

**JUDGMENT SHEET**  
**ISLAMABAD HIGH COURT, ISLAMABAD,**  
**JUDICIAL DEPARTMENT**

**W.P. No.3321/2019**

Jahangir Muggo and others.

*vs.*

Securities & Exchange Commission of Pakistan and others.

**W.P. No.3322/2019**

M/s United Industries Limited and other.

*vs.*

Securities & Exchange Commission of Pakistan and others.

Petitioners by:	Mr. Sikandar Bashir Mohmand, Advocate for petitioners in W.P No.3321/2019. Mr. Muhammad Afzal Siddiqui, Advocate for petitioners in W.P No.3322/2019.
Respondents by:	Barrister Minaal Tariq for SECP. Mr. Imtiaz Rashid Siddiqui & Syed Hasnain Ibrahim Kazmi, Advocates for respondent No.3 to 6 in both writ petitions. Mr. Muhammad Afzal Siddiqui, Advocate for respondent No.7 in W.P. 3321/2019.

Date of Hearing: 23.06.2022

**MOHSIN AKHTAR KAYANI, J:** By way of this common Judgment I intend to decide both these writ petitions arising out of the same order passed by the Executive Director (Regulations) SECP dated 06.08.2019, whereby, a show cause notice was issued *as to why inspector(s) should not be appointed in terms of provision of section 256 of the Act to investigate into the affairs of company with respect to, inter alia, the matters alleged in the Application.*

2. Brief facts referred in instant writ petitions are that the petitioners in Writ Petition No. 3321 of 2019 are Mr. Jahangir Muggo, Begum Safia Hanif Muggo, Mst. Afshan Muggo, Mst. Samina Muggo and Mst. Aisha Muggo, who claims to be the share holders of the company alongwith respondent No.8 to the extent of 51% shares in United Industries Limited, which is Public Limited Company, whereas, the respondent No. 3 to 6 hold 49% shares in the company. The

petitioners are primarily aggrieved to the impugned order passed on the application filed by respondent No. 3 to 6 before the Commission on 04.08.2007 with the request for Special Audit of the Company and appointment of an Auditor to carry out detail scrutiny of the affairs Of company under section 234-A of the Companies Ordinance, 1984 (repealed law), which was allowed by the SECP in way of issuance of impugned show cause notice.

3. In Writ Petition No.3322 of 2019 M/s United Industries Limited as well as M. Akbar Muggo also assailed the same show cause notice dated 06.08.2019 on similar grounds as referred in the body of the petition.

4. Brief history of these cases are that, an application under section 234-A of the Companies Ordinance, 1984 was filed by four share holders i.e. respondent Nos. 3 to 6 in both of these petitions with the claim that there are gross malfeasance and falsification of accounts committed over number of years by the Chief Executive and other members of the Management of United Industries Limited and those applicants are deprived of their due return on their investment and funds have been siphoned off from the company. Ninety percent of the shares of United Industries Limited were purchased by M/s Akbar Muggo & Associates from Ghee Corporation of Pakistan Limited, Lahore through Privatization Commission in the year 1992, which is a leading manufacturer of Kashmir Banaspati, Kashmir Cooking Oil and Laundry Soap. As such there are two groups of share holders in the company who are holding equal numbers of shares of the company from the date of the purchase and the applicants / respondents claims that they own half of the purchased shares in terms of Form-29 of 1993.

5. It has been complained by the applicant /respondents that Mr. Akbar Muggo in capacity to Chief Executive is conducting the affairs of the company in an unlawful and fraudulent manner that is oppressive to the interest of Directors / Shareholders and is also in contravention of the Memorandum & Articles of

the Association of the Company, in which certain illegalities have been highlighted i.e.

