

JUDGMENT SHEET
LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

C.M.No.03 of 2023
AND
Civil Original No.11 of 2022

M/s Mandviwalla Builders & Developers and Mangla View Resort (Pvt.) Limited **V/S** *M. Awais Sheikh CEO Mangla View Resort and Mangla Garrison Housing (Pvt.) Limited and others*

J U D G M E N T

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| Date of hearing | 01.06.2023 |
| Petitioner(s) by | M/s. Mohsin Kamal, Nauman Iqbal and Waleed Khan, Advocates. |
| Respondent(s) by | Syed Ijaz Ali Akbar Sabzwari, ASC, Mr. Muhammad Kamal Hassan and Mrs. Kalsoom Akhtar, Advocate for the Respondents/Applicants No1&2 (C.M. No.03 of 2023). Mr. Muzaffar Ahmed Mirza, Chief Prosecutor, Executive Director, Legal Affairs, SECP with Syeda Muneeza Fatima, Special Public Prosecutor on behalf of Respondent No.4. |
| | Mr. Rashid Mehmood, Research Officer, Lahore High Court, (Rawalpindi Bench). |

“Jurisdiction is not given for the sake of the judge, but for that of litigant”
(Blaise Pascal, French Philosopher)

JAWAD HASSAN, J. By way of this application (C.M.No.03 of 2023) in terms of Section 5 of the Companies Act, 2017 (*the “Act”*) read with Order VII, Rule 10 of the Code of Civil Procedure, 1908 (*the “CPC”*), the Applicant made following prayer:

“Under the circumstances, it is therefore most respectfully prayed that the titled C.O. No.11/2022 may very graciously be struck off the register of this Bench and returned to the Applicants.

It is further prayed that the Applicants may please be burdened with heavy costs for furnishing incorrect, misleading and misconceived information to this Honorable Court and thereby procuring the interim order dated 12.12.2022 from this Court and circulating the same without permission from this Honourable Court.”

2. On 23.01.2023, the Applicants/Respondents filed captioned application raising objection qua the maintainability of the main petition on the ground of lack of territorial jurisdiction of this Court. Learned counsel for the Applicants/Respondents Mangla View Resort (Pvt.) Limited and Mangla Garrison Housing (Pvt.) Limited has filed application to return the titled Civil Original filed under Section 286 of the Companies Act, 2017 on the basis that registered office of the Respondent No.1 is situated at Lahore as evident from Annex-A of this petition.

I. PRELUDE OF THE APPLICATION RAISING OBJECTION AGAINST TERRITORIAL JURISDICTION:

3. While deciding application, the Court will dilate upon and interpret, at first instance, Section 5 (1) and Section 5 (4) of the “*Act*” in connection with status of a registered office of the company for the purpose of ascertaining jurisdiction by this Court, that too, keeping in view the legal track, process, procedure, limits and aim, object and purpose envisaged in the provisions of the “*Act*”, repealed Companies Ordinance, 1984 (*the “Repealed Ordinance”*), the Companies’ (Court) Rules, 1997, The High Courts (Establishment) Order (Punjab Amendment) Ordinance, 1981 (Pb Ord. I of 1981) (*the “Amendment Ordinance”*) and the Rules and Orders of Lahore High Court Volume V (*the “Rules”*). Since the petition under Section 286 of the Companies Act, 2017 (*the “Act”*) has to be decided by this Court in the light of recent judgment passed by this Court in “NADEEM KIANI Versus MS. AMERICAN LYCETUFF PVT LIMITED etc” (2021 CLD 7) but once the application on territorial jurisdiction has filed, the Court has to decide that first.

II. OVERTURE TO THE FACTS OF THE CASE

4. Brief facts of the main case are that Petitioner No.1/M/s Mandviwalla Builders & Developers (*the “**Petitioner No.1**”*) Tariq Mehmood is a shareholder of Petitioner No.2/Mangla View Resort Pvt. Ltd. (*the “**Petitioner Company**”*) i.e. a Special Private Limited Company registered with the Respondent No.4 Securities & Exchange Commission of Pakistan (*the “**SECP**”*) for the purpose of designing, construction, development, marketing and selling the housing project on the land comprising 324 acres situated 7-Kilometer, Mangla Gadari Road, Mangla Cantt including allowable covered area, retail component (without circulation), retail circulation, residential component, office component, amenity/recreational, parking (1000 cars), service/misc area/lobbies, external development and total built-up-area (*the “**Project Land**”*). It is noted that Tariq Mehmood is also the shareholder in Petitioner No.2 Mangla View Resort (Pvt.) Limited. In order to protect the rights of the parties, a joint venture agreement (*the “**JVA**”*) dated 16.02.2015 was executed between the “*Petitioner No.1*” and the “*Petitioner Company*” with an authorized capital of Rs.150,000,000/- setting up other commitments and business plan. The “*Petitioner No.1*” and Respondent No.1 have equal shares of 50% in the “*Petitioner Company*”. It is mentioned down in contents of main petition that the “*JVA*” was mutually terminated in accordance with clause 11 thereof, in relation where to, another joint venture agreement dated 10.01.2018 (*the “**termination agreement**”*) was also executed amongst the “*Petitioner No.1*”, the “*Petitioner Company*”, Respondent No.1 and Respondent No.3, wherein M/S Harley Willington (Pvt) Limited (HW) (*the “**third party**”*) expressed its willingness to undertake the objectives of the above project and to settle all claims of the “*Petitioner No.1*” in the “*project land*”, in the event where of, the “*third party*” issued seven cheques worth Rs.125 Million drawn on Soneri Bank Ltd. for the purpose of full and final settlement of the claims of the “*Petitioner No.1*”; however, only two cheques worth Rs.60 Million could be

