HCJD/C-121
JUDGMENT SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No.3689/2013

EASTERN TESTING SERVICES (PVT.) LTD.
VERSUS
SECP, ETC.

Petitioner by	:	Syed Hamid Ali Shah and Syed Ishfaq Hussain Naqvi, Advocates.
Respondents by	:	M/S. Babar Sattar, Muhammad Afzal Saddiqui, Hamid Ahmed, Nasir Mehmood & Shahzad Ali Rana Advocates. Mr. Ibrar Saee, Law Officer SECP.
Date of Hearing	:	**17-09-2015.**

ATHAR MINALLAH J: The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter referred to as the ***"Constitution"***) assailing two orders passed by the Deputy Registrar of the *Securities and Exchange Commission of Pakistan* (hereinafter referred to as the ***"Commission"***) dated 05-09-2013 and 10-09-2013 respectively.

2. The facts, in brief, are that the petitioner is a juridical person incorporated under the *Companies Ordinance 1984* (hereinafter referred to as the ***"Ordinance"***). The respondent No.4 was the Chief Executive Officer of the petitioner company. It is asserted that the respondent No.4 was removed from his positions as the Chief Executive Officer and Director of the company through a special resolution passed in the *Extra Ordinary General Meeting* held on 19-03-2011, and instead one Mr. Abdul Razaq Ali was appointed as the Chief Executive Officer for the remaining unexpired term. The respondent No.4, prior to passing

of the special resolution, had filed a Civil Suit assailing the meeting, which was scheduled to be held on 29-01-2011. The learned Civil Court passed an injunctive order and the same was vacated on 09-03-2011. The respondent No.4, filed an appeal against the order dated 09-03-2011 and the learned Additional District Judge, Islamabad, passed an injunctive order dated 16-03-2011. The appeal was decided by the learned Additional District Judge, Islamabad vide order dated 07-04-2011. The petitioner filed two civil revisions before this Court i.e. C.R No.37/2011 and C.R No.38/2011 respectively. Both the Civil Revisions were allowed by this Court vide order dated 05-05-2015. The petitioner company asserts that as it had not received a notice nor any information through other means regarding the injunctive order dated 16-02-2011 passed by the learned appellate Court, therefore, it went ahead with the holding of the *Extra Ordinary General Meeting* on 19-03-2011. In response to the letter dated 20-01-2012, the Commission, vide letter dated 06-02-2012, informed the respondent no. 4 that pursuant to the special resolution passed in the EOGM held on 19-03-2011 he had been removed as the Chief Executive. It is pertinent to mention that the said letter is addressed to the respondent No.4 and not to the petitioner company. It appears from the record that Messrs Hafeez Peerzada Law Associates, while acting on behalf of the respondent No.4, wrote a letter dated 22-08-2013 to the Commission, and in response the Deputy Registrar informed vide letter dated 05-09-2013 that the earlier letter dated 06-02-2012 had been withdrawn on the ground that the decision taken in the *Extra Ordinary General Meeting held* on 19-03-2011 was in violation of the injunctive order dated 16-03-2011, passed by the learned Additional District Judge, Islamabad. The second impugned order dated 10-09-2013 is with reference to the letter dated 05-09-2013, and the same is in the nature of a clarification. The petitioner, instead of availing the remedies provided under the Ordinance, invoked the jurisdiction of this Court under Article 199 of the Constitution and thus the instant petition.