- i. Maintenance of dual business accounts for the company.*
- ii. The evasion of government taxes*
- iii. Unauthorized framed benefits for Chief Executive and his family.*
- iv. Unlawful extraction of funds out of the company accounts.*
- v. Consumption of Sui Gas.*
- vi. Advertisement and promotional activities.*
- vii. Comparison of packing material between United Industries Limited and Unilever (Pakistan) LTD.*
- viii. Variance in consumption of Chemicals.*
- ix. Expansion in plant & machinery Viz a Viz production capacity.*
- x. Expansion in building & plant / machinery.*
- xi. Comparison of cost / ton selling & distribution expenses.*
- xii. Violation of company law.*
- xiii. Details of assets owned by Mr. Akbar Muggo from the year 2003*

6. In view of the above objections and issues highlighted in the application, in terms of section 234-A of the Companies Ordinance, 1984 the respondents have prayed for the following

*Under the above mentioned circumstances we four undersigned Directors / Shareholders request you to accept our application under section 234-A of Companies Ordinance 1984 for ordering of Special Audit of the Company and appoint an auditor to carry out detailed scrutiny of the affairs of the United Industries Limited.*

*We also agree to share the cost of audit under the Sec 234-A of the Company Law.*

7. The above mentioned application was allowed vide order dated 03.09.2008 by the Executive director SECP, whereby, he directed to conduct the special audit of the company, even the terms of reference for the above mentioned order were also framed by the Executive Director SECP for conducting audit for the period of 01.07.2004 to 30.06.2007.

8. The respondent No.8 alongwith the petitioners being dissatisfied with the order of Executive Director SECP, preferred an appeal before the appellate bench

of SECP, whereafter the original order has been maintained vide dated 19.12.2008. The petitioners and respondent No.8 have challenged the said order through two separate writ petition Nos.2044 and 2045 of 2009, which was decided through a consented order of both the parties vide order dated 03.05.2017 with the following observations:

*In view of above, impugned order dated 03.09.2008 is hereby set-aside and matter is remanded back to SECP and relevant authority of SECP is directed to decide this matter afresh after hearing the parties in the light of objections raised in W.P No. 2045/2009 and 2044/2009 and pass speaking order while considering the order dated 02.03.2016, passed in C.O No.35/2006 by Lahore High Court, Lahore.*

9. Keeping in view the above mentioned order, matter was remanded to the appellate forum of SECP for adjudication whereafter; impugned show cause notice has been issued, which has been assailed by the petitioners and respondent No.8 separately through petitions in hand.

10. Learned counsel Mr. Sikandar Bashir Mohmand advocate on behalf of petitioner in writ petition No.3321 of 2019, while arguing this case has raised the following questions:

- i. Petitioners were never issued any notice after the remittance of case to the respondent Nos.1 & 2 by the Islamabad High Court, Islamabad on the basis of consent order passed in the writ petitions and without calling upon the petitioners, getting their response or hearing them, impugned notice was issued.*
- ii. The impugned proceedings are in clear violation of this court's order, as it is a matter of record that issue was confined to the question whether in the changed circumstances a special audit as per insertion in law which was declared ultra vires could be taken by SECP.*
- iii. The show cause notice was not made any reference to any order passed by the commission, and simply reproduced the points allegedly raised, but records no decision.*
- iv. The application under section 234-A having becoming infructuous could not be converted into Suo Moto in the proceedings under*

*section 256(1)(a) of the Companies Act, 2017, nor could such power vest any authority under the law.*

11. Conversely learned counsel for respondent No.3 to 6 have resisted the instant Writ Petitions primarily on the ground that they are holding 49% as well as the petitioners also hold 49% shares of the company, whereas, remaining 2% shares alleged to have been taken over by the respondent No.8 from Privatization Commission is disputed, which is pending with the Hon'ble Lahore High Court in ICA No.10 of 2016 titled as (Mian Waqar-ud-Din and others Vs. United Industries Limited and others), though, the said ICA is not an issue before this court.

12. In terms of section 513 of the Companies Act, 2017 all amendments made to erstwhile ordinance through Finance Acts have been validated; thus, all of the intentions and purpose of section 234-A of the erstwhile ordinance stands protected. It is the prerogative of the respondent / SECP to initiate *Suo Moto* proceeding under section 256(1)(a) of the Companies Act, 2017, as and when sufficient material is brought to its notice.

13. That the SECP being apex regulator after going through the audit report prepared by M/s Avais, Hyder Liaquat Nauman, Chartered Accountants, for the period 01.07.2006 to 31.12.2014 revealed that same was an audit conducted on sample basis which at best encompassed only five percent of the total record of the respondent company.

14. That auditors highlighted in the report that the management i.e. petitioners group have siphoned off amounts running into hundreds of millions of rupees.