encashed as rest ones had bounced back with note of bank concerned that the “*third party*” had stopped payment and such act of the “*third party*” was in connivance with the Respondent No.1. It is further averred by the Petitioners that, after bouncing of cheques referred above, criminal cases were got registered as well as summary suit for recovery of amount was instituted under Order XXXVII of the “CPC” by the “*Petitioner No.1*” before Sindh High Court, Karachi. However, on basis of later patched compromise, further 20 Million PKR were paid to the “*Petitioner No.1*” by the “*third party*”, but due to its fault in payment of remaining agreed amount, the matter has not finally been settled. The Petitioners contended further that the Respondent No.1 though is Chief Executive Officer (CEO) and Director of the “*Petitioner Company*” beside lessee of the “project land”, but he has now established the Respondent No.2/M/s. Mangla Garrison Housing Private Limited (*the “Respondent/Company”*), that too, without informing the Petitioners and is shifting the entire capital of the “*Petitioner Company*” to the “*Respondent Company*”, which act is beyond the terms of the “JVA” and is in violation of the relevant Article of Association (*the “AOA”*) and Memorandum of Association (*the “MOA”*), in derogation of law envisaged in the “Act” as well as is in conflict to his fiduciary duties as being CEO and Director of the “*Petitioner Company*”. It is further agitated that the “*Respondent Company*” fraudulently and with mutual connivance of the “*Respondent No.1*”, has started illegal construction and development work on the “project land” without Petitioners’ permission and inviting them in the board’s meetings again in blatant violation of the “AOA” and the “MOA”. Hence, the Petitioners have approached this Court seeking interference to prevent injustice and also to cure the mismanagement on part of the “*Respondent No.1*”.

III. APPLICANTS/RESPONDENTS’S SUBMISSIONS:

5. Syed Ijaz Ali Akbar Sabzwari, ASC for the Applicants/Respondents No.1&2 *inter alia* submitted that as per Section 5 of the “Act” the Civil Original petition can be

filed/entertained at the place at which the registered office of the “Respondent Company” is situated/located and, as per Form-A, admittedly the “Registered Office” of the “Petitioner Company” is located at “Office No. 04, Ground Floor, Avas Chamber, I/C-5, Sikandar Malhi Road, Gulberg-II, Lahore”; that while filing this Civil Original, the Petitioners have malafidely concealed material facts of the case with intent and design to mislead this Court by way of banking upon misstated, incorrect and distorted facts in connection with the Registered Office of the “Petitioner Company”; that this Court is not seized with the territorial jurisdiction over the issue in controversy and the orders/directions rendered by this Court ultimately would be “void ab-initio” and “Qorum Non Judice” as well as of no legal consequences; that the main C.O on behalf of the Petitioners/Respondents is blended with fraud and misrepresentation, wherein they have secured interim restraining order from this Court and, without permission of the court, went on to publicize said order in media as well as widely circulated letters in connection thereto amongst the peers of applicants/Respondents thereby causing great deal of damage and loss to the business of the applicants/Respondents. Syed Ijaz Ali Akbar Sabzwari, ASC for Applicants/Respondents concluded stressing hard that this Court lacks jurisdiction to entertain this matter and he prayed that the main C.O may be struck off the Register of this Bench and may be returned to the Petitioners/Respondents alongwith imposing heavy costs upon them for furnishing incorrect, misleading and misconceived information before this Court. In support of his contentions, he has relied upon the judgments of this Court reported as “PROVINCE OF PUNJAB through Secretary to Government of Punjab, Communication and Works Department, Lahore and another Versus Messrs MUHAMMAD TUFAIL and Company through Muhammad Tufail (deceased) through Legal Heirs (PLD 2017 SC 53), “Messrs JET GREEN (PVT.) LIMITED Versus FEDERATION OF PAKISTAN and

others” (PLD 2021 LAHORE 770) and “ZAFAR IQBAL and 3 others Versus NASREEN AHMED and 8 others” (2014 CLD 1039).

