

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

**Before :-**

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.  
Mr. Justice Shahbaz Khan, Judge.**

**C. Appeal No.35/2015.**

1. Deng Xiao Bin Director Pak China Sost Port Company (Pvt) office situated at Sost Gojal Hunza.
2. Zhang Yi Director Pak China Sost Port Company (Pvt) office situated at Sost Gojal Hunza, residents of People Republic of China presently residing at Sost Dry Port Gojal Hunza, District Hunza Nagar.

**Petitioners**

**Versus**

1. Registrar Joint Stock Companies Gilgit-Baltistan Gilgit.
2. Zafar Iqbal Chairman Silk Route Dry Port Trust, Sost Resident of Village Passu Gojal Hunza.
3. Abdul Rauf Director Silk Route Dry Port Trust, Sust Dry Port Building Resident of Gojal Hunza.
4. Iqbal Karim Director Silk Route Dry Port Trust, Sost r/o village Nazimabad Gojal Hunza.

**Respondents**

**PETITION FOR LEAVE TO APPEAL UNDER ARTICLE 60 OF  
GILGIT-BALTISTAN (EMPOWERMENT & SELF  
GOVERNANCE ORDER) 2009 AGAINST THE IMPUGNED  
ORDER/JUDGMENT DATED 07-08-2014 PASSED BY THE  
LEARNED GILGIT-BALTISTAN CHIEF COURT.**

**PRESENT :-**

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

**DATE OF HEARING: - 17-05-2016.**

**DATE OF JUDGMENT:-22-06-2016.**

**JUDGMENT**

**Justice Shahbaz Khan J.....**

Facts on file reveal that the petitioners and respondents No.2 to 4 are subscribers and directors of M/S Pak China Sost Port company (Pvt)Limited hereinafter referred as JV Company, having its head office situated at Sust Gojal Hunza. The parent company of petitioners namely SIONOTRANS Group Xingiang Company Limited is a Company registered in China whereas, M/S Silk Route Dry Port Trust is a locally registered Institution represented by the Chairman and Board of Directors.

2. That as per Articles of Association as well as Agreement made previously between SIONOTRANS Group Xinxiang Company and Silk Route Dry Port Trust incorporated a joint venture Private Limited Company in the name and style of M/S Pak China Sost Dry Port Trust Company (Pvt) Limited wherein 3 Directors and Chairman were to be nominated by SIONOTRANS Group Xingxiang Company and a Vice Chairman and two Directors were to be nominated by Silk Rout Dry Port Trust and its each and every meeting was to be convened by the Chairman and in case of his absence the vice Chairman having a quorum of at least three Directors , two from petitioners and one from respondents side.

3. On the direction of the learned Chief Court G.B. given in judgment dated 07-05-2014 as a result of an application filed under Section 290 of Companies Ordinance 1984 by the respondent No.2 vide case No.C.Misc.228/2013, which was not challenged in appeal or otherwise by the petitioners, chairman BOD or Managing Director being heads of management of the JV Company. The respondent No.1/Registrar Joint Stock Companies G.B. convened 8<sup>th</sup> meeting of the BOD and in the said

BOD meeting except petitioner No.1, other two directors from Chinese side did not participate and therein, some decisions in respect of JV Company affairs were taken to be approved by the next meeting to be held within 21 days which infact not held till date. The petitioners being the Directors and responsible for running and managing all administrative affairs of the Company, instead arranging BOD meetings and running affairs of the company as per law and directions of Chief Court, filed an application before the Chief Court GB under Section 290 of Companies Ordinance 1984 which was dismissed hence the petitioners filed CPLA No.81 /14 which has been granted and the same has been converted into appeal vide our order dated 02-11-2015.