15. The respondent / SECP in terms of section 10 of SECP Act, 1997 read with companies Act, 2107 is fully competent to delegate its functions to its officers.

16. Similarly, learned counsel for respondent Barrister Minaal Tariq has also opposed the instant writ petitions on the ground that the petitioners were given

due right of hearing, even their attendance have been marked by the representatives / duly authorized advocate, who participated in the proceedings, which is evident from the attendance record and as such the order has been passed in accordance with law.

17. That show cause notices are not to be considered as a conclusive order, rather option is given to the petitioners to submit their reply with the detail or any other ground which they intend to take alongwith other record before passing the final order on the pending application, therefore, no prejudice has been caused, hence writ petitions are not maintainable.

18. Arguments heard, record perused.

19. Perusal of record reveals that the petitioners and respondent No.8 are primarily aggrieved with the show cause notice dated 06.08.2019 issued by the Executive Director (Regulations) SECP on the application filed by the respondent No.3 to 6 in terms of Section 234-A of the repealed Companies Ordinance, 1984 which was previously allowed by the Executive Director SECP vide order dated 03.09.2008 and the same was assailed by the petitioners and respondent No. 8 through Writ Petition Nos. 2044 and 2045 of 2009 titled as (M/s United Industries Limited, etc Vs. Mian Qaqar-ud-Din, etc) and (M. Jahangir Muggo, etc Vs. SECP, etc respectively. With consent of both the parties the previous order was set-aside vide order dated 03.05.2017 by this court with direction to the SECP authorities to decide and adjudicate the matter by passing speaking order while considering the order dated 02.03.2016 passed in C.O No. 35 of 2006 by the Lahore High Court, Lahore.

20. The appended record and history of this case reveals that C.O No.35 of 2006 titled as (Mian Waqar-ud-Din etc Vs. M/s United industries Limited, etc) was filed in terms of section 305, 309 and 290 of Companies Ordinance, 1984 in the year 2006 before Hon'ble Lahore High Court, Company Bench by the respondent No.3 to 6, referring serious allegations whereby it was alleged that funds have

been dishonestly diverted, different amounts of the company have been used without approval of the board and never been listed in the books, even a mismanagement of the company affairs were also part of the grounds. The petition was contested by the present petitioners and finally the Hon'ble Lahore High Court vide its judgment dated 02.03.2016 reported as **2017 CLD 696 [Lahore] titled as (Mian Waqar-ud-Din vs. United Industries Limited, etc)** dismissed the petition for winding up of the company. However, certain directions were passed in exercise of powers under section 290 of the Companies Ordinance, 1984, where present petitioners were directed to buy out the shares in proportion of the shares held by the respondents on the basis of evaluation determined by the auditors appointed by the court in the report; three months time has been referred for completion of transaction; similarly the auditors were directed to calculate the profit accrued to the company from the period 01.01.2015 till passing of the judgment; even directions were issued to the directors of the company to hold meeting of the Board of Directors and Annual General Meeting to approve the financial statements; as well as the audited financial accounts and reports be also submitted before board of directors for their approval.

21. The above mentioned order has been assailed in ICA No.02 of 2015, whereby, the Hon'ble Division Bench of the Lahore High Court suspended the portion of the impugned order containing directions vide order dated 28.06.2016 and the matter is still pending.

22. Now question arises as to whether after the enactment of the Companies Act, 2017, which has been notified in Gazette on 31.05.2017, any application under repealed ordinance of Companies Ordinance, 1984 is maintainable or otherwise, qua the special audit request of the respondents, when no concept of especial audit is available in the present law rather a generalized concept of audit has been referred in terms of section 256 with auditors right to information and duties of

auditor in terms of section 248 and 249 of the Act. The plain reading of these provisions *prima facie* reveals that *a company's auditor shall conduct the audit and prepare his report in compliance with the requirements of International Standards on auditing*. However the Commission may by general or especial order, direct, the statement of compliance as contained in section 227 of the Companies Act, 2017. The Act also provides penalty for any contravention or default in compliance with the requirements of section 246, 247, 248 & 250 of the Companies Act, but despite this complete mechanism, no concept of especial audit is envisaged in the new law.

