

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

C.O. No.04/2018

M/s Relief International

Versus

Securities & Exchange Commission of Pakistan, etc.

Petitioner By : Mr. Nabeel Rehman and Barrister Aqeel Malik, Advocates.

Respondents By : Ms. Komal Malik Joiya, Advocate for respondents No.2 to 6.
Mr. Ibrar Saeed, Advocate for SECP.
Ch. Muhammad Tahir Mehmood, AAG.

Date of Hearing : 29.10.2021.

AAMER FAROOQ, J. – M/s Relief International (“**the petitioner**”), through the instant petition, seeks winding up of M/s Relief Pakistan (“**the Company**”). In this behalf, respondents No.3 to 6 are the Directors of the company.

2. The background leading to filing of the instant petition is that the company is registered as non-profit entity under section 42 of the erstwhile Companies Ordinance, 1984, now replaced by the Companies Act, 2017, with respondents No. 3 to 6 as its Directors. The petitioner with its principal head office in the United States of America (USA) is an International Non-profit Organization and carries out social welfare works overseas; with the said purpose, it incorporated the company with respondents No.3 to 6 as its nominees/directors. The Company was registered with Securities and Exchange Commission of Pakistan (“**SECP**”) and license was granted to it by the Regulator within the mandate of section 42 of the then Companies Ordinance, 1984 on 28.03.2008. The license granted to the company was revoked on 29.01.2016, which order was challenged in review by the company where after the matter was sent to the Ministry of Interior for security clearance, but since nothing was

conveyed, it was never renewed. On 11.04.2018, a request was made for revocation of the license which was allowed and confirmed on 18.04.2018. Basically the licence earlier granted was never renewed. The petitioner signed Memorandum of Understanding (MoU) with Ministry of Interior, Federal Government for indulging in social welfare works in Pakistan, however, it was advised by the Federal Government that the needful shall be done for dissolution of the Company. Accordingly the petitioner advised respondents No.2 to 6 to start/commence procedure for winding up of the company but despite lapse of considerable period, nothing was done, hence the instant petition under section 305 of the Companies Act, 2017 has been filed.

3. Learned counsel for the petitioner, *inter alia*, contended that the company was incorporated with the sole object to represent and carry out as a subsidiary or local chapter of the petitioner and since the memorandum has directly been signed between the Federation of Pakistan and the petitioner, hence there is no need for existence of the company; that on 16.05.2017, SECP advised the petitioner to proceed further with the dissolution of the Company and, in this behalf, meeting of the Board of Directors (BoD) was convened and the petitioner resolved to dissolve the company in accordance with law which decision was intimated to SECP but despite the same, respondents No.3 to 6 have done nothing to conclude the matter. Learned counsel further argued that licence issued by the SECP dated 28.03.2008 stands revoked and in any case there is no requirement for the company to continue as petitioner has entered into Memorandum of Understanding with the Federal Government. It was submitted that respondents No.3 to 6 are not acting in accordance with the provisions of law, hence winding up order of the company be passed and all its assets be transferred to the parent company/petitioner.

4. At the very outset, learned counsel for respondents No.2 to 6 objected to the maintainability of the petition. It was contended that the company is not an ordinary company but has been incorporated under section 42 of the erstwhile

Companies Ordinance, 1984, now replaced by section 42 of the Companies Act, 2017 and the process for dissolution/winding up as such is provided under sections 42 and 43 of the Act of 2017, hence the instant petition is not maintainable. It was argued that since special procedure exists for winding up of the Company, the general provision cannot be invoked under the facts and circumstances. The learned counsel attracted attention of the Court towards Associations with Charitable and Not for Profit Objects Regulations, 2018 as well as section 43 of the Act of 2017. She also placed reliance on cases reported as Province of Punjab through Secretary Excise and Taxation Department, Lahore and others versus Murree Brewery Company Limited and another (2021 SCMR 305), The Collector of Sales Tax, Gujranwala and others versus Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427), Ghulam Hassan versus Jamshaid Ali and others (2001 SCMR 1001). It was argued in alternative that even if winding up petition can be filed under the provision of 304 (b) of the 2017 Act, it can only be done by the SECP.

5. Learned counsel for SECP conceded the arguments addressed by the learned counsel for respondents No.2 to 6 on maintainability of the petition and submitted that under the law, the entire exercise for dissolution is to be undertaken by the Company with SECP.

