

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

BEFORE:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Civil Appeal No. 79/2016
in
CPLA. No. 114/2016.**

Pak China Sost Port Company etc

Petitioners.

Versus

Zafar Iqbal & others

Respondents.

PRESENT:-

1. Mr. Amjad Hussain Advocate for the petitioners.
2. Mr. Malik Shafqat Wali senior Advocate alongwith Mr. Rehmat Ali Advocate-on-Record on behalf of the respondents.

DATE OF HEARING: - 30.06.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This appeal has arisen out of the impugned judgment dated 25.10.2016 in Jud. Misc. No.01/2015 passed by the learned Chief Court whereby the appeal filed by the respondent No. 01 was accepted with the direction to windup the M/S Pak China Joint Venture Sost Dry Port Company (Pvt) Ltd by appointing M/S Hajji Mirza Ali, Senior Advocate SAC and Mr. Muhammad Hussain Shehzad Advocate SAC as official liquidators. The said liquidators were also directed to take into their possession all assets moveable, immovable, the books of accounts and other registers/record of the company and will proceed with the liquidation, thereof according to law. The

petitioners being aggrieved by and dissatisfied with the impugned judgment, filed this petition for leave to appeal. This court vide order dated 03.11.2016 granted leave to appeal. Consequently, notices were issued to the respondents and the case was finally heard on 30.06.2017.

2. Briefly the facts of the case are that the respondent No. 01 namely Zafar Iqbal Chairman Silk Rout Dry Port Trust resident of Pusso Gojal Upper Hunza filed a Petition i.e. Jud. Misc. No. 01/2015 in the learned Chief Court under Section 305 and 309 of The Company Ordinance 1984 for winding up of Pak-China Sost Dry Port Joint Stock Company (Pvt) Limited. The respondent filed the said petition with the contention that his company was entered into a contract with the one Xin Jian Jiuling Transport and Storage Private Limited in the year 2004 which was stretched over for a period of 10 years and the said agreement was likely to come to an end in the year 2014. Both the companies were properly integrated by respondent No. 02 on 17.08.2004 with the nomenclature "M/S Pak-China Joint Venture Sost Dry Port Company (Pvt) Limited". Per averments of the respondent No. 01 the said company has to be expired in the year 2014 as neither a new agreement was signed nor the same has been extended by the respective parties by virtue of mutual understanding. Moreover, the petitioners failed to submit statuary reports to the Registrar Joint Stock companies with regard to convene the annual general meetings despite the facts that he has been intimated to do so which is the sheer violation of

Article 180 of The Companies Ordinance, 1984 as per the contentions of the respondent No.01. In this regard a unanimous resolution passed by the general body recommending to close the business activities between respective parties. The perusal of the record of the case transpires that the petitioners filed Civil Misc. No. 228/2013 in the learned Chief Court by submitting an application under Section 290 of The Companies Ordinance 1984 contending therein that the affairs of the said companies were not being run in line with the provisions of Section 180 of said Ordinance. It was also contended in the said application that the Directors of the company in question are holding their possession unlawfully and illegally instead of the fact that the term of the said Director has already been expired as per the agreement held on 17.08.2014. The said application so filed by the respondent No. 01 was disposed off by the learned Chief Court on 07.05.2014 by observing that:-

Quote.

“In the light of above discussion the Registrar Joint Stock Companies Gilgit-Baltistan is directed to convene the board meeting of Joint Company within one month of this Order”.

Unquote.

3. The petitioners contested the petition in the learned Chief Court as well as in the Supreme Appellate Court Gilgit-Baltistan by filing CPLA. No. 35/2015 which was disposed off by apex Court of Gilgit-Baltistan declaring the same as meritless. Conversely, the petitioners controverted the contentions of the respondents with the

plea that the said agreement has been extended up to 2022 and the meetings of the Board of Directors have been convening from time to time as per the agreement and spirit of the said Ordinance. They mainly contested the said petition on the ground of maintainability and locus standi. Per version of the petitioners the learned Chief Court has no jurisdiction to hear and decide the petition so filed by the respondent No. 01. The dispute between the parties should have been referred to the Securities and Exchange Commission of Pakistan (SECP) for its adjudication in line with the relevant provisions of the said Ordinance. The learned Chief Court upon hearing, allowed the said petition with the aforementioned directions. The petitioners being aggrieved filed this petition for leave to appeal.