23. In order to resolve the controversy in legal sense, it is necessary to compare the provision of section 234-A of the Companies Ordinance, 1984 i.e. especial auditing viz a viz investigation into affairs of company in terms of section 256 of the Companies Act, 2017, the same has been reproduced as under:

Companies Ordinance, 1984	Companies Act, 2017
<b><u>234-A. Special Audit</u></b>  1) The commission may on its own motion, or upon an application made by members holding not less than 20% voting rights in a company, order a special audit of the company and appoint an auditor to carry out detailed scrutiny of the affairs of the company.  2) The Commission may during the course of the special audit, pass such interim orders and directions as maybe deemed appropriate by the Commission.  3) On receipt of the special audit report, the commission may issue such directions for immediate compliance to the company and its management as the Commission deems fit.  4) In case where the special audit has been ordered by the Commission on an application made by the member of the company, one half of the expenses of the special audit	<b><u>256. Investigation into affairs of company.</u></b>  1) Where the Commission is of the opinion, that it is necessary to investigate into the affairs of a company – a) on the application of the members holding not less than one tenth of the total voting power in a company having share capital; b) on the application of not less than one tenth of the total members of a company not having share capital; c) on the receipt of a report under sub-section (5) of section 221 or on the report by the registrar under sub-section (6) of section 254;  it may order an investigation into the affairs of the company and appoint one or more persons as inspectors to investigate into the affairs of the company and to report thereon in such manner as the Commission may direct:



<p>shall be borne and paid in advance by such members, and the other half shall be borne by the company.</p> <p>5) In case where the special audit has been ordered by the Commission on its own motion, the expenses of the special audit shall be payable by the company.</p> <p>6) Where the expenses of the special audit are payable by the company, such expenses in the first instance may be defrayed by the Commission, and the company shall be liable to reimburse the Commission in respect of such expenses</p> <p>7) The amount of expenses liable to be paid by the company, the members or any other persons, as the case may be, shall be recoverable as arrears of land revenue.</p> <p>8) The provisions of section 255 shall apply mutatis mutandis to the auditor appointed to carry out the special audit of the company under sub-section (1)</p>	<p>Provided that before making an order of investigation, the Commission shall give the company an opportunity of being heard.</p> <p>2) While appointing an inspector under sub-section (1), the Commission may define the scope of the investigation, the period to which it is to extend or any other matter connected or incidental to the investigation.</p> <p>3) An application by members of a company under clause (a) or (b) of sub-section (1) shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring the investigation.</p> <p>4) The Commission may, before appointing an inspector, require the applicants to give such security for payment of the costs of the investigation as the Commission may specify.</p>
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24. After careful comparison of both the provisions referred above, it is made clear that both these provisions of repealed law and the present law are different in nature having different requirements, no doubt in both these concept, special audit and investigation, the Commission has its *Suo Moto* powers, but with certain qualifications like under Companies Act, 2017 investigation could only be carried out into the affairs of the company where Commission is of the opinion that it is necessary to investigate into the affairs of the company, which is qualified with application of share holders in sub clause (a) & (b) of sub section (1) of section 256, which could only be initiated on the request of the share holders. However, in exercise of *Suo Moto* powers the Commission has to formulate its opinion *on the receipt of a report prepared by authorized officer of the Commission after inspection of books of accounts and books and papers of the company in terms of sec 221 (5) of the Act or on the report by the registrar in terms of section 256, 254 (4) of the act where registrar is of the opinion that the information or explanation or*

*books or papers or documents in question discloses an unsatisfactory state of affairs or that it does not discloses a full and fair statement of the matter to which it purports to relate.*