4. The learned counsel for petitioners argued and sought declaring the BOD meeting and its decision illegal and void on the sole point that the respondent No.1 had no jurisdiction and authority under Section 170 Companies Ordinance 1984 to issue directives and pass orders in this regard after promulgation of Companies Amended Ordinance 2002 under which Registrar Joint Stock Companies has no powers except to Register a Company recommended by Security and Exchange Commission of Pakistan (SECP). He further argued that even during the meeting of Board of Directors, the petitioner no. 1 present therein challenged and opposed the powers and authority of the respondent No.1 to convene the said meeting of BOD by the Registrar Joint Stock of Companies in absence of prior approval/ authority from the Chairman of SECP under the referred law.

5. The Learned counsel for respondent forcefully defended the impugned judgment and order and argued that the petitioners being the directors and top management concerns were under obligation to convene BOD meetings regularly & run the affairs of the company smoothly as per legal requirement of the concerned provisions of Companies Ordinance 1984 and articles of association which the petitioners utterly failed to comply with. Thus as a result of Case No. 228/2013 filed by the Respondent No. 2 under Section 290 of

Companies Ordinance 1984, the Honorable Chief Court GB passed an order on 07/05/2014 to convene the meeting in this regard. The convening of 8<sup>th</sup> BOD meeting by respondent No.1 as Registrar Joint Stock Companies was an act of implementation of the directions of Chief Court GB referred above. He further contended that as per Articles of Association, resolution of the BOD passed in its 7<sup>th</sup> meeting in 2011 as well as agreements between parties made previously to be more specifically the Contract of Cooperative Business Cooperation of Pak China Sust Port Joint Stock Company (Pvt) Ltd dated 21/02/2002 both parties of China and Pakistan side are under legal obligation to act upon the provisions of Articles of Association in respect of rights, powers, positions and assigned role to be played in the joint venture company. As per Articles of Association, the elections and selection of chairman, vice chairman and directors of the BOD of the respective parties of JV Company is the internal affair of the respective party as such none of the parties have a right to object or oppose to the nominations of directors, chairman or vice chairman nominated by either side. He further argued that despite various requests the refusal of holding of meeting of BOD & non acceptance of elected and nominated directors and vice chairman of the respondent No.1 to 4 by the petitioners is in violation of articles of association, agreements between the parties and the Section 180 of Companies Ordinance 1984.

6. The Petitioners have challenged the holding of 8<sup>th</sup> BOD meeting Dated 16<sup>th</sup> June 2014 convened by the Registrar Joint Stock Companies GB and sought relief vide Petition under Section 290 of Companies Ordinance 1984 and prayed as under:

**“ It is therefore, humbly prayed that by accepting this petition, disputed meeting of BOD and decisions taken in the said meeting may very graciously be declared as unlawful and ab-initio void in the interest of justice”**

7. The record reveals that the respondents No 2 to 4 became directors and the respondent No. 2 as chairman of Silk Route Dry Port Trust

Sost as a result of an election process held in 2013 thus became legally entitled to represent the Silk Route Dry Port Trust in the JV Company as ex officio directors and the vice chairman as per Article 17 and 18 of Articles of Association of the JV company. As a result of elections of the Silk Route Dry Port Trust, the ex chairman of Dry Port Trust Mr. Ali Afsar handed over the charge of the Silk Route Dry Port Trust to the respondent no. 2 on 25/08/2013 but avoided to leave post of Vice Chairman of the Dry Port Trust JV Company. As per above referred Articles of Association of JV Company, there is a term of three years tenure for a director, the Chairman and vice chairman accordingly. Despite lapse of five years as directors, Mr. Al Afsar & two other Directors did not bother to leave the vice Chairmanship and directorship of the JV Company and kept on representing the Silk Route Dry Port Trust therein illegally despite the fact that they had already handed over the management and affairs of Pakistan side Silk Route Dry Port Trust to the present Respondents 2-4. As a result, the present Respondent No. 2 moved an application under Section 290 of Companies Ordinance 1984 before Chief Court GB against the management and BOD members and sought restraining of illegal functioning of said vice chairman & directors representing Silk Route Dry Port Trust in the JV company whose term was lapsed but they were holding the post illegally and allowing the respondent No. 2 to function as vice chairman of Sost Dry Port Trust JV Company, which was allowed by the Chief Court Gilgit in its judgment Dated 07/05/2014 of the **case No. C. Misc. 228/2013** wherein the learned Chief Court directed the Respondent No.2 Registrar Joint Stock Companies Gilgit Baltistan as under:

**“In the light of above discussions the Registrar Joint Stock Companies Gilgit Baltistan is directed to convene the Board meeting of Joint Company within one month of this order”**

It is to be noted here that the Chairman BOD and Managing Director fully represented in the above case on behalf of JV Company and contested in the title **case No. C. Misc. 228/2013** but did not file any appeal , revision or writ petition against the said order of Chief Court giving the verdict a finality in the eyes of law.

8. That the respondent No. 1 acted upon the directions given by the Honorable Chief Court GB and convened the meeting of BOD of the JV Company on 16<sup>th</sup> June, 2014 and made some decisions therein to be approved by the next BOD Meeting to be held within next 21 days. The petitioners / Management of JV Company instead of holding 9<sup>th</sup> BOD meeting within 21 days accordingly, challenged the holding of 8<sup>th</sup> BOD meeting though the C. Misc. 170/2014 before the learned Chief Court which has been straightaway dismissed and remarked as under in the impugned order:

**“ The undue interference by the Party A besides relaxed attitude of the Registrar Joint Stock Companies GB in the presence of clear cut orders of the Court is the reflection that the Company can only be run on the wishes and whims of the problem creators instead of clearly provided Articles of Association. The petition No. 170/2014 is nothing except to delay the transition of the affairs of the company and to defeat the ends of justice which is dismissed accordingly.**

**The Registrar Joint Stock Companies is strictly directed to ensure that each and every person connected with the company should take over their own function within thirty days of this order”**

9. That the case file reveals that the BOD Meeting in dispute was not convened by the Respondent No. 1 in exercise of powers given under Section 170 of Companies Ordinance 1984 at his own sweet will or under influence of the any other respondent as alleged in para no 4 of the memo of petition for leave to appeal rather the meeting was convened on the directions of the learned Chief Court GB given in the judgment dated 07/05/2014 referred above against which the representative head of JV Company the Chairman BOD & Managing Director being party to same case fully participated and contested the case but interestingly did not challenge it by filing any kind of appeal or revision against the same thus the contention raised by the learned counsel for petitioners based on a presumption is not tenable.

10. That the main contention of Learned Counsel for petitioners is based on the sole point that after promulgation of Companies Ordinance Amendment Act 2002, all the powers enjoyed by the

Registrar have been assigned to Commission thus the acts done by Registrar in this regard is without authority. As discussed before, firstly the convening of meeting of BOD by Registrar was not a sweet will or an act under the influence of other respondents rather the same was implementation of Court order and secondly due to non establishment of Securities & Exchange Commission in Gilgit Baltistan yet, the Registrar Joint Stock Companies Gilgit Baltistan exercises all powers including registration of Companies & other Corporate issue in GB.

11. That it is interesting here to note that all the corporate matters including the registration of companies have been undertaken in GB under the provisions of Companies Ordinance 1984 since long in absence of enforcement of the same in GB. Factually the Companies Ordinance 1984 was enforced and adapted by the Ministry of KANA Islamabad vide Notification No. F.2(1)/2005-NA-1 Dated 17<sup>th</sup> February, 2007 in the name of Northern Areas Companies Ordinance (Adaptation & Enforcement) Order 2007 as under:

**No. F. 2(1)/2005-NA-I  
Government of Pakistan  
Kashmir Affairs & Northern Areas, Division**

**Islamabad the 17<sup>th</sup> Feb. 2007**

**AN**

**ORDER**

To adapt, apply and enforce the Companies Ordinance 1984 to the Northern Areas.

WHEREAS, it is expedient to adapt, apply and enforce the Companies Ordinance 1984 (XLVII of 1984) in the Northern Areas and for matters connected therewith and ancillary thereto.