3. Syed Hamid Ali Shah ASC, appearing for the petitioner, has contended that; the Deputy Registrar had no power or jurisdiction to review the letter dated 06-02-2012; review is a substantial right, and could only have been exercised by the Deputy Registrar if it had been expressly provided by the Ordinance; the power of review is not expressly conferred upon the Deputy Registrar; the review of the letter dated 06-02-2012 is without jurisdiction and, therefore, not sustainable in law; the respondent No.2, had taken a consistent stance during the course of the investigation before the respondent No.3 that the approval of the *Extra Ordinary General Meeting* was granted, as there was no information regarding an injunctive order; the respondents No.1 & 2, took a conflicting stance with regard to the acceptance of the *Extra Ordinary General Meeting* dated 19-03-2011; the respondents No.1 to 3 could not approbate and reprobate; the injunctive order dated 16-03-2011, passed by the learned Additional District Judge, Islamabad was not conclusive, as the same was subject to notice and, therefore, it could not have been made a ground for annulling the decision taken in the *Extra Ordinary General Meeting* on 19-03-2011; the summons issued by the Court of the learned Additional District Judge, Islamabad reflect that the same had been issued and served after the passing of the special resolution in the *Extra Ordinary General Meeting* held on 19-03-2011; the impugned orders have been passed in violation of Section 468 of the Ordinance; the return dated 21-03-2011, relating to the *Extra Ordinary General Meeting* dated 19-03-2011 had been accepted and, therefore, the same could not have been annulled; the impugned orders have been passed by ignoring Sections 159, 180 & 199 of the Ordinance; the impugned orders were sent to the respondent No.4 and not the management of the petitioner; the respondents No.1 & 2 have neither associated the management of the company before passing the impugned orders nor taken into consideration the relevant record of the company; the term of office of the respondent No.2 has expired; the impugned orders have been passed by the respondents No.1 & 2 inclusion with the respondent No.4 and, therefore, are

based on malafide; the respondents had been influenced and, therefore, they ignored the relevant provisions of the law; the respondents No.1 to 3 failed to appreciate that the conditional injunctive order, which had been passed by the learned Additional District Judge, Islamabad had lost its efficacy, when the same was not served; an injunctive order did not place a bar for holding an *Extra Ordinary General Meeting*.

4. Mr. Babar Sattar, Advocate High Court, appearing on behalf of the respondent No.4, raised a preliminary objection relating to the maintainability of the petition on the ground that various adequate remedies are provided under the Ordinance and, therefore, the petition is not maintainable and liable to be dismissed. He contended that the question regarding the maintainability of the Constitutional Petition is to be decided at the first instance, and reliance was placed on "Messrs Act International vs. Provincial Earthquake Rehabilitation and Reconstruction Authority", ***2013 Y L R 1396,*** "Moula Bux Khatian vs Province of Sindh" ***2012 M L D 97,*** "N.W.F.P Public Service Commission vs. Muhammad Arif", ***2011 SCMR 848;*** the Ordinance provides various alternate remedies i.e. under Sections 468, 484 and 485 of the Ordinance; Sections 468 of the Ordinance is to be read in conjunction with Sections 33 & 34 of *Securities and Exchange Commission of Pakistan Act, 1997* (hereinafter referred to as the ***"SECP Act"***); when an alternate remedy is available the petition under Article 199 of the Constitution is not maintainable. Reliance has been placed on "Naseemullah vs. Executive Director, SECP", ***2013 CLD 216***, "Principal Sadiq Public School vs. Director EOBI", ***2012 CLC 880,*** "BP Pakistan Exploration and Production vs Additional Commissioner Inland Revenue", ***2011 PTD 647,*** "Collector of Customs vs. Universal Gateway Trading Corporation" ***2005 PTD 123***, "Syed Match Company Ltd vs. Authority under Payment of Wages Act", ***2003 SCMR 1493***, "Khalid Mehmood vs Collector of Customs, Customs House, Lahore", ***1999 SCMR 1881***, "Collector Customs Karachi vs. M/s New Electronics", ***PLD***

1994 SC 363, ''Agha Gas Company vs. Central Board of Revenue", ***1997 PTD 269***, "Al-Ahram Builders vs. Income Tax v Income Tax Appellate Tribunal", ***1993 SCMR 29***, "Assistant Collector vs Dunlop India", ***AIR 1985 SC 330***, and "Thansingh Nathmal and others vs The Superintendent of Taxes, Dhubri", ***AIR 1964 SC 1419***; fundamental rights cannot be claimed as having been violated by incorporated companies with foreign share holding; reliance has been placed on "Al Raham Travels and Tours vs Ministry of Religious Affairs", ***2011 SCMR 1621*** and "Federation vs. Haji Muhammad Sadiq", ***PLD 2007 SC 133***.

5. Mr. Muhammad Afzal Siddiqui, ASC, Mr. Shahzad Ali Rana and Mr. Ibrar Saeed adopted the arguments advanced by Mr. Babar Sattar, Advocate and urged for dismissal of the petition.