25. Now adverting towards the present case while considering the reasons prevailed upon Executive Director SECP who issued a show cause notice as to whether any such report has been referred or there was an opinion of registrar of SECP on the basis of report of authorized officer of the Commission where he feels unsatisfied. However, on minute scanning of the show cause notice, no opinion has been referred on the basis of inspection of books of accounts and papers of the company, neither any unsatisfactory state of affairs have been disclosed qua any information or explanation rendered by the petitioners. It is trite law that things have to be done in a manner and mode in which they have been prescribed and all other modes stand excluded if not acted in that manner as held in 2020 SCMR 2129 (Ajmir Shah, Ex-Sepoy Vs. The Inspector General, Frontier Corps Khyber Pakhtunkhwa and another), PLD 2018 [SC] 189 (Muhammad Hanif Abbasi Vs. Imran Khan Niazi and others), PLD 2016 [SC] 995 (Shahida Bibi and others Vs. Habib Bank Limited and others), PLD 2013 [SC] 255 (Muhammad Anwar and others Vs. Mst. Ilyas Begum and others). As such, the minimum requirement to exercise the powers of *Suo Moto* by the Commission are subject to opinion based upon the information and explanation claimed by the Registrar on the basis of inspection report submitted by the authorized officer of the commission in terms of section 221 (5) of the Act and if no such documents are available before the Executive Director, any order of investigation into affairs of the company is considered to be an illegal affair and beyond its jurisdiction.

26. This court has also gone through the concept of investigation provided in the repealed law Viz a Viz the present Companies Act, 2017, which commonly reveals that whenever the affairs of company have been managed through an unlawful or fraudulent manner and the minor share holders rights have been

prejudiced or management of the company has been conducted in a manner prejudicial to the interest of the creditors or of the public interest, such aspect could only be determined on the basis of report submitted by the registrar of the companies in terms of sub section (6) of section 261 or on the inspection report of books of accounts, papers of the company or on the report of authorized officer in terms of sub section (5) of section 231 of the Companies ordinance, 1984; the repealed law, therefore, investigation could be ordered on the basis of opinion formulated by the Commission. The primary reason for investigation has clearly been explained in sub clause (i) to (vii) of sub section (b) of section 265 of the Companies Ordinance, 1984. These provisions are equal to the section 256 of the Companies Act, 2017 which is parameteria to the new provision. In view of this legal position the concept of special audit in terms of section 234-A of the Companies Ordinance, 1984 is not available in the new law neither could be equated with the provision of section 256 of the Companies Act, 2017, as conducting a special audit might be a part of investigation at the larger context but it should not be equated with investigation.

27. The old provisions of special audit in terms of section 234-A of the Companies Ordinance, 1984, refers its character highlighted in term “special” which could not be treated as in general concepts, especially when the concept of audit has separately been explained in section 252 of the same ordinance whereby, every company shall at each annual general meeting appoint an auditor whose duties has been explained in section 255 of the ordinance, the report prepared by the auditor has to be read before the company in general meeting and shall be open to inspection by any member of the company, even audit of cost accounts of company shall be conducted on the direction of the Federal Government for those companies referred in sub clause (e) of sub section (1) of section 230 of the Ordinance, engaged in production, processing, manufacturing or mining activities. All these aspects differentiate the

requirement and procedures for application of specialized audit process viz a viz the general audit concept in the old law as well as concept of investigation in the new law.

28. It is trite law that special provision of law i.e. Special Audit in terms of Section 234-A of the Companies Ordinance, 1984 has its own criteria and application under the repealed ordinance if considered in the light of general provision of the same law. The Courts usually interpret the concept of special provision by excluding the general provision in the same law, rather special provision controls the general provision as held in 2014 SCMR 1268 (A.Qutubudin Khan Vs. CHEC Millwala Dredging Company Pvt. Limited), 2012 SCMR 669 (Capt. R. Nayyar Islam Vs. Judge Accountability Court-III and others.), 2010 SCMR 229 (United Bank Limited Vs. Mst. Jameela Mumtaz and others), (PLD 1991 SC 143 (Brig. Sher Ali Aaz and another vs. The Secretary Establishment Davison and an others).

29. In view of above position, the special provision as applied by the respondent/Executive Director in the impugned Show Cause Notice in concept of Special Audit under Section 234-A has incorrectly been applied, especially when the entire concept of Special Audit has been eliminated in the new law.