NOW THEREFORE, in exercise of the powers conferred by Section 17-B of the Northern Areas Council Legal Framework Order 1994 read with entry 3 of S.No.19 of Schedule –II to the Rules of Business 1973 the Government of Pakistan is pleased to make the following order:-

1. Short Title and Commencement: (1) This Order may be called the Northern Areas Companies Ordinance (Adaption and Enforcement) Order 2007.  
2. It extends to the whole of Northern Areas.  
3. It shall come into force at once.
3. Enforcement of the Companies Ordinance 1984:- The Companies Ordinance 1984 (XLII of 1984) shall as in force immediately before the commencement of this order, and all rules notification and orders made or issued there-under mutatis mutandis and as far as practicable apply to the Northern Areas.

No.F.2 (1)/2005 NA-I

Sd/ x x x x x x x x x  
(Muhammad Aktar Khan)

12. The above notification makes it clear that the Companies Ordinance 1984 has been made enforced and applicable in Gilgit Baltistan since 17<sup>th</sup> February 2007 vide above notification and prior to it factually the **Companies Act 1913** was enforced in GB as the same was made applicable to Northern Areas **vide notification NO.Reg-H.C.NTF-15/71, dated 27-7-1971.**

It would be not appropriate at the moment to touch or discuss the legitimacy of all actions including the registration of hundreds of companies made under Companies Ordinance 1984 by the Joint Stock Companies Northern Areas prior to its adaptation & enforcement in GB, we restrict our self to the instant case and discuss the corporate history of GB for an academic discussion.

13. Instead of establishing an independent Institution of Joint Stock Companies in GB after promulgation of Companies Act 1913 , the Ministry of KANA Islamabad assigned this task to Planning & Development Department Gilgit by appointing the then Additional Commissioner now the Secretary Planning as Registrar and the Assistant Chief as Assistant Registrar vide notification No.D-7 (5)/83 dated 21/02/1983 which states as under :

**GOVERNMENT OF PAKISTAN  
KASHMIR AFFAIRS & NORTHERN AFFAIRS  
DIVISION  
'R' BLOCK 1ST FLOOR**

**No.D-7 (5)/83**

**Islamabad , the 21<sup>st</sup> February 1983**

**ORDER**

In exercise of the powers conferred by sub-section (2) of section 248 of the Companies Act 1913 (Vii of 1913), the Government of Pakistan is pleased to appoint the Additional Commissioner (Development) Northern Areas, and the Assistant Chief in the office of the Additional Commissioner and Assistant Registrar to be the Registrar and Assistant Registrar respectively of Joint Stock Companies for the Northern Areas.

Sd/x x x x x x x x

**(Akbar Hayat Khan )**

**Deputy Secretary to the  
Government of Pakistan**

Naturally, the Respondent No. 1, in addition to his departmental work as Secretary P&D, have to perform their dual work as Registrar Joint Stock Companies as well, thus cannot give proper time and attention to regulate and monitor the corporate sector issues properly as a result such kind of situation erupt that even foreign companies are functioning in Gilgit Baltistan openly without going through the legal formalities and even they avoid to follow and abide by laws of the land. Such kind of corporate regulatory system exists nowhere in the world as a result “Big Board” like scandals happened in this region resulting looting of hundreds of poor families. The learned Chief Judge Chief Court GB has rightly observed in impugned judgment about the results of non establishment of an independent institution of Joint Stock Companies and its impacts however instead of suggesting the GB Government to take up the matter with G.B. Council to establish Security Exchange Commission in GB as a result of promulgation of Northern Areas Security and Exchange Commission Act (Adaption and Enforcement ) Order 2007 vide notification issued by **No.F.2(1)/2005-NA-1**, dated 17<sup>th</sup> February 2007, has directed the authorities to establish a Joint Stock Companies perhaps due to having no knowledge of promulgation of the above law in GB. The above referred notification reads as under:

**No.F.2 (1)/2005-NA-1  
Government of Pakistan  
Kashmir Affairs & Northern Areas Division**

Islamabad the 17<sup>th</sup> February 2007

**AN**

**ORDER**

To adapt, apply and enforce the Securities and Exchange Commission of Pakistan act 1997 (XLII of 1997 in the Northern Areas).