6. In rebuttal, Syed Hamid Ali Shah ASC, argued that; the rule that when an alternate remedy is available the jurisdiction of the High Court cannot be availed is not absolute and it is this rule by which the Court regulates its jurisdiction. Reliance has been placed on "The Murree Brewery Co.Ltd vs Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others", PLD 1972 SC 279, "Muslimabad Cooperative Housing Society Ltd. through Secretary versus Mrs. Siddiqa Faiz and others" PLD 2008 SC 135, "Hydri Ship Breaking Industries Ltd versus Sind Government and others", 1988 MLD 1863, "Gatron (Industries) Limited versus Government Of Pakistan and others" 1999 SCMR 1072, " National Development Finance Corporation Versus Wafaqi Mohtasib, Islamabad And Another", 2004 CLD 260; the constitutional jurisdiction of a High Court may be resorted to even when an alternate remedy is available; reliance has been placed on "Muhammad Idrish versus East Pakistan Timber Merchants Group And Another", PLD 1968 SC 412, Salahuddin and 2 others versus Frontier Sugar Mills & Distillery Ltd and

10 others", PLD 1975 SC 244, "Abdur Rab Choudhury versus Registrar Of Joint Stock Companies and 2 others", PLD 1960 DACCA 541, "Khalid Mehmood vs Collector of Customs, Customs House, Lahore", 1999 SCMR 1881, "Dr. Sher Afgan Khan Niazi versus ALI S. HABIB and others", 2011 SCMR 1813, "Brig. Muhammad Bashir versus Abdul Karim and others", PLD 2004 SC 271, "Town Committee, Gakhar Mandi versus Authority under the Payment of Wages Act Gujranwala and 57 others", PLD 2002 SC 452, "Messrs Chenab Cement Product (Pvt) Ltd and others versus Banking Tribunal, Lahore and others", PLD 1996 Lahore 672, "Government of the Punjab through Collector, Faisalabad and another versus Hudabia Textiles Mills, Faisalabad through Chairman and 4 others", 2001 SCMR 209, "M.N. Steel Mills versus Wapda", NLR 1988 Civil 404, "Ibrahim Textile Mills Ltd. versus Federation of Pakistan and another", PLD 1989 Lahore 47, "Messrs. East And West Steamship Company Vs. Pakistan, through Secretary Ministry of Commerce, Karachi and others", PLD 1958 SC (Pak) 41, "Messrs Pioneer Cement Limited through Kanwar Iqbal Talib, duly authorized Director versus Province of the Punjab through Secretary, Local Government Department, Lahore and another", 2000 CLC 54, "Dr. Sikandar Ali versus Government College University, Lahore", 2012 PLC (CS) 1119 & "Zulfiqar Ali versus Munir Ahmed and another", 1999 CLC 731; when the alternate remedy is illusory then a petition under Article 199 of the Constitution is maintainable and reliance has been placed on "Baluchistan Textile Mills Ltd. versus Central Board of Revenue and others", 1984 CLC 2192, "Messrs EFU General Insurance Ltd. through Joint Managing Director, Karachi versus Federation of Pakistan through Ministry of Law and Parliamentary Affairs, Government of Pakistan, Islamabad and 3 others", 2010 PTD 1159, "Messrs Pirani Engineering through Chief Financial Officer versus Federal Board of Revenue and 2 others", 2009 PTD 809, and "Dr. Akhtar Hassan Khan and others versus Federation of Pakistan and others", 2012 SCMR 455.

