

Stereo. H C J D A 38

**JUDGMENT SHEET**

**LAHORE HIGH COURT, LAHORE**

**JUDICIAL DEPARTMENT**

**C. O. No. 14225 / 2023**

Equity Master Securities (Pvt.) Limited & 03 others

**Versus**

Pakistan Stock Exchange Limited & 937 others

**JUDGMENT**

<b>Date of Hearing:</b>	03.06.2024
<b>Petitioners By:</b>	Mr. Muhammad Nawazish Ali Pirzada, Advocate
<b>Respondent No. 1 By:</b>	Mr. Shezal Khan Burki, Advocate
<b>Respondent No. 2 By:</b>	Mr. Ruman Bilal, Advocate
<b>Respondent No. 5 By:</b>	Mr. Muhammad Ali Malik, Advocate
<b>Respondent No. 647 By:</b>	Mr. Dilnawaz A. Cheema, Advocate

**ABID HUSSAIN CHATTHA, J:** This winding up Petition is instituted by Petitioner No. 1 / Equity Master Securities (Pvt) Limited (the “**Company**”) in concert with Petitioners No. 2 to 4, the Chief Executive Officer and Directors of the Company in their capacity as contributories seeking to wind up the Company under the supervision of the Court in terms of Sections 301 and 305 of the Companies Act, 2017 (the “**Act**”).

2. It was averred that the Company, currently exiting under the Act, was incorporated as a private limited Company on 26.03.2008 under the Companies Ordinance, 1984. It is a licensed company authorized to offer services as a broker under license issued by the Security and Exchange Commission of Pakistan (the “**SECP**”) and as such, is permitted to undertake the business of buying, selling or dealing in securities through the Pakistan Stock Exchange (the “**PSE**”). The said license has been renewed

from time to time and lastly on 01.01.2023 till 31.12.2023 under Section 69 of the Securities Act, 2015 (the “**Securities Act**”) and under Section 52 of the Futures Market Act, 2016 (the “**Futures Act**”). The Company has passed a special resolution dated 27.02.2023 for its winding up under supervision of the Court which was also filed in the Company Registration Office of the SECP. It was further asserted that due to difficult economic conditions, non-receipt of due payments to the Company, expenses incurred on false and fabricated cases instituted against the Company, volatile securities business and loss of volume of shares traded on PSE due to Corona Virus pandemic, the equity of the Company had turned negative, as such, further losses are not sustainable, the Company has lost its substratum and is no more a going concern, therefore, its winding up is imperative and expedient being in the best interest of its shareholders, creditors and account holders. Hence, it is just and equitable to wind up the Company.

3. Notice was issued subject to the question of maintainability of the Petition and SECP was directed to submit reply in collaboration with the concerned Respondents including PSE, Central Depository Company of Pakistan Limited and National Clearing Company of Pakistan Limited.

4. Learned counsels for SECP and PSE posed a serious challenge qua the maintainability of this Petition in terms of Section 148 of the Securities Act by asserting that the Company and its contributories are barred to institute this Petition without satisfying the SECP that the Company has settled all outstanding claims of investors as per ‘Default Regulations’ of the PSE and have obtained prior approval of SECP in this regard. It was explained that an alternate mechanism under Rule 4.9 of PSE Rule Book is available to the Company to refer and deal with the matter of its default towards its account holders who invested in PSE through the Company and the institution of this Petition is an attempt to thwart the applicable regulatory mechanism provided by the PSE. This is particularly so when the Petitioners have also not informed PSE with respect to the passing of special resolution before filing the instant Petition as per applicable regulations of PSE which is a frontline regulator regarding

business of the Company. It was also apprised that SECP has also passed an investigation order dated 30.03.2023 under Section 139 of the Securities Act for investigation into affairs of the Company and the instant Petition is an attempt to frustrate the investigation process. As such, pertinent facts have been concealed with *mala fide* intention to procure the winding up order. Hence, Section 308(2) of the Act should be invoked which empowers this Court to dismiss the winding up Petition if the Petitioners are found acting unreasonably in seeking to have the Company wound up instead of pursuing the special remedies available under the law.