4. The learned counsel for the petitioners submits that the petitioners and respondent No. 01 executed a contract of cooperative business operation as a "Joint Venture" and the said Joint Venture was executed between the parties on agreed and specified terms. He further submits that the said Joint Venture was subsequently extended vide resolution passed by the 7th board meeting of Pak China Sost Dry Port Company Private Limited. As per Chapter 10, the term/tenure of this Joint Venture was for 17.7 years, commencing its Joint operation w.e.f 01.05.2005, which meant that it was extended up to 2022. He also submits that in case of any dispute between the parties the dispute would be resolved through arbitration as provided in Chapter 17 and under

Article 42 in the said agreement which was endorsed by the respondent No. 2. Per learned counsel the Civil Courts have no jurisdiction to entertain the matter. He further submits that the said contract was registered with the respondent No.2 the Registrar Joint Stock Company at Gilgit. He submits that the proper forum for adjudication with regard to the subject matter was Security and Exchange Commission of Pakistan (SECP) not the learned Gilgit-Baltistan Chief Court. He further submits that there was no time mentioned for winding up of the Company under Section 305 of the Company Ordinance as the terms of the agreement have been extended up to 2022. The learned counsel for the petitioners contends that the learned Gilgit-Baltistan Chief Court fell in error in exercising the jurisdiction for winding up the company which was not so vested in it. He finally submits that the impugned judgment dated 25.10.2016 in Jud. Misc. No.01/2015 passed by the learned Chief Court is not sustainable being the result of misconception of law and misreading/non-appreciation of facts of the case. He prays that the said impugned judgment may graciously be set aside.

5. On the other hand, the learned counsel for the respondents supports the impugned judgment dated 25.10.2016 in Jud. Misc. No.01/2015 passed by the learned Chief Court. He contends that the petitioners did not comply the orders the learned Chief Court in the 8th meeting of Board of Directors held on 16.06.2014. He also contends that some decisions were made and it was decided that 9th meeting of Board of Directors will be held

within 21 days but the petitioners instead of holding the meeting resorted to this apex Court by filing CPLA. No. 35/2015, which was disposed off on 16.05.2016 being meritless. Per learned counsel the said judgment is exhaustive in nature and it covers all the material points involved which shows the malafidies of the petitioners and the petitioners are playing the game of hide and seek, instead of acting in accordance the original agreements. He contends that the Jud. Misc. No.01/2015 of the respondents has rightly been accepted by the learned Chief Court which according to him is well reasoned and well founded being passed in accordance with law. He prays that the impugned judgment dated 25.10.2016 in Jud. Misc. No.01/2015 passed by the learned Chief Court may pleased be maintained.

6. We have heard the learned counsels for respective parties are at length, perused the record of the case file and gone through the impugned judgment dated 25.10.2016 in Jud. Misc. No.01/2015 passed by the learned Chief Court. We have also perused the contents of the agreement executed between the parties thoroughly. The perusal of the said agreement reveals that it was applicable for a period of 10 years commencing from 2004 to 2014. There is nothing on record that either the same agreement was executed afresh with the mutual consent of the petitioners and respondents nor the previous agreement was extended through mutual understanding. Furthermore, the parties unanimously passed the resolution dated 07.09.2014 wherein it was agreed by

them to windup the “Joint Venture Company” as the petitioners failed to run the company in question by convening Annual General Meetings (AGMs) and submitting statuary reports etc to the Registrar of Joint Stock Companies in accordance with Sections 170 & 180 of the Companies Ordinance, 1984. The aforesaid violation on part of the petitioners creates cause of action to file the petition in the learned Chief Court for its indulgence to hear and decide the matter and to pass the impugned judgment dated 25.10.2016. In our considered view, the learned Chief Court has rightly entertained and passed the said impugned judgment which is well reasoned and well founded. No interference is warranted into it.

7. In view of the above discussions, we dismissed this appeal vide our short order dated 30.06.2017. Consequently, the impugned judgment dated 25.10.2016 in Jud. Misc. No.01/2015 passed by the learned Chief Court was maintained vide the said short order. The petitioners, however, may approach any legal forum for redressal of their grievances, if they so advised. These were the reasons of the said short order.

8. The appeal was dismissed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?