

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Companies original no.2/2023

Khurshid Ahmed Qureshi, and others
versus
Livestock and Diary Development Board (LDDDB), and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
29	25.04.2024	Mr. Aftab Rashid, advocate for the petitioners. Barrister Munawar Iqbal Duggal, Additional Attorney General along with Yasir Arfat Abbasi, AAG Mr. Muhammad Tayyib Malik, advocate for respondent no.7. Mr. Muzafar Ahmed Mirza, Chief Prosecutor, SECP. Syeda Muneeza Fatima, SPP, SECP. Aqib Anwar, Administrator, LDDDB. Jamor Hussain, Company Secretary. Rehan Ali Cheema- Deputy Secretary and Ali Qasim- Section Officer, MNFSR.

CM no.583/ 2024

This application is for appropriate orders in light of the order of the Balochistan High Court appended to the CM. Notice to the respondents.

2 It is with the utmost respect and humility to the learned Division Bench of the Balochistan High Court that I say I find myself caught between a rock and a hard place. I am in complete empathy with the angst their Lordships must be battling with. However, I do hope in earnest that the Division Bench will give this Court some more time for this Court not to err on the wrong side of the company law in this petition under the Companies Act, 2017, for it raises a question of first impression on account of the promulgation of the State Owned Enterprises Act, 2023, and on account of the rampantly conflicting opinions of the Ministry of Law & Justice, the SECP, and the petitioners, which legal controversy is only compounded by the infelicitous drafting of the SOE Act, on the question whether the constitution of the Board of the company will now occur at the solitary behest of the Federal Government or by the members of the petitioner company alone for being a company limited by guarantee.

3 The applicants are directed to place on record the memo of the petition, the respondents' replies thereto, and the judgement of the Balochistan High Court, which is yet to be read by this Court. This Court will eagerly look for the possibility of that judgement providing a solution to the legal question of company law it is grappling with, and should that be the case, it will forthwith dispose of this petition on the strength of that judgement. If that, however, not be the case, then this Court will make all reasonable efforts on the next date, after hearing the objections, if any, of learned counsel for the respondents, to pass an appropriate order.

4 It is also to be borne in mind that the judgement of the Balochistan High Court was passed in a Constitutional petition, whereas the petition before me is under the Companies Act, 2017, and, therefore, I have to tread with care so that any order passed by me solely on the basis of a judgement of the Balochistan High Court, without my factoring in the aforesaid items of legislation, does not unwittingly be the reason for my ruling contrary to the aforesaid items of legislation.

5 It needs being said that, in so far as I can gauge, and to the extent their Lordships on the Division Bench might condescend to agree, the respondents are not in deliberate or wilful breach of their judgement, remain quite eager to comply therewith, but are prevented by the order of this Court.

6 Further, it appears to this Court that the direction of the Balochistan High Court was for the matter of the appointment of the CEO to be placed before the Board. The compliance with that direction would entail resurrecting the Board. I will need legal assistance from the learned Additional Attorney-General and other counsels as to whether a Board of a company that stands replaced by an administrator in the Company jurisdiction can be resurrected simply and only for the purposes of the appointment of its CEO, while the validity of the constitution of the Board appears *prima facie* illegal, and this is a legal question that I must as a Company judge answer, for I know of no legal provision or precedent in the company law that seems to justify this course.

7 As rightly pointed out by *Mr. Muzafar* for SECP, the core question in this petition before the Court is whether the Board is to be reconstituted by the Government or by the members of the company and, unless this question of law

is answered correctly, I do not see how, even if the administrator were removed, the Board would be validly reconstituted, in which case it might very well be that the appointment of the CEO is being placed before a Board which is not legally and validly constituted.

8 I therefore expect in earnest that the Balochistan High Court will grant further gracious indulgence to the respondents for a few weeks more, by which time this case will likely stand decided and the Board reconstituted accordingly.

Main case

Relist on **10.05.2024**.

(Sardar Ejaz Ishaq Khan)
Judge

Rana.M.Ift