IV RESPONDENTS/PETITIONERS’ SUBMISSIONS:

6. Mr. Mohsin Kamal, Advocate for the Petitioners/Respondents *inter alia* argued that challenged activities of the Respondent No.1 and the “Respondent Company” are illegal, unlawful, unjust and against all norms of natural justice, fairness and equity; that the actions of the Respondent No.1 and the “Respondent Company” are in absolute disregard to the “JVA”, the “AOA” and the “MOA” of the “Petitioner Company” requiring the notices of every meeting of the Board of Directors to be transmitted in advance and in writing whilst affording with reasonable time and disclosing the nature of business to be transacted in intended meeting; that the “AOA” and the “MOA” further required the whole business and affairs of the “Petitioner Company” to be subject to control and supervision of the Board of Directors as well as managed and controlled by CEO, which obligations contained in the “AOA” and the “MOA” were not honored by Respondent No.1 and the “Respondent Company”; that the Respondent No.1 got incorporated the “Respondent Company” in direct conflict with legally recognized interests of the Petitioners; that the act of the Respondent No.1 for collecting undue gains by way of transferring shares of the “Petitioner Company” to the “Respondent Company” without approval of Board meeting of the “Petitioner Company”, is in clear violation of Section 204 of the “Act”; that if any Director was directly or indirectly interested in any contract or arrangement entered into by the relevant company, he would be required to disclose the same in a meeting of the Directors, but the Respondent No.1 has failed to perform his duties in accordance with mandate provided by law; that Section 208 of the “Act” envisages that a company may enter into any contract or arrangement with a related party only in accordance with the policy approved by the board, but the Respondent No.1, despite of being CEO of the “Petitioner Company”, incorporated the “Respondent Company”

without requisite approval by the board and transferred shares of the “*Petitioner Company*” to the “*Respondent Company*” setting forth illegal constructions and developments over the “project land”; that the conduct of Respondent No.1 and the “*Respondent Company*” are oppressive in nature towards the “*Petitioner No.1*” as well as members and creditors of the “*Respondent Company*”; that impugned acts of the Respondent No.1 and the “*Respondent Company*” are fraudulent, deceptive, illegal and without fulfillment of statutory/legal requirements contemplated in law, in result whereof, the “*Petitioner Company*” had not been run in proper manner and has been forced to undergo heavy financial losses necessitating it’s winding up; that legal notice transmitted by the “*Petitioner No.1*” with regard to above mentioned mal-handling at the hands of the Respondent No.1 and the “*Respondent Company*” was not responded/replied as well; that attending circumstances indicated surely qualify to agitate matter before court seeking the required investigation and ultimate desired protection of rights of the Petitioner Company and it’s members, which relief is aimed at to avoid further irreparable loss. To support his said submissions, learned counsel for the Petitioners/Respondents has relied upon pronouncements in cases titled “*BROTHER STEEL MILLS LTD. and others Versus MIAN ILYAS MIRAJ and 14 others*” (PLD 1996 Supreme Court 543), “*Chairman Board of Directors, Jubilee Life Insurance Company Limited: In the matter of Show Cause Notice* (2016 C L D 17), *REGISTRAR OF COMPANIES Versus PAKISTAN INDUSTRIAL AND COMMERCIAL LEASING LIMITED and 30 others*” (2005 CLD 463).

7. In connection with in hand Application (C.M. No.03 of 2023), learned counsel for the Petitioners/Respondents has vehemently raised objection qua its maintainability by stating that all the relevant documents including tax returns, letter heads, etc. and JVA dated 16.02.2015, the address of the office of the “*Petitioner Company*” is shown as “at 7-Kilometer, Mangla Gadari Road, Mangla Cantt”. He added that the “project land” exists in Mangla, which falls within the

territorial jurisdiction of this Bench i.e. Rawalpindi Bench. He added that all the business activities are being conducted within the area of Rawalpindi, therefore, this Court is competent to entertain the civil original.

V. SECP'S SUBMISSIONS:

8. Mr. Muzaffar Ahmed Mirza, Chief Prosecutor, Executive Director, Legal Affairs, SECP assisted by Syeda Muneza Fatima, Special Public Prosecutor, in support of the para-wise comments filed on behalf of SECP, submit that the "*Petitioner Company*" was incorporated on June 25, 2004 having Corporate Universal Identification No.0047808 with authorized and paid up share capital of Rs.150 Million and Rs.120 Million respectively divided into 15 Million and 12 Million shares of Rs.10/- each; that the "*Petitioner Company*" was incorporated with main object to acquire by purchase or otherwise lands to develop them in plots for sale, to establish upon them housing estates or to construct houses, golf courses, community buildings, flats and apartments etc. It is added that the "*Respondent Company*" was incorporated on November 30, 2018 having corporate Universal Identification No.0126883 with the registered office address as 98-D, 5th Floor, Commercial Broadway, DHA Phase 8, Lahore; that the authorized and paid up capital of the "*Respondent Company*" is Rs.9 Million and Rs.9,00,000/- respectively divided into 9,00,000 and 90,000 shares of Rs.10 each; that the principal line of business of the "*Respondent Company*" is to lay out, construct, build, erect, demolish, alter, re-model or to do any work in connection with any infrastructure including apartments, homes, plazas etc. In addition to disclosure of said formal facts, objection raised by the Applicants/Respondents regarding jurisdiction of this Court is also supported on behalf of SECP with submission that registered office of the "*Petitioner Company*" is situated at Office No.4, Ground Floor, Avasi Chambers, 1/C-5, Sikandar Malhi Road, Gulberg II, Lahore as had been notified vide Form No. 21 dated 14.11.2014 therefore; this C.O is not maintainable before this Bench at Rawalpindi in terms of