6. In rebuttal, learned counsel for the petitioner opposed the contention of learned counsel for respondents No.2 to 6 and argued that it is the prerogative of the company to initiate proceedings for winding up as a parent company. It was also contended that the grounds mentioned in section 305 of the Act of 2017 are duly attracted and where such is the case, a petition under section 304 is maintainable. He placed reliance on cases reported as In the matter of: Messrs Investec Mutual Fund Ltd. (2011 CLD 4), In the matter of: Messrs Progressive Insurance Company Ltd. (2009 CLD 1602), Integrated Technologies & Systems Ltd versus Interconnect Pakistan (Pvt) Limited through Acting Chief Executive and others (2001 CLC 2019), In re: Synthetic Chemicals Co. Ltd. Karachi (PLD 1985

Karachi 193), Pakistan State Oil Company Limited versus Pakistan Oil Pipelines Limited and 6 others (PLD 1993 Karachi 322), Messrs Consolidated Exports Ltd versus Messrs Dyer Textile and Printing Mills Ltd. (PLD 1984 Karachi 541), The Additional Registrar Company versus Al-Qaim Textile Mills Limited (2021 CLD 931), Dr. Muhammad Imran Qureshi and 2 others versus Muhammad Asif and others (2020 CLD 1960), Messrs Securities and Exchange Commission of Pakistan versus Official Liquidator, Islamic Investment Bank Limited and 10 others (2016 CLD 1164), Creek Marina (Pvt) Ltd. versus Pakistan Defence Officers' Housing Authority (2012 CLD 1525), Additional Registrar of Companies, Karachi versus Tri Star Power Ltd. (2010 CLD 1115), Additional Registrar of Companies versus Messrs Noorie Textile Mills Ltd. (2010 CLD 143), Shaukat Ali versus Messrs Bawany Sugar Mills Ltd. (2009 CLD 947), Najeeb Fibres (Pvt) Ltd. versus Tanya Knitwear (Pvt) Ltd (2009 CLD 643), PICIC Commercial Bank Ltd versus Spectrum Fisheries Ltd (2006 CLD 440), Arshad Tanveer, Chairman, Site Association of Industry versus Sindh Industrial Trading Estates Ltd (1997 CLC 456), Freewheels (P) Ltd. versus Veda Mittra (AIR 1969 Delhi 258), Salomon v A Salomon and Company Ltd (HL 16 Nov 1896), Commissioner of Income Tax vs. United Breweries (1973 89 ITR 17 Kar.), M/s Rajesh and Co. vs M/s Ravissant Pvt. Ltd (2012) 171 CompCas 30 (Delhi), M/s Convergys Corporation vs Mr. Sreenivasu Ruttala and 4, dated 05.08.2016 (High Court Andhra Pradesh).

7. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

8. Since respondents No.2 to 6 have raised objection regarding maintainability of the petition, hence the referred objection is taken up first for adjudication. Arguments of respondents No.2 to 6 hinge upon sections 42 and 43 of the Companies Act, 2017, hence it is appropriate that the referred provisions be reproduced for the sake of brevity. The said sections are as follows:-

"42. Licencing of associations with charitable and not for profit objects.—(1) Where it is proved to the satisfaction of the Commission that an association is to be formed as a limited company—

- (a) for promoting commerce, art, science, religion, health, education, research, sports, protection of environment, social welfare, charity or any other useful object;
- (b) such company—
 - (i) intends to apply the company's profits and other income in promoting its objects; and
 - (ii) prohibits the payment of dividends to the company's members; and
- (c) such company's objects and activities are not and shall not, at any time, be against the laws, public order, security, sovereignty and national interests of Pakistan,

the Commission may, by licence for a period to be specified, permit the association to be registered as a public limited company, without addition of the word "Limited" or the expression "(Guarantee) Limited", to its name.

(2) A licence under sub-section (1) may be granted on such conditions and subject to such regulations as the Commission thinks fit and those conditions shall be inserted in and deemed part of the memorandum and articles, or in one of those documents.

(3) Memorandum and articles of association of a company, licenced under this section, shall be in accordance with the form set out in Table F in the First Schedule or as near thereto as circumstances admit and approved by the Commission.

(4) The association on registration under this section shall enjoy all the privileges and be subject to all the obligations of a limited company.

