunity of hearing, the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, passed the order dated 30th of August,2016 appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of “*M/s ISAKHEL ESTATE FARMS LTD.*” as per the terms of reference and the Inspector was directed to submit his report within 30 days from the date of the

communication of the order. Feeling aggrieved of the order dated 30th of August,2016 passed by the Executive Director (C & CD) , Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of "*M/s ISAKHEL ESTATE FARMS LTD.*", the appellants filed Writ Petition No. 8594 of 2016 before this Court which was dismissed through the impugned order dated 28.02.2024, passed by the learned Single Judge in Chambers, hence this appeal.

3. The learned counsel for the appellants submitted that the learned Single Judge in Chambers had erred in facts and law while passing the order dated 28.02.2024. The learned counsel for the appellants further argued that none of the conditions as enumerated under section 265 of the Companies Ordinance ,1984 necessitating the appointment of an Inspector to investigate the affairs of a company were prevalent hence the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, could not have passed the order dated 30th of August,2016 appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of "*M/s ISAKHEL ESTATE FARMS LTD.*" and the Single Judge in Chambers had erred in facts and law while passing the order dated 28.02.2024 ,dismissing the petition as filed by the appellants seeking the setting aside of the order dated 30th of August,2016 passed by the Executive

Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department.

4. We have heard the learned counsel for the appellants and perused the record.

5. The perusal of the record reveals that Sardar Ghazanfar Ullah Khan, the predecessor of the appellants along with others formed a public limited company in the name and style of "*M/s ISAKHEL ESTATE FARMS LTD.*", duly incorporated under the provisions of the Companies Act, 1913 and later functioning as a public limited company in terms of the Companies Ordinance, 1984. Subsequently, Sardar Arshad Ullah Khan (Late), the predecessor of respondent No.2 (i) to (iv), filed a petition under sections 152 and 290 of the Companies Ordinance, 1984, before this Court. The said petition as filed by Sardar Arshad Ullah Khan (Late), the predecessor of respondent No.2 (i) to (iv), bearing C.O.01 of 1995 was decided by this Court vide order dated 10.04.2015 and it was ordered that a copy of that petition along with all its annexures be transmitted to the Securities and Exchange Commission of Pakistan with a direction to treat it as an application and decide the same strictly in accordance with the law. The Securities and Exchange Commission of Pakistan, after receiving the

order of this Court, issued show-cause notices to the Chief Executive and Directors of the “*M/s ISAKHEL ESTATE FARMS LTD.*” under Section 265 of the Companies Ordinance, 1984. After getting the replies to the show-cause notices and providing the opportunity of hearing, the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, passed the order dated 30th of August, 2016 appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of “*M/s ISAKHEL ESTATE FARMS LTD.*” as per the terms of reference and the Inspector was directed to submit his report within 30 days from the date of the communication of the order. Feeling aggrieved of the order dated 30th of August, 2016 passed by the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department, appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of “*M/s ISAKHEL ESTATE FARMS LTD.*”, the appellants filed the Writ Petition No. 8594 of 2016 before this Court which was

dismissed through the impugned order dated 28.02.2024, passed by the learned Single Judge in Chambers.

6. A perusal of the order dated 30th of August,2016 passed by the Executive Director (C & CD) , Securities and Exchange Commission of Pakistan, Company Law Division , Corporatization and Compliance Department, appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of "*M/s ISAKHEL ESTATE FARMS LTD.*" reveals that the said order was passed in the exercise of the powers under section 265 of the Companies Ordinance ,1984 read with S.R.O. 154(1)/2015 dated 19.02.2015 and while passing the said order, the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department observed that the participation of the interested director in the Board Meeting wherein the resolution for disposal of the agricultural land owned by the Company was passed, violated the provisions of section 216 of the Companies Ordinance,1984, which provide that no director of a company shall, as a director, take any part in the discussion of, or vote on, any contract or arrangement entered into, or to be entered into, by or on