30. Ordinarily where the plain language of statutes admits of no other interpretation than intention of legislature conveyed through such language is to be given its full effect as held in PLD 2015 [SC] 501 (Ghulam Haider Vs. Murad through legal representatives). This principle has also been highlighted in PLD 2012 [SC] 923 (Baz Muhammad Kakar Vs. Federation of Pakistan through Ministry of Law and Justice), 1998 SCMR 841 (Pakistan International Airlines Corporation, Karachi Vs. Wafaqi Mohtasib), hence the plain unambiguous words must be expounded in their natural and ordinary sense as reflected from the plain reading of section 234-A of the Companies Ordinance, 1984 viz a viz section 256 of Companies Act, 2017, resultantly both the provisions are not

parameteria nor having any nexus with each other. This court has also considered the two headings used in these two laws “special audit viz a viz investigation into the affairs of company” referred in both these sections of law, which clearly establish that both these headings which are prefix to section indicates factors to be considered therein, which gives the intentions of the legislature and as such the detail provided in the respective sections if considered with the heading there is no ambiguity to establish that what is the purpose of these provisions. Under ordinary rules of interpretation heading prefixed to sections usually control the plain words of the provision, though it is not a hard and fast rule but language implied in the heading cannot be used to give a different affect to clear words of the Section where there cannot be any doubt as to their ordinary meaning as held in (Iqbal Sing Marwah Vs. Meenakshi Marwah) (2005) 4 SCC 370, therefore only in case of ambiguity or doubt heading or sub-heading may be referred to an aid in construing the provision as held in (R. Krishnaih vs. State of AP) AIR 2005 AP 10.

31. It has not been denied by the respondents that they have filed winding up petition before the Company Judge at Lahore, which was dismissed and at present ICA No.10/2016 is pending before the Hon’ble Division Bench of Lahore High Court, Lahore. This aspect *prima-facie* discloses that reasons of winding up raised by the respondents have not been agreed to by the Company Judge and some directions were passed in para 62 of C.O No.35/2006 including the direction to the Auditors to calculate the profit and submission of report by the Auditors qua the audited accounts of each financial year but those directions were suspended by the Hon’ble Division Bench in ICA, therefore, claiming the investigation under the garb of special audit is also considered to be in violation of spirit of order passed in C.O No.35/2006, even otherwise, subject direction for audited accounts have already been suspended. It has clearly been established on record that Company Judge has not observed any glaring illegality to pass

winding up order, nor any fraud has been highlighted in the said judgment rather the plain reading of entire judgment of Company Judge suggests that it is a case where certain requirements of Section 290 of Companies Ordinance, 1984, presently in terms of Section 286 of Companies Act, 2017 could be in existence in order to regularize the affairs of company in future, whereby necessary directions were already passed, therefore, when the Company Judge has already declared not to wind up the company on mere allegation suggested by the respondents it is not appropriate to pass any direction qua the investigation into the affairs of company in terms of Section 256 of the Companies Act, 2017 though it has different criteria which entails consequences.

32. In order to initiate investigation into the affairs of company report under sub-section (5) of Section 221 of the Companies Act, 2017 is necessary which has close connection with Section 256 of the Act *ibid* and any report compiled under this provision would logically form the basis of an investigation sought to be conducted by the Commission into the affairs of that company as held in **(Daewoo Pakistan Express Bus Service Ltd. and another vs. SECP and others)**

**2020 CLD 919**, wherein it was also held that:-

*...5. In particular, in respect of investigation into the affairs of a company under section 256, there are only three instances under which the investigation can be ordered by the Commission. By clause (a) of subsection (1), it can be done on the application of members holding not less than one tenth of the total voting power in a company having share capital and in terms of clause (b) of subsection (1) on the application of not less than one tenth of the total members of a company not having share capital. The learned counsel for Saad S. Faruqui (the complainant) concedes that the complainant does not possess the qualifications mentioned in clauses (a) and (b) of subsection (1) of section 256. Therefore, the complainant could not have filed an application under section 256 directly. He however chose an indirect modus operandi to trigger and put into motion the investigation into the affairs of Daewoo envisaged by section 256. For, inevitably, the proceedings under section 221 lead to the investigative powers contemplated by section 256 and so is*