(5) The Commission may at any time by order in writing, revoke a licence granted under sub-section (1), with such directions as it may deem fit, on being satisfied that—

- (a) the company or its management has failed to comply with any of the terms or conditions subject to which a licence is granted; or
- (b) any of the requirements specified in sub-section (1) or any regulations made under this section are not met or complied with; or
- (c) affairs of the company are conducted in a manner prejudicial to public interest; or
- (d) the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years; or

- (e) the company has acted against the interest, sovereignty and integrity of Pakistan, the security of the State and friendly relations with foreign States; or
- (f) the number of members is reduced, below three; or
- (g) the company is—
 - (i) conceived or brought forth for, or is or has been carrying on, unlawful or fraudulent activities; or
 - (ii) run and managed by persons who fail to maintain proper and true accounts or they commit fraud, misfeasance or malfeasance in relation to the company; or
 - (iii) run and managed by persons who are involved in terrorist financing or money laundering; or
 - (iv) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Act or failed to carry out the directions or decisions of the Commission or the registrar given in exercise of the powers conferred by this Act; or
 - (v) not carrying on its business or is not in operation for one year; or
- (h) it is just and equitable that the licence should be revoked:

Provided that before a licence is so revoked, the Commission shall give to the company a notice, in writing of its intention to do so, and shall afford the company an opportunity to be heard.

- (6) Notwithstanding anything contained in this Act or any other law, no association shall be registered as a company with the objects as mentioned in clause (a) and the conditions provided in clause (b) of sub-section (1) without a licence granted in pursuance of this section.

43. Effect of revocation of licence.— (1) On revocation of licence of a company under section 42, by the Commission—

- (a) the company shall stop all its activities except the recovery of money owed to it, if any;
- (b) the company shall not solicit or receive donations from any source; and
- (c) all the assets of the company after satisfaction of all debts and liabilities shall, in the manner as may be specified, be transferred to another company licenced under section 42, preferably having similar or identical objects to those of the company, within ninety days from the revocation of

the licence or such extended period as may be allowed by the Commission:

Provided that a reasonable amount to meet the expenses of voluntary winding up or making an application to the registrar for striking the name of the company off the register in terms of sub-section (3), may be retained by the company.

(2) After compliance of the requirements mentioned in sub-section (1), the board of the company shall file within fifteen days from the date of such compliance, a report to the registrar containing such information and supported with such documents as may be specified.

(3) Within thirty days of acceptance of the report by the registrar, submitted by the company under sub-section (2), the board shall initiate necessary proceedings for winding up of the company voluntarily or where it has no assets and liabilities make an application to the registrar for striking the name of the company off the register.

(4) If the company fails to comply with any of the requirements of this section within the period specified or such extended period as may be allowed by the Commission, the Commission may, without prejudice to any other action under the law, appoint an administrator to manage affairs of the company subject to such terms and conditions as may be specified in the order and initiate necessary proceedings for winding up of the company.

(5) The provisions of section 291, except those of sub-section (1) thereof, shall apply mutatis mutandis to the administrator appointed under this section.

(6) Where any assets of the company are transferred, in consequence of revocation of licence, to another company licenced under section 42, the members and officers of the first mentioned company or any of their family members shall not be eligible to hold any office in the later company for a period of five years from the date of transfer of such assets.

(7) Where the licence of a company has been revoked before the commencement of this Act and such company is not in the process of winding up, this section shall apply as if the licence was revoked immediately after the commencement of this Act.”

Under section 42 of the Act, the company is to operate as charitable and not for profit objects and under the law, license is granted by the SECP under the terms and conditions it deems appropriate. SECP, under sub-section 5 of section 42, can revoke the licence under certain circumstances as mentioned in the referred

provision. After revocation of the license or upon such eventuality, the company has to stop its activities except recovery of money owed to it, if any. The company in question then is to transfer all its assets to other company licenced under section 42 and having similar or identical objects as of the Company whose licence has been revoked within 90-days from the date of revocation of the license. The Board of the company in question then within 15-days is to file a report to the Registrar, which is to be accepted by the Registrar of the Companies and also the Board is to initiate necessary proceedings for winding up of the company voluntarily and where there are no assets and liabilities make an application to the Registrar for striking the name of the Company off the Register. Under sub-section 4 of section 43, if the company fails to fulfill the requirement or procedure, SECP has power to take appropriate action under the law and even can appoint an administrator to manage the affairs of the company. Sub-section 6 of section 43, bars the officers and members of the first company to become members of the Company to whom assets have been transferred. Under sub-section 7 *ibid*, where the license of the company has been revoked before the Act of 2017 and such company is not in process of winding up, section 43 would be applicable if license was revoked immediately after commencement of the Act.