section 5(1) of the “Act”. Mr. Muzaffar Ahmed Mirza, Chief Prosecutor, Executive Director, Legal Affairs, SECP assisted by Syeda Muneeza Fatima, Special Public Prosecutor have relied upon pronouncements in cases titled “IFTIKHAR HUSSAIN and others Versus DADEX ENTERNIT and others” (2002 CLD 575), “ZAFAR IQBAL and 3 others Versus NASREEN AHMED and 8 others” (2014 CLD 1039), “PROVINCE OF PUNJAB through Secretary to Government of Punjab, Communication and Works Department, Lahore and another Versus Messrs MUHAMMAD TUFAIL AND COMPANY through Muhammad Tufail (deceased) through legal heirs” (PLD 2017 SC 53) and “CHIEF EXECUTIVE OFFICER, Peshawar Electric and Power Company (PEPCO) Versus SAJEEDA BEGUM” (2022 SCMR 2058).

VI. DETERMINATION BY THE COURT

i. Prime desire of law to first cross barrier of question/objection of jurisdiction:

9. Part II of the “Act” deals with jurisdiction of the Court and Section 5 of the “Act”, starts with the Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situated. Hence, the issue revolves around the point whether this Court at Rawalpindi Bench has the jurisdiction to entertain the titled Civil Original under the “Act”. The capacity of the Court to take account of any dispute submitted to it is called jurisdiction. Thus, without a specific jurisdiction, the Court will not possess the prowess to decide on a particular dispute. In company law matters, litigants before proceeding with their claim face with one most common question, sometimes perplexing, as to which Court shall have the territorial jurisdiction to hear and finally adjudicate the dispute. Section 5 of the “Act” deals with jurisdiction of the Court and the law contained in Constitution and relevant statutes civil and criminal code and statutes on various subject matters clearly provide and demarcate jurisdiction of the Courts but in spite of the same, the common issue that often

arises before the Court is with regard to territorial jurisdiction of the Courts. Jurisdiction of Court refers to power of the Court to deal with the matter and render a decision for its resolution. Jurisdiction of every court is on three counts i.e. Subject matter, Pecuniary and Territorial. Territorial jurisdiction refers to power of the court to inquire and proceed with the trial of matter that is presented before it. The issue of territorial jurisdiction of this Court under the “*Repealed Ordinance*” was being determined in terms of Section 7 of the “*Repealed Ordinance*” keeping in consideration location of the registered office of the Company, which provision has been kept intact in Section 5 of the “*Act*”. Thus, location of registered office of a company carries pivotal role and status while determining territorial jurisdiction of the Court dealing with company matters. This Court in the case of “IFTIKHAR HUSSAIN and others Versus DADAX ENTERNIT and others” (2002 CLD 575) and Peshawar High Court in “PHOENIX Security Service (Pvt.) Ltd through Director Commercial Versus Messrs EMERALD Mining Company (Pvt.) Ltd” (PLD 2000 Peshawar 78) have also dealt with the same issue by holding that the Court having jurisdiction under the “*Repealed Ordinance*” shall be the High Court having jurisdiction in the place at which registered office of the Company is situated.

10. It is by now a settled law that if a mandatory condition for the exercise of a jurisdiction before a Court, tribunal or authority is not fulfilled, then the entire following proceedings become illegal and suffer from want of jurisdiction. So, there rests no room for stepping ahead with in hand Civil Original without first attending to and adjudicating upon question of jurisdiction as has been held by the Supreme Court of Pakistan in case titled “ZAHID ZAMAN KHAN and others Versus KHAN AFSAR and others” (PLD 2016 SC 409) that “*the law enjoins a duty upon the Court to settle question about its jurisdiction first because subject to certain exceptions, any decision rendered by the court having no jurisdiction stands vitiated on that account alone*”. In “GOVERNMENT OF SINDH through Secretary