7. The learned counsels have been heard and the record perused with their able assistance.

8. The impugned orders have been passed by the Deputy Registrar of the Commission while exercising powers vested in him under the Ordinance, inter alia, section 468 of the Ordinance. This is not disputed by the learned counsel for the petitioner. Section 468 empowers the Registrar of the Commission to refuse to accept defective documents on the grounds enumerated as (a) to (d) in sub section 1 thereof. The Registrar may adopt either of the two options i.e to require the company to file a revised document in such form and within such time as may be specified in this regard, or refuse to accept to register such document. Sub section 2 of section 468 provides that the effect of refusal to accept any document is as if it had not been delivered to the Registrar in accordance with the provisions of the Ordinance. However, the said sub section also empowers the Registrar to specify the time, and to extend it, so as to enable the company to file a revised document in such form as may be acceptable to him/her. The refusal is communicated to the company in writing as mandated under sub section 3. Sub section 4 of section 468 provides two fold remedies to a company if the acceptance of the document has been refused by the Registrar. The company may either remove the deficiency and the defect as pointed out, or file an appeal within thirty days from the order of refusal. Appeal in case of an order passed by an officer described in clause (a) lies to the Registrar, while an order passed by the latter relating to refusal in accepting the document, or upholding an order in appeal, to the Commission. It is noted that an order of refusal under Section 468 can be passed by an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar as they all are included in the definition of a Registrar as defined in clause 31 of subsection 1 of section 2 of the Ordinance. Sub section (1) of Section 484 of the Ordinance provides for remedy to an aggrieved person or the Registrar to invoke the revisional powers of the Commission against an order passed by the Registrar, or

an officer, or an officer subordinate to the Commission. The only exception is an order passed under section 476. Sub section 2 of section 484 vests the power of review in the Commission or the Registrar as the case may be. 'Registrar', therefore, would include all officers having the designation as enumerated in Section 2(1) (31). The power of review can either be exercised on an application or suo moto. Likewise, Section 33 of the SECP Act provides for an appeal to the Appellate Bench of the Commission against an order of the Commission passed by one Commissioner, or an officer authorized in this behalf by the Commission. The scope of the right of the appeal has also been provided in the said provision and excludes an appeal against orders described therein. Section 34 of the SECP Act provides for an appeal to the Court, referred to in Part II of the Ordinance, in respect of an order of the Commission comprising two or more Commissioners or the Appellate Bench. Section 7 of Part II of the Ordinance provides that the Court having jurisdiction for the purposes of the Ordinance shall be the High Court, having jurisdiction in the place at which the registered office of the company is situated. It is, therefore, obvious that an appeal under Section 34 lies before a High Court. The argument of the learned counsel for the respondent No.4 relating to Section 33 and 34 of the SECP Act, to be read with Section 468 of the Ordinance, is not without substance. When Section 468 of the Ordinance and Sections 33 & 34 of the SECP Act are read together it leaves no doubt that any order passed by the Commission consisting of one Commissioner under clause b of section 468 is appealable before an Appellate Bench, and if a person is aggrieved by an order of the latter a right of appeal before the High Court has been provided.

9. A plain reading of the above provisions unambiguously shows that various remedies are provided under the Ordinance and were available to the petitioner company. The company also could have delivered a revised document in the form acceptable to the Registrar or to have preferred an appeal to the

Registrar under Clause (a) of Sub-section 4 ibid, as both the letters have been issued by an officer of the rank of Deputy Registrar. Moreover, in case the petitioner company had been aggrieved by an order passed by the Registrar under Section 468 (4) (a) of the Ordinance, there was a further remedy of revision before the Commission under Section 484 ibid. An order passed under Section 486 (4)(b) of the Ordinance by the Commission consisting of one Commissioner was appealable before an Appellate Bench under Section 33 of the SECP Act, while a further appeal is provided against an order passed by the latter before a High Court under Section 34 of the SECP Act. The Ordinance, read with the SECP Act, therefore, provides for adequate remedies against an order passed under section 468 of the Ordinance.

10. Next, is the question raised by the learned counsels for the respondents regarding the maintainability of the petition when adequate remedies are provided under the law. The learned counsels have relied on various judgments. However, it would be pertinent to consider the precedent law, so as to answer the question of maintainability. Article 199 of the Constitution provides that a High Court may 'if it is satisfied that no other adequate remedy is provided by law' exercise powers and jurisdiction vested under Clause (a) (b) and (c) of sub article 1 thereof. The High Court is, therefore, to be satisfied that no other adequate remedy is provided by law. The principles and law laid down in this regard, and the scope and powers of the jurisdiction of the High Court under Article 199 of the Constitution have been elucidated and discussed in a chain of cases as discussed below:-

i. The august Supreme Court in "Tariq Transport Company, Lahore vs. The Sargodha-Bhera Bus Service, Sargodha and