5. Learned counsel for the Petitioners submitted that the Petitioners have instituted the titled Petition in accordance with the rights accorded to the Petitioners under the provisions of Sections 304 & 305 of the Act. The special resolution passed in this behalf was duly filing before the SECP. However, inaction on the part of the SECP to accord approval of the same cannot be read as non-compliance of Section 148 of the Securities Act, particularly, when it is in the best interest of the shareholders, creditors and account holders of the Company that the Company be wound up.

6. In view of the serious objections qua maintainability of this Petition, it is imperative to address the question of maintainability at the outset. The Company is existing under the Act which is applicable to all kinds of companies including the Company. Section 293 of the Act prescribes three modes of winding up a company i.e. by the Court; or voluntary; or subject to the supervision of the Court. Section 294 of the Act describes liability as contributories of present and past members of the company in the event it is being wound up. Similarly, Sections 295 to 300 of the Act deal with the liability of Directors whose liability is unlimited, contributory having fully paid shares, nature of liability of contributory, contributories in case of death of a member, contributories in case of insolvency of member and contributories in case of winding up of a body corporate which is a member, respectively. Section 301 of the Act enumerates the circumstances in which a company may be wound up by the Court. It includes instances pressed by the Petitioners when a company by a

special resolution has resolved that it may be wound up by the Court or if the Court is of the opinion that it is just and equitable that the company should be wound up.

7. Section 304 of the Act accords the right to institute a winding up Petition to a company or to any creditor or creditors or to any contributory or contributories or by all or any of the aforesaid parties together or separately or to the registrar or to the SECP or to a person authorized by the SECP in that behalf subject to the provisions of the said Section. This Section lists certain mandatory prerequisites which are required to be complied with by each category of persons authorized to institute a winding up Petition. In the case of a contributory, the prerequisites of Section 304 of the Act are that a contributory shall not be entitled to present a winding up Petition unless either the number of members is reduced, in the case of a private company, below two, or, in the case of public company, below three; and the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least one hundred and eighty days during eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former holder. Similarly, the prerequisite stipulated for a company to bring a winding up Petition are that it has to furnish with its Petition, in the prescribed manner, the particulars of its assets, liabilities, business operations and the suits or proceedings pending against it.

8. Section 305(1) of the Act stipulates that where a company is being wound up voluntarily or subject to the supervision of the Court, a Petition for its winding up by the Court may be presented by any person authorized to do so under Section 304 and subject to the provisions of that Section. Sub Section (2) thereof casts a mandatory obligation upon the Court that it shall not make a winding up order unless it is satisfied that the voluntary winding up or winding up subject to the supervision of the Court cannot be continued with due regard to the interests of the creditors or contributories or both or it is in the public interest.

9. Admittedly, the Company is not an ordinary Company but a licensed Company which is engaged in the further regulated business of selling, buying and dealing in securities on PSE under the license issued by SECP. As such, the operations of the Company are subject to regulatory regime of PSE as a frontline regulator and SECP as an apex regulator which regulates the PSE as well as the Company. The Securities Act in this behalf is most relevant which has been promulgated to amend and consolidate the law for regulation of the securities industries, the protection of investors and for the matter connected therewith and ancillary thereto. Section 148 of the Securities Act, importantly is reproduced as under:-

*“(1) In the case of a licensed person which is a company, if it appears to the Commission that it is desirable for the protection of customers that the company should be wound up under the Companies Ordinance, 1984 (XLVII of 1984), the Commission may present a petition for it to be wound up under that Ordinance on the ground that it is just and equitable that it should be wound up and that Ordinance shall apply to such petition as it applies in relation to a petition presented under that Ordinance.*

*(2) Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), -*

- (a) a licensed person shall not file a petition for winding up unless it satisfies the Commission in the manner prescribed that it has settled all outstanding investors claims as per default regulations and has obtained prior approval of the Commission and the Commission may, in the interest of the public or interest of investors, impose such conditions as it deems appropriate.*
- (b) The Court may refuse to entertain petition for winding up of a company, if the Court is satisfied that-*
  - (i) requirements of clause (a) have not been fulfilled;*
  - (ii) petitioner intends to avoid or prejudice investigation of offences under this Act, or*
  - (iii) any other ground that the Court deems fit in the facts and circumstances of the case.”*

**10.** Section 2(xix) of the Securities Act defines 'Default Regulations' to mean those provisions of the regulations which provide for the initiation of proceedings or other action if a clearing member has failed or appears to be unable or likely to become unable, to meet his obligations for all unsettled or open market contracts to which he is a party. Further, Sections 138 to 139 of the Securities Act confer powers upon the SECP to inspect and investigate the affairs of a licensed person. Similar powers are also vested with the SECP under the Futures Act. In short, a comprehensive regulatory scheme is available to scrutinize the affairs of a licensed person for the protection of rights and interests of stakeholders and investors. Section 174 of the Securities Act unequivocally provides that provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. This provision makes it abundantly clear that provisions of the Securities Act being a special law applicable to the Company will pre-empt and take precedence to the provisions of winding up stipulated in the Act.