9. Under clause 11 of Associations with Charitable and Not for Profit Objects Regulations, 2018, the consequences of revocation of license and procedure subsequent thereto to be followed by a company is provided. The relevant clause reads as follows:-

"11. Revocation of license.- (1) In addition to the grounds provided under sub-section (5) of section 42 for revocation of the license, where the promoters, directors or chief executive officer of the company licensed under section 42 of the Act and registered under these regulations or company law do not comply with any of the conditions imposed by these regulations or are disqualified under regulation 10 at any time or fail to get the license renewed within the time period provided under these regulations or have violated any provision of these regulations or of the Act, the Commission may, after giving a notice in writing and an opportunity of being heard, revoke the license.

(2) Where the Commission revokes the license granted under section 42 of the Act, it shall send the revocation order to the company at its registered office address and place this information on the website of the Commission.

(3) Upon revocation of the license by the Commission, the company shall cease to enjoy the exemptions and privileges conferred upon it by virtue of license granted under section 42 of the Act.

(4) The company shall immediately prepare and arrange audit of its financial statements for the period starting from the day following the date of last audited financial statements till date of revocation of license in case the latest available audited financial statements are older than three months and the auditor shall submit its report within fifteen days of its engagement for the purpose.

(5) Subject to the requirements of section 43 of the Act, the board of directors of the company shall within a period of ten days of revocation of license shortlist and approve the name of transferee company which has provided concurrence to receive the assets of the company.

(6) Subsequent to the approval of the board, the chief executive officer shall proceed to transfer the assets of the company after satisfaction of all debts and liabilities by entering into agreement with approved transferee company and such agreement shall set out the roles and responsibilities of transferor and transferee companies and mechanism for transfer of assets along with details of assets to be transferred.

(7) Subject to the provisions of sub-section (2) of section 43 of the Act, the board shall file the report to the registrar in the manner as provided in **NFP Form 4** along with following documents,-

- (i) affidavit by the chief executive officer stating that all requirements of the Act and these regulations have been fully complied regarding transfer of assets to another section 42 company;
- (ii) latest audited financial statements along with auditors report exhibiting complete details of total assets, total debts and liabilities along with net assets to be transferred to another company licensed under section 42 of the Act;
- (iii) copy of minutes of board meeting in which transferee company was short listed;
- (iv) copy of letters of concurrence from the transferee company;
- (v) copy of agreement for transfer of assets; and

- (vi) certificate confirming completion of transfer of assets issued by the auditor of transferee company.”

Admittedly, the actions which the company was required to undertake have not been done and under clause 16, contravention of the regulations attract penalties provided in the Act of 2017.

10. As noted above, the petitioner as well as the company has not followed the procedure provided under sections 42 and 43 of the Act of 2017 and the Regulations of 2018, which they were required to do so. In any case, the license of the company got expired and was never renewed and even in 2018, SECP confirmed the revocation/expiry of the license. The company was required to transfer its assets to another company incorporated under section 42 *ibid* and furnish a report to the Registrar and pass resolution for voluntarily winding up of the company. In case, there were assets and liabilities otherwise making an application to the Registrar for striking the name of the company from the register. The company was also required to comply with procedure provided in clause 11 *ibid*.

11. Since mandatory provisions of law have not been followed, under sub-section 4 of section 43, the SECP is empowered to take appropriate action, including appointment of the Administrator for completion of the dissolution process. The SECP can also initiate a petition for winding up under sub-section (c) of section 304 of the Companies Act, 2017 and in light of the provision, the same is not required to investigate in the affairs of the company. The case law cited by the learned counsel for the respondents No.2 to 6 to substantiate her arguments that where special procedure is provided general procedure is not to be adopted, is instructive. Reliance is placed on Province of Punjab through Conservator of Forest, Faisalabad and others versus Javed Iqbal (2021 SCMR 328) and Province of Punjab through Secretary Excise and Taxation Department, Lahore and others versus Murree Brewery Company Limited and another (2021 SCMR 305). There is

no cavil with the principles laid down in judgments relied by learned counsel for the petitioner, however, they are not applicable in facts and circumstances.

12. In view of the above position of law and facts, the instant petition by the petitioner is not competent and is accordingly **dismissed**. The SECP can take action in the matter as the company has not done the needful and can even invoke penal provision under section 44 of the Companies Act, 2017. It can also agitate the winding up petition under section 304 of the companies Act, 2017. The petitioner at best can be a whistleblower by pleading to SECP that respondents No. 2 to 6 are not complying with the provisions of law and doing the needful for dissolution of the company.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 27th day of January, 2022.

JUDGE

M.Shah/.

Approved for Reporting.