Education and Literacy Department and others Versus NIZAKAT ALI and others” (2011 SCMR 592) it has been held that “every Court prior to taking cognizance and adjudicating upon an issue should first resort to the question of assumption of its jurisdiction and if it comes to the conclusion that jurisdiction can be assumed only then the issue can be adjudicated upon”. Further, it is held in case titled “PAKISTAN RED CRESCENT SOCIETY, PUNJAB PROVINCIAL BRANCH Versus ZIA ULLAH KHAN NIAZI” (2011 PLC (C.S) 1640) it has been held that “The tenor of the afore-referred order passed by this Court indicates that the Tribunal had to decide the appeal afresh and "in accordance with law". The law includes the question of jurisdiction and the court ought to have decided the same in the first instance rather than relying on merely the remand order of this Court to assume jurisdiction”. Moreover, esteemed guideline with regard to deciding question of jurisdiction at very outset of judicial proceedings is enumerated in case titled “IZHAR ALAM FAROOQI, Advocate Versus SHEIKH ABDUL SATTAR LASI and others” (2008 SCMR 240) reading that “notwithstanding the raising of such an objection by the parties, the forum taking cognizance of the matter must at the first instance decide the question of its jurisdiction. There can be no exception to the principle that an order passed or an act done by a Court or a tribunal not competent to entertain the proceedings is without jurisdiction and that it is mandatory for the Court or tribunal as the case may be to attend the question of jurisdiction at the commencement of the proceedings”. It has also been held in case titled “KHYBER TRACTORS (PVT.) LTD. through Manager Versus PAKISTAN THROUGH MINISTRY OF FINANCE, Revenue and Economic Affairs, Islamabad” (PLD 2005 SC 842) that “question of jurisdiction of a forum is always considered to be very important and any order passed by a Court or a forum, having no jurisdiction, even if is found to be correct on merits, is not sustainable. The jurisdiction of a Court lays down a foundation stone for a judicial or quasi-judicial functionary to exercise its

powers/authority and no sooner the question A of jurisdiction is determined in negative, the whole edifice, built on such defective proceedings, is bound to crumble down ...”.

(ii) **Purpose/object of The Companies Act, 2017:**

11. Returning to issue in the lis in hand, the Act was promulgated for facilitating corporatization and protecting interests of shareholders and it focuses on inculcating principles of good governance and safeguarding minority interests in corporate entities, being regulated by Board of Governors. Preamble of a Statue for sure signifies, confines and denotes aims it is destined for as has been held in case titled “Messrs Jet Green (Pvt.) Limited Versus FEDERATION OF PAKISTAN and others” (PLD 2021 Lahore 770) reading as follows:

“7. ... The preamble to a statute is though not an operational part of the enactment but it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also sheds clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, therefore holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. ...”

12. Visiting preamble of the “Act” is abundantly clear when it is weighed on touchstone of above narrated esteemed observation. For ready reference, Preamble of the “Act” is reproduced as under:

“WHEREAS it is expedient to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic means in conduct of business and regulation thereof, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interests in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith;

(iii) **Anatomy of Section 5 of The Companies Act, 2017**

13. In relation to question of jurisdiction of this Court raised by Applicants/Respondents, the Court has to examine Section 5 of the “Act”, which mandates jurisdiction in a case to a High Court having jurisdiction in a place at which a “Registered Office” of the company is situated. For ready reference Section 5 *ibid* is reproduced as under:

“5. Jurisdiction of the Court and creation of Benches:-

(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.

(2) Notwithstanding anything contained in any other law no civil court as provided in the Code of Civil Procedure, 1908 (Act V of 1908) or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act.

(3) For the purposes of jurisdiction to wind up companies, the expression “registered office” means the place which has longest been the registered office of the company during the one hundred and eighty days immediately preceding the presentation of the petition for winding up.

(4) There shall be, in each High Court, one or more benches on permanent basis, each to be known as the Company Bench, to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under this Act: Provided that Benches constituted under the Companies Ordinance, 1984 (XLVII of 1984), shall continue to function accordingly unless otherwise notified by the respective Chief Justice of the High Court: Provided further that provisions of section 6 shall be effective from the date of notification by the Chief Justice of the respective High Court within one hundred and eighty days from the date of the commencement of this Act.

(5) There shall be a Registrar to be known as “Registrar of the Company Bench” duly notified by the Chief Justice of the respective

High Court who shall be assisted by such other officers as may be assigned by the Chief Justice of the respective High Court.

(6) The Registrar of the Company Bench shall perform all the functions assigned to it under this Act including all ministerial and administrative business of the Company Bench such as the receipt of petitions, applications, written replies, issuance of notices, service of summons and such other functions or duties as may be prescribed under section 423.

(7) The Chief Justice of the respective High Court, if deemed appropriate, may also establish a secretariat in each Company Bench of the respective High Court in such form and manner to provide secretarial support and to perform such functions as may be prescribed under section 423.”

(iv) Comparative Study of In Force and Repealed Company Laws:

14. Steering back in legislative history, vide Section 7 of the repealed Companies Ordinance, 1984 (*the “Repealed Ordinance”*), the Company Benches of the High Courts had the original jurisdiction in the companies matter, which status of jurisdiction is kept intact in the Act as well, however; in consonance with the concept of separation of executive and judicial powers in line with the esteemed pronouncement in case titled “MIAN MUHAMMAD NAWAZ SHARIF Versus PRESIDENT OF PAKISTAN and others” (PLD 1993 SC 473), the powers of the Federal Government in Section 7 (1) of the repealed Ordinance enabling the Federal Government to notify civil courts to exercise all or any powers of the Company Bench has been done away in the Act eventuating in a state that now the Company Bench of a High Court has exclusive jurisdiction in company matters. For ready reference and the comparative study of the provisions of jurisdiction under Section 7 of the repealed Ordinance and under Section 5 of the Act, both provisions are reproduced hereunder:

| Companies Ordinance, 1984 | Companies Act, 2017 |
|--|--|
| <p>7. Jurisdiction of the Court.- (1) <i>The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:</i></p> <p><i>Provided that the Federal Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil Court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in that case such Court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such Court.</i></p> <p>(2) <i>For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.</i></p> <p>(3) <i>Nothing in this section shall invalidate a proceeding by reason of its being taken in a Court other than the High Court or a Court empowered under sub-section (1).</i></p> | <p>5. Jurisdiction of the Court and creation of Benches.- (1) <i>The Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.</i> (omitted)</p> <p>(2) <i>Notwithstanding anything contained in any other law no civil court as provided in the Code of Civil Procedure, 1908 (Act V of 1908) or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Court is empowered to determine by or under this Act.</i></p> <p>(3) <i>For the purposes of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the one hundred and eighty days immediately preceding the presentation of the petition for winding up.</i></p> <p>(4) <i>There shall be, in each High Court, one or more benches on permanent basis, each to be known as the Company Bench, to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under this Act:</i></p> <p>(5)</p> <p>(6)</p> <p>(7)</p> |

(v) **Pathology of Section 5 of the Companies Act, 2017 in connection with jurisdiction of High Court in company cases:**

15. Whilst reading the above reproduced provisions for the purpose of interpretation, the word “Court” is quite important and it is

defined in Section 2(23) of the “Act” as that “*Court means a Company Bench of a High Court having jurisdiction under this Act*”. The “Act” under Section 5(7) envisages creation of a separate secretariat in each Company Bench of the respective High Court to provide secretarial support. The Company Bench under Section 6(10) of the “Act” can refer any matter to the Registrar of the Company Bench for recording of evidence, if deemed necessary. Under Section 5 (4) of the “Act”, the Chief Justice of the High Court has been given explicit powers to constitute Company Benches to exercise jurisdiction vested in the High Court under the “Act”. Since the Chief Justices of the respective High Courts have the exclusive powers to create more than one Company Benches, it is imperative to determine the jurisdiction as to which Company Bench will exercise powers in a particular case. Section 5(1) of the “Act” unequivocally provides that the jurisdiction shall be determined on the basis of place of the “*registered office*” of the company situated in the territorial jurisdiction of the respective High Court.

16. Rules and Orders of Lahore High Court, Volume V, Part A, Rule 4 reads as follows:

PART A: RULES FOR THE DISPOSAL OF EXECUTIVE
AND ADMINISTRATIVE BUSINESS:

1. *The administrative and executive work of the High Court shall be controlled by a Committee of Judges to be known as the Administration Committee:*

Provided that those matters which are the exclusive concern of the Chief Justice, namely, the constitution of Benches and the appointment and control of the High Court Establishment shall be dealt with in accordance with such instructions as may from time to time be issued by the Chief Justice.

.....
.....
.....

4. (a) *Each member of the Administration Committee shall act as an Administration Judge and the powers and duties of each*

Administration Judge shall be defined by the Chief Justice from time to time.

17. Moreover, under Section 3-C of the High Courts (Establishment) Order (Punjab Amendment) Ordinance, 1981 (Pb Ord. I of 1981) (the “*Ordinance 1981*”), the Hon’ble Chief Justice have power to assign the area in relation to which each Bench shall exercise jurisdiction vested in the Lahore High Court. Said provision is reproduced as follows:

SECTION (3-C):

The Chief Justice of the Lahore High Court shall have power to make provision for all or any of the following matters, that is to say:-

- (a) assigning the area in relation to which each Bench shall exercise jurisdiction vested in the Lahore High Court;*
- (b) transferring proceedings pending in:-*
 - (i) the Lahore High Court;*
 - (ii) the Benches; and*
 - (iii) the Circuit Court, if any;**to a Bench or to a Circuit Court or to the Lahore High Court, as the case may be; and*
- (c) determining cases or classes of cases which shall be disposed of by the Judges nominated to the Benches or the Circuit Courts; and for all matters incidental, supplemental and consequential thereto.”*

(iv) Significance of “registered office” in relation to jurisdiction in company lis:

18. Whilst determining question of the “registered office”, consistent with the repealed Ordinance, Section 21 of the “Act” elucidates that the registered office will be the one where all communications and notices would be addressed to the company. For ready reference, Section 21 of the “Act” is reproduced hereunder;

21. Registered Office of Company:

- (1) a company shall have a registered office to which all communications and notices shall be addressed and within a period of thirty days of its incorporation, notify to the registrar in the specified manner.*

(2) notice of any change in situation of the registered office shall be given to the registrar in a specified form within a period of fifteen days after the date of change: provided that the change of registered office of a company from-

(a) one city in a province to another; or
(b) a city to another in any part of Pakistan not forming part of a province; shall require approval of general meeting through special resolution.

(3) if a company fails to comply with the requirements of sub-section (1) or (2), the company and its every officer who is responsible for such non-compliance shall be liable to a penalty not exceeding of level 1 on the standard scale.