others", ***PLD 1958 SC 437*** has observed and held as follows:-

> *"I consider it to be wrong on principle for the High Court to entertain petitions for writs, except in very exceptional circumstances, when the law provides a remedy by appeal to another Tribunal fully competent to award the requisite relief. Any indulgence to the contrary by the High Court is calculated to create distrust in statutory tribunals of competent jurisdiction and to cast an undeserved reflection on their honesty and competency and thus to defeat the legislative intent. And in a case of the present kind where the right which the petitioner for a writ claims to vest in him is entirely the creation of a statute, it is all the more imperative on him to exhaust the remedies provided by the statute before he comes to the High Court. He cannot be permitted to say that while he will have one or all the benefits of the statute, he will comply with none of its remedial processes."*

ii. It was held in the case titled "Lt. Col. Nawabzada Muhammad Amir Khan vs. The Controller of Estate Duty and others", ***PLD 1961 Supreme Court 119*** as follows:-

> *"The rule that the Court will not entertain a writ petition when other appropriate remedy is yet available is not a rule of law barring the jurisdiction of the Court. It is a rule by which the*

Court regulates the exercise of its own discretion. As stated in Halsbury at page 107, 3rd Ed., Vol. 11:

> *"The Court will, as a general rule, and in the exercise of its discretion, refuse an order of mandamus, when there is an alternative specific remedy at law which is not less convenient, beneficial, and effective."*

One of the well-recognized exceptions to this general rule is a case where an order is attacked on the ground that it was wholly without authority."

iii. The above principles and law enunciated by the august Supreme Court in the case of "Lt. Col. Nawabzada Muhammad Amir Khan" supra were further affirmed in the case titled "The Muree Brewery Co.Ltd vs Pakistan through the Secretary to Government of Pakistan, Works Division and 2 others", ***PLD 1972 SC 279***. It is pertinent to mention that the august Supreme Court quoted with approval passages from pages 42 and 43 of 1961 Edition by the Administrative Law by Wade, specifically in the context of the scope of review.

iv. In the case titled "Abdur Rehman vs Haji Mir Ahmad Khan and another" ***PLD 1983 SC 21***, the august Supreme Court held that the Constitutional jurisdiction of a High Court could be exercised only on proof of non-availability of adequate remedy.

v. In the case of "Commissioner of Income Tax, Companies-II and another vs. Hamdard Dawakhana (Waqf), Karachi",

PLD 1992 Supreme Court 847, the august Supreme Court affirmed with approval the observations made by Hon'ble Mr. Justice Ajmal Mian, J; (as he was then) in C.A.No.79-K of 1991 and the same are as follows:-

> *"The tendency to bypass the remedy provided under the relevant statute and to press into service Constitutional jurisdiction of the High Court has developed lately, which is to be discouraged. However, in certain cases invoking of Constitutional jurisdiction of the High Court instead of availing of remedy provided for under the relevant statute may be justified, for example when the impugned order/action is palpably without jurisdiction and/or malafide. To force an aggrieved person in such a case to approach the forum provided under the relevant statute may not be just and proper."*

vi. In "Income-Tax Officer and another vs. M/s. Chappal Builders", ***1993 SCMR 1108***, the august Supreme Court, while referring to other judgments observed and held that the apex Court did not approve the interference by the High Courts in tax matters, when the normal course being adopted by all the High Courts in matters other then tax, rule of alternate remedy was being followed.

vii. In "Ch. Muhammad Ismail vs Fazal Zada, Civil Judge, Lahore and 20 others", ***PLD 1996 SC 246***, the august Supreme Court, while deprecating the course adopted by

the plaintiff in the case of invoking the Constitutional jurisdiction of the High Court instead of filing of an appeal, observed that the High Court has to be cautious in exercising its Constitutional jurisdiction when other adequate remedy is available to the party invoking that jurisdiction. The august Supreme Court elaborated the distinction between 'want of jurisdiction', 'excess of jurisdiction' and 'wrong exercise of jurisdiction' for the purposes of highlighting as to the nature of the order, which could be impugned by invoking the Constitutional Jurisdiction of the High Court in exceptional cases when an alternate remedy is available. The august Supreme Court held that wrong exercise of jurisdiction was not amenable to the Constitutional jurisdiction of the High Court. Moreover, the august Supreme Court observed as follows:-