*equally egregious and harmful for any company which would, at once, be at guard of its creeping danger. The complainant simply filed a complaint to the Commission which passed the Inspection Order and served it upon Daewoo. The entire basis of that order are the allegations made in the complaint on the part of the complainant. Thus, plainly and clearly, the Commission did not bring its own independent mind to bear on the entire aspect of the case and by acting mechanically passed the Inspection Order. No reasoned and deliberative process preceded the making of the Inspection Order. This is against the grain of the core principles underlying section 221. For Daewoo this has unpalatable consequences, in that, the inspection would likely lead to the compiling of a report in terms of subsection (5) of section 221 and on which the Commission would proceed to appoint Inspectors by exercise of powers under section 256 of the Act, 2017. Therefore, the two provisions, that is, sections 221 and 256 are closely tied in with each other and have to be read together while determining the true import and construction of section 221. Surely, the legislature realized the need to fence the powers conferred on the Commission and this intention which permeates both sections 221 and 256 cannot be circumvented by a contraption. Learned counsel for Daewoo relies upon an order passed by this Court in W.P No.20088 of 2012 which involved the question regarding appointment of inspectors under the erstwhile section 231 of the Companies Ordinance, 1984 which is in pari materia with section 221. This judgment was followed in W.P No.27555 of 2017 by relying upon the following excerpt of the earlier judgment passed by a learned Single Judge (Shams Mehmood Mirza J.):*

*" It is accepted position that report under section 231(5) can lead to investigation and appointment of inspectors under section 263 but inspectors cannot be appointed simultaneously with the order of inspection of books of accounts and other books and papers as SECP proceeded to do through letter dated 01.08.2012. Be that as it may, in case inspectors are to be appointed then prior show cause notice has to be given. For all intents and purposes, through letter dated 01.08.2012, SECP exercised powers under section 265 of the Ordinance as under section 231 of the Ordinance, it had no power to appoint inspectors to carry out the investigation into the affairs of the petitioners. The fact that inspectors were appointed under section 265 of the Ordinance is furthermore apparent from the task given to them in terms of clause 2 of letter dated*

*01.08.2012. The registrar or the inspecting official at the most can inspect the books of account and other documents/papers of similar nature in exercise of powers under section 231 of the Ordinance. However, the wide nature of work the inspectors were required to perform under the impugned letter could not be undertaken in terms of section 231 of the Ordinance. The source of power for issuance of order/letter dated 01.08.2012 was located in section 265 of the Ordinance and, therefore, SECP had to issue the show cause notice to the company before taking the proposed action. Notwithstanding the vital question of issuance of show cause notice, it is also to be noted that the power for appointment of inspectors under section 265(b) of the Ordinance to carry out the investigation in the affairs of the company is discretionary and is dependent upon the formation of an opinion ("in the opinion of the Commission") that such an investigation is necessary..."*

33. This court has also been guided by the judgment reported as **(Hira Textile Mills Ltd. vs. Bank Al-Falah Ltd.) 2022 CLD 285**, wherein it was held that if at all the Commission seeks to investigate into the affairs of a company on an application, it must be an application made by one of the persons or entities mentioned in section 256 and none else, even show cause notice could only be issued by the Commission while exercising its *suo motu* powers conferred U/S 257 **by forming an independent and bipartisan opinion**. No doubt investigation into the affairs of company is a serious matter and entails consequences both financial as well as goodwill of the corporate entity, therefore, these powers could not be used lightly by the Commission. The powers to investigate into the affairs of company have been circumscribed by the provisions of Section 256 and in case *suo motu* powers are required to be exercised by the Commission the minimum requirement mentioned in clause 13 of subsection (1) of Section 257 of the Companies Act, 2017 have to be looked into though such powers have to be preceded by formation of an opinion and there-after a show cause notice giving the company an opportunity of hearing could be issued. However, in case there



is no formation of opinion by the Commission, investigation could not be initiated in a mechanical fashion.

34. I have confronted learned counsel for the SECP to demonstrate any opinion which has been formulated independently while considering the minimum requirement of investigation into the affairs of a company excluding the orders of Company Judge, Lahore but no justiciable reasoning has been rendered in writing. In such circumstances, order passed by the respondent SECP by issuing show cause notice is considered to be nullity in the eyes of law and same could not sustain in these peculiar circumstances, therefore, both the captioned writ petitions are ALLOWED and show cause notice dated 06.08.2019, issued by Executive Director (Regulations), SECP is hereby SET-ASIDE. However, affairs of company should be regulated subject to final decision of ICA No. 10/2016, if no other violation has been committed under the law.

(MOHSIN AKHTAR KAYANI)  
JUDGE

Announced in the open court on: 21.07.2022

JUDGE

Approved for reporting.

A.Waheed.