19. Furthermore, the company is required to notify the registered office under regulation 4 of the Company (General Provisions and Forms) Regulations, 2018. Relevant part of regulation 4 is reproduced hereunder:

4. Forms and Returns:-

Pursuant to the provision of section 506 of the Act, formats of following forms and returns are specified which shall be used in all matters to which those forms and returns refer:

| S. No. | Name of Form | Description | Relevant section/regulation |
|---------------|---------------------|--|------------------------------------|
| | | | |
| 27. | Form 21 | Notice of situation of registered office of any change therein | Section 21 |

(vii) Situation of registered office of the Petitioner Company:

20. There is no denial that the “Petitioner Company” filed Form-21 dated 14.11.2014 with the concerned Registrar notifying change of registered office of the company from 7-km Mangla Gadari Road, Mangla District Jehlum to a new registered office situated at Office No. 4, Ground Floor, Avais Chambers, 1/C-5, Sikandar Malhi Road, Gulberg II, Lahore. Consequently, SECP issued an acknowledgment through Letter No. JR-I/0047808 dated 30.12.2014.

(viii) **Consistent dictates of preceding pronouncements:**

21. This Court has examined the record with the valuable assistance of parties, which reveals that the “Registered Office” of the Petitioner/Company is located at “Office No. 04, Ground Floor, Avas Chamber, I/C-5, Sikandar Malhi Road, Gulberg-II, Lahore”. It is to be remembered all the way long in discussion to follows that all issues arising out of the “Act” are to be dealt with by the Company Judge of a Court having jurisdiction at the place where the registered office of the Company is situated, which in the present case is “Lahore High Court, Lahore (Principal Seat)”, where admittedly the registered office of the Petitioner/Company is located.

22. Attending issue of jurisdiction, concept of jurisdiction is elaborated in case titled “PROVINCE OF PUNJAB through Secretary to Government of Punjab, Communication and Works Department, Lahore and another Versus Messrs MUHAMMAD TUFAIL AND COMPANY through Muhammad Tufail (deceased) through Legal Heirs (PLD 2017 Supreme Court 53) by the Supreme Court wherein it has been held that:

“14. The concept of jurisdiction of a Court encompasses (i) territorial jurisdiction, (ii) pecuniary jurisdiction and (iii) subject matter jurisdiction. The concept of jurisdiction has its genesis in the physical power of a Court to issue process to persons within the reach of the Court. Shorn of all extraneous 'frills', this is the essence of jurisdiction. A Court is to decide matters when persons relating thereto are within its reach. This basic jurisdiction is then regulated by defining the limits of that 'reach' by setting pecuniary limits, or by assigning different 'subjects' within one territory to different Courts, for example, by assigning banking and environmental matters to different Courts within one territory. ...”

23. Having also been referred and relied in “MCB Bank Limited Versus ADEEL SHAHBAZ STEEL MILLS and others” (2023 LHC 2922) (LHC Citation), this Court in case titled “BAHOO DYING INDUSTRIES (Private) Limited Versus SUI NORTHERN GAS

PIPELINES LIMITED etc.” (PLD 2021 Lahore 186) has elaborated the concept of jurisdiction reading as follows:

“8. The concept of jurisdiction has its genesis in the physical power of a Court to issue process to persons within the reach of the Court. The jurisdiction of a legal forum/Court includes its (i) territorial jurisdiction; (ii) pecuniary jurisdiction; and (iii) subject matter jurisdiction. The jurisdiction is always conferred upon the Courts by a law and it cannot be decided by the parties inter se. The territorial jurisdiction refers to a Court's power over actions and parties within the bounds of a particular territory. If a Court does not have territorial jurisdiction over the events or persons within it, then the Court cannot give a binding decision regarding the rights of the parties.”

24. Discussions earlier above utmost clarify that the “Act” is *pari materia* and successor to the Repealed Ordinance. With reference to Section 7(1) of the Repealed Ordinance, Supreme Court of Pakistan in a case titled “CHIEF EXECUTIVE OFFICER, Peshawar Electric And Power Company (PEPCO) and another Versus SAJEEDA BEGUM and others [2023 PLC (C.S) 90 = 2022 SCMR 2058] has observed that:

“8. ... As was correctly pointed out by the ASC for PESCO, PESCO is a body corporate that had been incorporated under the Companies Ordinance of 1984. Therefore, for the purposes of this instant petition, section 7(1) of the Companies Ordinance, 1984 is relevant. It is reproduced below for reference:-

7. Jurisdiction of the Court

(1) The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate:

Provided that the Federal Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil Court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in that case such Court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such Court. ...”

11. As far as the merits of PESCO's petition are concerned, PESCO is regulated by the Companies Ordinance of 1984 and therefore, the relevant High Court for the purposes of issuance of any directions under Article 199 of the Constitution is the High Court where the main office of PESCO is situated. PESCO's headquarters are situated in Peshawar, KPK and none of its activities are undertaken within the territorial jurisdiction of the Islamabad High Court. It has no place of business, branch office or presence in any of the territories that fall within the jurisdiction of the Islamabad High Court. Therefore, in the absence of anything to the contrary, reading Article 199 of the Constitution with section 7 of the Companies Ordinance of 1984, brings us to the un-escapable conclusion that the relevant High Court for the purposes of issuing any directions (if at all any High Court could assume jurisdiction) would have been the Peshawar High Court and not the Islamabad High Court."