WHEREAS, it is expedient to adapt, apply and enforce the Securities and exchange commission of Pakistan Act 1997 (XLII of 1997 ) in the Northern Areas and for matters connected therewith and ancillary thereto.

NOW THEREFORE, in exercise of the powers conferred by section 17B of the Northern Areas Council Legal Frame Work Order, 1994 read with entry 3 of serial No.19 of Schedule-II to the Rules of Business 1973 the Government of Pakistan is pleased to make the following order :-

1. Short title extent and commencement :- (1) This order may be called the Northern Areas Security and Exchange Commission Act (Adaption and Enforcement) Order 2007.
2. It extends to the whole of Northern Areas.
3. It shall come into force at once.

2. Enforcement of the Securities and Exchange Commission Act, 1997. The Securities and Exchange Commission of Pakistan Act 1997 (XLII of 1997) shall, as in force immediately before the commencement of this Order, and all rules notification and orders made or issued there under, mutatis mutandis and as far as practicable, apply to the Northern Areas.

No.F.2(1)/2005.NA-I)

Sd/x x x x x x  
(Muhammad Akhtar Khan)  
Deputy Secretary (NAs)

14. Coming to the point of Learned Counsel for Petitioners that vide Companies Ordinance Amendment Act 2002, the Registrar of Joint Stock of Companies GB seizes authority to exercise his powers given under section 170 of the Companies Ordinance 1984 as the same have been vested with the security exchange commission. It is pertinent here to mention that in 2002, the Companies Laws Ordinance 1984 was not applicable in Gilgit Baltistan rather the Companies Act 1913 was in operation. However it is true that after promulgation of Northern Areas Companies Ordinance (Adaption and Enforcement) Order 2007 dated 17/02/2007 and Northern Areas Securities Exchange Commission Act (Adaptation & Enforcement Order 2007 Northern dated 17/02/2007, theoretically all the powers covered under section 170 should be exercised by the "commission" provided the same is in existence. Although the law of NAs Security Exchange Commission was applicable in GB since 2007, but neither the Gilgit Baltistan Council nor Government of Gilgit Baltistan bothered to establish the Commission till date. As a result, the Registrar of Companies is still exercising the powers including the registration of companies and their ancillary matters as per past practice which is understandable. Thus if the contention of the learned counsel for petitioners is strictly followed then the legitimacy of the hundreds of companies as well as petitioners own JV Company Pak China Sost Port Company (Pvt) Limited itself suffers as the same has been registered in 2004 by the Registrar Joint Stock Companies GB. No doubt there is a vacuum in respect of the existence of commission in GB thus in absence of such institution the acts done by

the Registrar of Joint Stock Companies cannot be thrown away and declared as illegal and unlawful in toto. Until and unless an independent institution of Security Exchange Commission is established in GB, the Registrar of Joint Stock Companies GB is justified to follow the past practice.