> *"The High Courts are already huddled up with thousands of cases. If the litigant public is permitted to take all sorts of disputes to the High Courts without first availing of the other remedies available to them, under law, it will not only necessarily increase the work-load of the High Courts but would also defeat the provisions of law by which the said remedies have been made available. Such a spree on the part of the litigant public would, if we may say so, amount to abuse of the Constitutional jurisdiction which is to be exercised by the High Courts in exceptional cases to provide justice which cannot be otherwise obtained by the aggrieved parties."*

viii. After examining the precedent law Hon'ble Mr. Justice Wajihuddin Ahmed, J (as he was then) while authoring the judgment in "Khalid Mehmood vs Collector of Customs, Customs House, Lahore", ***1999 SCMR 1881***, elaborated the principles and law relating to the rule of exercising jurisdiction under Article 199 of the Constitution when an adequate remedy is available. It was held that the adequacy of the alternate remedy should always attract the attention of the High Court. It would be pertinent to reproduce the relevant observations of the judgment as follows:-

> *"Of such alternative remedies also there are some, which would still leave the jurisdiction of the High Court virtually unaffected, if the order, complained of, is so patently illegal, void or wanting in jurisdiction that any further recourse to or prolongation of the alternative remedy may only be counter-productive and, by invocation of Article 199 the mischief can forthwith be nipped in the bud. In such matters, of course, neither the alternative remedy would be adequate nor bar of jurisdiction in the Sub-Constitutional Legislation may come in the way of the High Court in exercising its Constitutional jurisdiction.*
>
> *There are other matters, however, where the Constitutional jurisdiction under Article 199 cannot be so readily resorted to. One such, falling in this category, would be matters amenable to the*

jurisdiction of an exclusive Tribunal, mandated by the Constitution itself. Another, which readily comes to the mind, would be disputes under a statute, postulating the appellate or revisional jurisdiction to reside either in the High Court itself or directly in the Supreme Court. An example, essentially relevant to the first, would be the Service Tribunal where the Tribunal is mandated by the Constitution of Pakistan namely, Article 212, thereof and where an appeal lies directly from the Tribunal's decision to the Supreme Court. Obviously, the High Court should be very slow in entertaining disputes covered by the jurisdiction of such a Tribunal even in matters where the High Court's jurisdiction cannot be taken away e.g. acts which are void, without jurisdiction or coram non judice. In such cases of ouster, the High Court would consider it a better exercise of its discretion not to interfere. More or less a similar principle applies where an exclusive Tribunal or a regular Court has jurisdiction in a matter but the legislation, creating such Court or forum or conferring jurisdiction on the same, also ends up by providing appellate or revisional jurisdiction to the High Court itself. Obvious examples could be civil and criminal proceedings, emanating under the Code of Civil and Criminal Procedure, Income Tax References, Customs Appeals etc. In such matters, where the High Court itself is the repository of the

ultimate appellate, revisional or referral powers, conferred by the relevant statute, it is in the rarest of cases that the High Court may be persuaded to entertain a Constitutional petition and to enforce the Constitutional remedy in preference to its own appellate, revisional or refusal dispensation arising in course of time."

ix. In "Collector of Customs, Customs House, Lahore and 3 others Vs. Messrs S.M. Ahmad & Company (Pvt) Limited, Islamabad", ***1999 SCMR 138***, it was observed and held as follows:-

"As regard the maintainability of writ petition in the presence of alternate remedy, it is a settled proposition of law that it is no bar if such remedy is only illusory in nature, as observed in Gulistan Textile Mills Ltd vs. Pakistan (1983 CLC 1474). No useful purpose would have been served if the respondent had been required to avail of the remedy of the appeal or revision because the highest body i.e. the C.B.R. had already expressed its opinion against the respondent."

x. In "Commissioner of Income Tax vs. Messrs Eli Lilly Pakistan (Pvt) Ltd", ***2009 SCMR 1279***, the august Supreme Court further affirmed and reproduced the principles and observations authored by Hon'ble Mr. Justice Ajmal Mian, J; (as he was then) in C.A.No.79-K of 1991 as already

quoted with approval in earlier judgment of "Commissioner of Income Tax vs. Hamdard Dawakhana (Waqf) supra.