behalf of the company, if he is in any way, whether directly or indirectly, concerned or interested in the contract or arrangement, nor shall his presence count for the purpose of forming a quorum at the time of any such discussion or vote and therefore an investigation into the affairs of the company became necessary and that, the Company had not been filing any returns with the Registrar concerned since 1995, therefore it needed to be ascertained as to whether the Company had been holding the election of directors properly and timely in accordance with the provisions of the Companies Ordinance 1984 and that the Company did not furnish any evidence in support of its claim regarding maintenance of proper books of accounts in accordance with the requirements of the Companies Ordinance 1984. Section 265 of the Companies Ordinance, 1984 allows the appointment of an Inspector to investigate the affairs of a company in certain prevailing conditions as enumerated in section 265 of the Companies Ordinance ,1984. It is also clear from the bare reading of section 265 of the Companies Ordinance ,1984 that it is not necessary that all the conditions as mentioned in section 265 (b) of the Companies Ordinance,984 should be existing at the same time before the appointment of an Inspector, rather even if one of the several conditions is, in the estimation of the Commission, existing, as the

word “or” has been used after every condition mentioned in section 265 (b) of the Companies Ordinance ,1984 allowing for the appointment of an Inspector, then the order of appointment of an Inspector to investigate the affairs of the company can be validly passed. The rule is that the word “or” is usually disjunctive and the word “and” is usually conjunctive and a withdrawal from the same is not available unless the very purpose and object of the Statute so requires. The reason being that if the Legislature wants to use “and” in a special statutory provision, then it has each right to do and nothing interrupts them from making so. So, if the word “and” has not been used and rather the word “or” has been used, it is clear that the Legislature has purposely applied the word “or”. Except when it is confirmed that there was some design or problem that stopped the Legislature from using the word “and”, literal translation has to be used to read the statutory provision and the rule “*or* is usually disjunctive and “*and*” is usually conjunctive” has to be provided effect to. We have also noted that the order dated 30th of August,2016 passed by the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department had been passed by the

Executive Director (C & CD), after due consideration of all the circumstances and for sound reasons which had been recorded therein. The said observations of the Executive Director (C & CD) , Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department made in the order dated 30th of August, 2016 could not have been countered during the proceedings of the petition filed by the appellants under Article 199 of the Constitution of the Islamic Republic of Pakistan,1973 and the learned Single Judge in Chambers was right to observe that the accuracy and the veracity of the said observations of the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department made in the order dated 30th of August, 2016 could not be challenged without receiving evidence and in a petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan,1973, that could not be done. In addition, we have gone through the record and have noted the recalcitrant attitude of the appellants who have frustrated the investigation of the affairs of the company for the past seven years. The appellants themselves should have no reluctance in joining the investigation if they can explain and answer the significant and well-founded

questions which have been raised in the order dated 30th of August,2016 passed by the Executive Director (C & CD), Securities and Exchange Commission of Pakistan, Company Law Division, Corporatization and Compliance Department appointing Mr. Muhammad Talib, FCA of M/s PKF F.R.A.N.T.S., Chartered Accountant, as Inspector for carrying out the investigation into the affairs of the company in the name and style of "*M/s ISAKHEL ESTATE FARMS LTD.*", an order which even otherwise does not dispose of the entire case and the case remains pending until the report as sought is submitted by the inspector.

7. When learned counsel for the petitioner was asked to state the reservations of the appellants and he could only say that the appointment of the Inspector was likely to affect the reputation of the company and cause undue inconvenience to the appellants. We are afraid that the possibility of inconvenience to the appellants or the likelihood of affecting the reputation of the company can hardly be grounds for rendering redundant the provisions of section 265 of the Companies Ordinance,1984. Furthermore, the Inspector is directed to ensure that the appellants are not inconvenienced in any manner during his investigation.

8. The learned counsel for the appellants has been unable to point out any illegality or excess of

jurisdiction having been committed by the learned Single Judge in Chambers while passing the impugned order dated 28.02.2024. We find that the impugned order dated 28.02.2024 has been passed by the learned Single Judge in Chambers after going through the record of the case and taking into consideration the facts and circumstances of the case.

9. In view of the above discussion, this appeal being devoid of merit, is *dismissed in limine*.

(MUHAMMAD TARIQ NADEEM) *(SADIQ MAHMUD KHURRAM)*
JUDGE *JUDGE*

Approved for reporting

Judge