15. The representative of Joint Stock Company Mr. Sajjad Haider Assistant Registrar stated at bar that keeping in view of present situation, a summary has been moved to Chief Minister GB to ask the Security Exchange Commission of Pakistan to take over the affairs in GB as well. We hold that such an attempt would be illegal and unlawful as the Security Exchange Commission of Pakistan being a federally legislated institution functions under Security Exchange Commission of Pakistan Act 1997 having jurisdiction to function and operate in the territorial limits of Pakistan defined in Article 1 (2) of Constitution of Pakistan and not beyond those limits such as Gilgit Baltistan and Azad Jammu & Kashmir. It is an admitted fact that the Gilgit Baltistan is not constitutional part of Pakistan and does not fall under the territories defined in the Constitution of Pakistan as mentioned above and the people herein have no representation in the parliament of Pakistan as well as other constitutional institutions as such any law legislated by the Federal Parliament does not become applicable to Gilgit Baltistan until and unless the same is adapted or enforced in Gilgit Baltistan by Ministry of K & GB Islamabad as Government of Pakistan with certain amendments and modifications through executive orders. Thus the extension of jurisdiction of Security Exchange Commission of Pakistan to Gilgit Baltistan to operate its offices would be unconstitutional and an act without authority as the law applicable in Gilgit Baltistan is **“Northern Areas Security Exchange Commission Act (Adaptation & Enforcement) Order 2007”**. The Government of Gilgit Baltistan instead of involving and asking Security Exchange Commission of Pakistan to extend its jurisdiction to Gilgit Baltistan, should ask Gilgit Baltistan Council, being its subject, to establish its own **commission** having restricted jurisdiction within the territorial limits of Gilgit Baltistan as defined in Northern Areas Exchange

Commission Act (Adaptation & Enforcement) Order 2007 as happened in cases of establishment & functioning of various independent institutions/administrative Courts in Gilgit Baltistan as a result of adaptation and enforcement of following general & special laws of Pakistan :

- The National Accountability Bureau Ordinance, 1999 (Adaptation & Enforcement) Order 2000,
- Northern Areas Code of Civil Procedure Order 1991,
- The Environmental Protection (Adaptation and Enforcement) Order 2002 NAB,
- The Financial Institutions (Recovery of Finances) (Adaptation & Enforcement) Order 2001,
- Northern Areas Regulation of Mines and Oil Fields And Mineral Development Order 2003,
- Northern Areas Legal Practitioners & Bar Council (Adaptation & Enforcement) Order 2002.
- The Northern Areas Anti Terrorism Order 2002,
- The Anti Narcotics Enforcement Force (Adaptation & Enforcement) Order 2002

Thus this court is of the opinion that the Government of Gilgit Baltistan may withdraw the request if any made to Security Exchange Commission of Pakistan to extend its jurisdiction to Gilgit Baltistan and take up the matter with the Gilgit Baltistan Council to establish the commission at the earliest.

16. As per legislative list of GB Council under Third Schedule of Gilgit Baltistan (Empowerment & Self Governance) Order 2009, the GB Council is empowered to establish regulatory institutions in respect of corporate sector as stated below:

**Gilgit Baltistan  
(Empowerment & Self Governance) Order 2009**

**Third Schedule  
Council Legislative List**

1. ....12

**13. Banking, that is to say, the coordination with Government of Pakistan of the conduct of banking business.**

**14.. The law for insurance and the regulation of the conduct of insurance business**

**15- Stock Exchange and future markets with object and business not confined to the areas comprising Gilgit-Baltistan.**

**16.. Corporations, that to say, the interpretation regulation and winding up of trading corporations including banking, insurance, and financial corporations, but not including corporation owned or controlled by the provincial Government of Gilgit Baltistan and carrying business, cooperative societies, and of corporations, whether trading or not with object not confined to the Gilgit Baltistan, but not including universities.**

**17. Keeping in view of above discussions, this Court is constrained to direct Gilgit Baltistan Council to establish its own Security Exchange Commission in Gilgit Baltistan within shortest possible time to ensure regulating and proper monitoring of activities of local, national and foreign companies operating in Gilgit Baltistan. In case of non availability of technical human resource locally, the GB Council may engage some experts from Security Exchange Commission of Pakistan **on deputation** till availability of locals expertise.**