11. The above precedent law has settled the principles and law relating to the scope of jurisdiction of the High Court, while exercising powers under Article 199 of the Constitution when an adequate remedy is provided under the law. The principles and law may, therefore, be summarised as follows:-

(i) The rule that the Court will not entertain a petition under Article 199 when other appropriate remedy is available is not a rule of law barring the jurisdiction of the Court.

(ii) When the law provides an adequate remedy, constitutional jurisdiction under Article 199 of the Constitution will be exercised in exceptional circumstances.

(iii) The exceptional circumstances which may justify invoking jurisdiction under Article 199 of the Constitution when adequate remedy is available are when the order or action impugned is palpably without jurisdiction, malafide, void or corum-non-judice.

(iv) The tendency to bypass the remedy provided under the relevant statute by resorting to the Constitutional jurisdiction of a High Court is to be discouraged so that the legislative intent is not defeated.

(v) Constitutional jurisdiction under Article 199 cannot be readily resorted to when the matters amenable to the jurisdiction of an exclusive forum is mandated by the Constitution itself or when

hierarchy provided under a statute ends up in appeal, revision or reference before a High Court or directly the apex Court.

(vi) The High Court in exercising its discretion will take into consideration whether the remedy provided under the statute is illusory or not.

12. As discussed above, this Court is satisfied that adequate remedies are provided under the Ordinance in the context of the impugned orders. The petitioner has not been able to make out a case that the impugned orders suffer from palpable want of jurisdiction, being void, corum non judice or based on malafide. It is also not denied that an injunctive order was in the field when the Extra Ordinary General Meeting dated 19-03-2011 was held. However, it is asserted that neither the order had been served on the petitioner nor the Registrar of the Commission. Section 468 vests wide powers in the Registrar and, inter alia, provides an opportunity to the company to deliver a revised document and seek extension of time in this regard. The petitioner could also prefer an appeal along with an application for condonation of delay. There is no force in the argument that the Registrar is not vested with the power of review as is evident from sub-section 2 of Section 484 of the Ordinance. Needless to mention that as the petitioner had resorted to invoke the jurisdiction of this Court under Article 199 of the Constitution without availing the adequate remedies available under the Ordinance read with the SECP Act, this instant petition is not maintainable.

13. There is yet another aspect regarding the maintainability of the petition. The case of the petitioner essentially rests on the foundation that the injunctive order passed by the learned Additional District Judge, Islamabad dated 16-03-2011 was neither served on the petitioner nor the Deputy Registrar, when

the Extra Ordinary General Meeting was held on 19-03-2011. This Court would exercise restraint in making any observation relating to the consequences flowing from this argument lest it may prejudice the case of either party in proceedings, if any, under the Ordinance before the Registrar. However, the argument essentially raises a disputed question of fact. Whether the injunctive order dated 16-03-2011 was served or not is a disputed question of fact and, therefore, cannot be resolved while exercising powers under Article 199 of the Constitution. On this ground, also, the petition is not competent, and consequently resorting to Article 199 of the Constitution in the circumstances cannot be a proper remedy. Reliance in this regard is placed on "Dr. M.A. Haseeb Khan etc versus Sikandar Shaheen and 9 Others", PLD 1980 SC 139, "Ghulam Muhammad and another versus Mst. Noor Bibi and 5 others", 1980 SCMR 933, "Khawaja Muhammad Akhtar versus President, Cantonment Board, Sialkot Cantt Election Authority (Tribunal) and another", 1981 SCMR 291, "Benedict F.D' Souza versus Karachi Building Control Authority & 3 others", 1989 SCMR 918, "Federation Of Pakistan and 2 others versus Major (Retd) Muhammad Sabir Khan", PLD 1991 SC 476 and "Muhammad Younis Khan and 12 others versus Government of N.W.F.P. through Secretary, Forest and Agriculture, Peshawar and others", 1993 SCMR 618.

14. For the above reasons the instant petition is not maintainable and is accordingly dismissed. This judgment and any observation recorded herein shall not prejudice or influence any proceedings which may be initiated by either of the parties under the Ordinance.

(ATHAR MINALLAH)
JUDGE

Announced in the open Court on 08-12-2015.

JUDGE

Approved for reporting.

*Asif Mughal/