**11.** Thus, the proposed decision of winding up of the Company taken by the Company in concert with the contributories must be analyzed in terms of all applicable laws and regulations. It follows from the above that the Company being a licensed person was not authorized to institute the Petition for winding up before satisfying SECP in the prescribed manner that it has settled all outstanding claims of investors as per Default Regulations and has obtained prior approval of SECP in this behalf. It is not refuted that a mandatory sanction of SECP was not obtained before instituting the titled Petition. It is also apparent from the record that SECP has invoked its investigative powers vested under Section 139 of the Securities Act against the Company and an investigation team has been constituted for this purpose. SECP through C. M. No. 115 / 2023 has also informed that the Company as a securities broker has defaulted against a host of its account holders and the victims are the public-at-large having unsettled claims against the Company. It is apprised that so far 197 claims amounting to Rs. 416.73 million are outstanding as of 30.06.2023 and that the process of

investigation is being delayed due to pendency of the titled Petition. PSE has also maintained that the process of settlement of claims of the victims is being carried out as per applicable Default Regulations and in the presence of a comprehensive mechanism for settlement of claims of the investors within the ambit of PSE, the winding up Petition, which otherwise is not maintainable, is also not in the public interest. Therefore, it is established that this Petition is not maintainable having been filed in violation of Section 148 of the Securities Act.

**12.** The Petition has also been incompetently instituted by the Company and its contributories without complying with the prerequisites embodied in Section 304 of the Act for the reason that the number of members of the Company are not reduced below two which is one of the threshold prescribed under Section 304(a) of the Act for the contributories to maintain the Petition for winding up. The Petition is also not maintainable in terms of Section 304(e) of the Act on behalf of the Company since it did not furnish, in the prescribed manner, the particulars of its assets, liabilities, business operations and the suits or proceedings pending against it. A mere hand written one page was appended with the Petition which lists assets twice than the liabilities of the Company which is in complete contrast to the averments in the Petition that the substratum of the Company has been lost and it is not a going concern. The information is not only deficient but is also not substantiated on the basis of reliable documents such as audited accounts of the Company. The information is also in deep contrast to the information provided by the regulators which demonstrates that pertinent facts and particulars as required to be disclosed under Section 304(e) of the Act were concealed in the Petition with *mala fide* intention. As such, the Petition is also not maintainable on behalf of the Company.

**13.** Therefore, it is safely concluded that the Company has defaulted with respect to its liabilities towards the account holders and others. 'Default Regulations' and investigation processes by PSE and SECP as regulators have already been triggered against the Company. Both the regulators have unequivocally opined that in the given circumstances, the

winding up of the Company is not in public interest. Rather, the right to institute the wind up Petition in terms of Section 148 of the Securities Act under the given circumstances now vests with the SECP. As such, the institution of the instant Petition is clearly an attempt on the part of the Petitioners to bypass the mandatory and special regulatory framework and evade their responsibilities and liabilities under the law. Hence, it is not just, equitable or in the public interest to wind up the Company particularly when other remedies are available to the Petitioners and they are acting unreasonably in seeking to wind up the Company instead of availing and pursuing the other remedy as ordained in Section 308(2) of the Act. Therefore, the instant Petition instituted by the Company and its contributories is not maintainable. However, SECP as the apex regulator may file the winding up Petition as and when in its opinion, it would be just and equitable to do so in terms of Section 148 of the Securities Act read with Sections 304 and 305 of the Act.

**14.** In view of the above, the titled winding up Petition is **dismissed** and in consequence thereof, all pending applications having become infructuous are also disposed of.

**(Abid Hussain Chattha)**  
**Judge**

Approved for reporting

**Judge**

\*Waqar\*