**18. It is an admitted fact that the JV Company is controlled, managed and operated by the Chinese side through the Petitioners being their nominee directors since its incorporation. Thus if any mismanagement or complaint occurs that the affairs of company are being conducted or are likely to be conducted in an unlawful or fraudulent manner , or in a manner not provided for in its memorandum then the responsibility shifts to the petitioners exclusively being the most responsible mangers and responsible for conducting all affairs of the company. The purpose of Section 290 appears to keep the company going well while at the same time securing the interest of minor share holders from acts of oppression and mismanagement. Proceedings under section 290 are to be resorted to when it is complained that affairs of the company were being conducted in an unlawful or fraudulent manner or in a manner not provided for in Memorandum & Articles of Association. Thus submission of instant application by the petitioners being the directors and managers of the company before the learned Chief Court under Section 290 of Companies Ordinance 1984 is against the spirit of this**

provision under which only Members, Creditors or the Registrar are entitled to submit an application before the court in case of any complaint against the management of the company responsible for the complained acts covered under this section.

Sub Section 1 & 2 of Section 290 of Companies Ordinance 1984 states as under:

- (1) If any member or members holding not less than twenty per cent of the issued share capital of a company, or a creditor or creditors having interest equivalent in amount to not less than twenty per cent of the paid up capital of the company, complains or complain, or the registrar is of the opinion, that the affairs of the company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the member or any of the members or the creditors or any of the creditors or are being conducted in a manner prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the registrar may make an application to the Court by petition for an order under this section.
- (2) If, on any such petition, the Court is of opinion--
  - (a) that the company's affairs are being conducted, or are likely to be conducted, as aforesaid; and
  - (b) that to wind-up the company would unfairly prejudice the members or creditors; the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

Section 290 confers right only three persons, namely,

- i. Member or Members, holding not less than twenty percent of the issued share capital of a company,
- ii. Creditor or creditors, having interest equivalent in amount to not less than twenty percent of the paid up capital of the company, and
- iii. The Registrar, to make an application to the court under this section

The only persons mentioned above have the right to file application under section 290 against the management, directors or BOD in

respect of affairs conducted in a manner specified in the above provision. Section 290 does not provide any statutory right to any DIRECTOR, BOD or the persons in management responsible for running affairs of the Company, to file an application before the Court who himself used to be responsible for whole management and administrative affairs of the company and having different definition, nature of status and functioning.

Section 2(21) of Companies Ordinance 1984 defines the "Member" of a company as under:

"Member" means, in relation to a company having share capital, a subscriber to the memorandum of the company and every person to whom is allotted, or who becomes the holder of, any share, scrip or other security which gives him a voting right in the company and whose name is entered in the register of members, and in relation to a company not having a share capital, any person who has agreed to become a member of the company and whose name is so entered"

Section 2 (31) of Companies Ordinance 1984 31 defines Registrar as under:

"Registrar" means a registrar, an additional registrar, a joint registrar, a deputy registrar, or an assistant registrar performing under this Ordinance the duty of registration of companies.

The Section 2(13) of Companies Ordinance 1984 defines director as under:

"Director" includes any person occupying the position of a director by whatever name called" Further explained that directors are persons appointed or elected according to law, authorized to manage and direct the affairs of a corporation or company"

Section 2(5) defines Chief Executive as under:

"Chief Executive" , in relation to a company means an individual, who subject to the control and directions of the directors, is entrusted with the whole, or substantially the whole, of the powers of management of the affairs of the company, and includes a director or any other person occupying the position of chief executive, by whatever name called, and whether a contract of service or otherwise"

Thus any member of BOD, Director or Chief Executive of a company does not fall under the scope of Section 290 at all. The petitioners, being directors and administrative heads responsible for all kinds of administrative and financial affairs of the Company, were not entitled to submit application under section 290 against Registrar or Pakistani share holders /partners in the JV Company before the Chief Court GB

seeking remedy beyond the scope of the above referred provision is not tenable in the eyes of law thus liable to be rejected.

19. These were the reasons for our short order dated 17/05/2016. Appeal is hereby dismissed being meritless and not maintainable. Consequently the judgment and order of learned Chief Court G.B. dated 07/08/2014, is upheld. Parties to bear their own cost.

**Judge**

**Chief Judge**

**Whether the case is fit to be published or not?**