25. Whilst determining "Civil Original Jurisdiction" of High Courts in company matters, it has been observed in a case titled "BROTHER STEEL MILLS LTD. and others Versus MIAN ILYAS MIRAJ and 14 others" (PLD 1996 SC 543):

"4. ... The proceeding was initiated under the Ordinance which under subsection (11) of section 2 provides:-

"the Court' means the Court having jurisdiction under this Ordinance."

Section 7 confers jurisdiction on the High Court in the following manner:-

"Jurisdiction of the Courts:-

(I) The Court having jurisdiction under this Ordinance shall be the High Court-having jurisdiction in the place at which the registered office of the company is situate ...

Section 8 provides that the Chief Justice of the High Court shall constitute one or more Benches each known as Company Bench to exercise jurisdiction under section 7. The procedure of the Court is provided by section 9 which shall be summary. From these provisions it is clear that the High Court or a Court empowered under section 7(l) has been vested with the jurisdiction to entertain, hear, try and decide the matters and cases arising under the Ordinance. Such jurisdiction has been conferred by the

Ordinance. The proceedings under the Ordinance are initiated in the High Court as a Court of first instance. While exercising such jurisdiction it has the characteristics and attributes of original jurisdiction. ...”

26. In another case titled “ZAFAR IQBAL Versus NASREEN AHMED” (2014 CLD 1039), it has been held that “Section 7 of the Companies Ordinance 1984 provides jurisdiction to a High Court at a place where the registered office of the company is situated. Admittedly and in pursuance of the memorandum of association the registered office of the Fazal Rehman Fabrics Limited is in province of Punjab. It does not need any lengthy discussion that all issues arising out of the Companies Ordinance, 1984 are to be dealt by the company Judge of a Court having jurisdiction at a place where the registered office of the company is situated which in the present case is Lahore High Court, where admittedly registered office of defendant No. 2 is situated. The distinction in section 7 of the Companies Ordinance was made only in respect of the winding up petition. In terms of sub-section (2) of section 7 for the purpose of winding up the registered office is one which has longest been the registered office of the company during last six months immediately preceding the presentation of the petition for winding up, however this is not the case here”. Again, on subject issue of territorial jurisdiction, while dilating upon Section 7 of the “Repealed Ordinance”, it has been held in a case titled “IFTIKHAR HUSSAIN and others Versus DADEX ENTERNIT and others” (2002 CLD 575) that “The provisions of Section 7(1) of the Companies Ordinance, 1984 are absolutely clear that it is the High Court having jurisdiction in the place at which the registered office of the Company is situated which can entertain any matter under the Companies Ordinance, 1984.” Dealing with matter of extension of the “Repealed Ordinance” under Article 247 of the Constitution of Islamic Republic of Pakistan, 1973, it has been held in a case titled “PHOENIX Security Service (Pvt.) Ltd through Director Commercial Versus Messrs EMERALD Mining Company (Pvt.) Ltd”

(PLD 2000 Peshawar 78) that “The Court has been defined by section 2(11) of the Company Ordinance, 1984, the Court means the Court having jurisdiction under this Ordinance and according to section 7(1), the Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which registered office of the Company is situated. According to section 8 of the Ordinance there shall in each High Court be one or more Benches, each to be known as the company bench to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under section 7.”. Again the matter involving extension of the Repealed Ordinance under Article 247 of the Constitution was dealt with in a case titled “ABDUL RAUF and another Versus Messrs MIFATAH UDDIN FLOUR MILLS (Pvt.) Ltd. and others” (PLD 2000 Peshawar 83) by holding that “The Court has been defined by section 2(11) of the Companies Ordinance, 1984, the Court means the Court having jurisdiction under this Ordinance and according to section 7(1), the Court having jurisdiction under this Ordinance, shall be the High Court having jurisdiction in the place at which registered office of the Company is situated. According to section 8 of the Ordinance there shall in each High Court be one or more benches, each to be known as the company bench to be constituted by the Chief Justice of the High Court to exercise the jurisdiction vested in the High Court under section 7. ... However, here in this case this fact is not of much importance due to location of Company's registered office as mentioned in the memorandum of association is N.W.F.P. and the dispute is also not related to Company. While holding that this Court has got the jurisdiction over PATA I also hold that this Court has got no jurisdiction in the matter ...”

VII. CONCLUSION:

27. In view of above enumerated facts, circumstances and law, it is confirmed that the registered office of the “Petitioner Company” is situated at Lahore, therefore, Rawalpindi Bench of this Court lacks jurisdiction to entertain the Civil Original. Accordingly, C.M.No.03 of

2023 is **allowed** and in consequence thereof, Civil Original (C.O. No.11 of 2022) be returned to the Petitioners to be filed before the Company Judge at Principal Seat of this Court, if so advised.

**(JAWAD HASSAN)
JUDGE**

Approved for Reporting

JUDGE

*Usman**