

IN THE HIGH COURT OF SINDH, KARACHI

Present:

**Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro**

Const. Petition No. D-3144 of 2025

(M/s M.A.K Garments (Private) Limited and another v. Securities & Exchange Commission of Pakistan and 2 others)

Petitioner : Through Mr. Abid S. Zuberi a/w Ms. Amna Khalil and Sana Q. Valika, Advocates

Respondent No.1 : Through Mr. Imran Shaikh, Advocate
& 2

Respondent No.3 : Through Mr. Asim Mansoor Khan, Advocate

Date of hearing : **04.03.2026**

Date of Order : **09.04.2026**

JUDGMENT

NISAR AHMED BHANBHRO, J. Through this petition, the petitioners have assailed upon the Order dated 30th June, 2025 (**Impugned Order**) passed by Director /Head of Onsite Department, Securities & Exchange Commission of Pakistan (**SECP**), whereby an investigation, under Section 256 of the Companies Act 2017 (TCA) was ordered into the affairs of M/S M.A.K Garments (Pvt) Limited (**Petitioner Company**).

2. Learned counsel for the petitioners contended that the Impugned Order has been passed in haste and without proper consideration of the detailed reply and supporting documents submitted by the petitioner company. It is submitted that the order is based merely on a complaint allegedly made by Respondent No.3. According to learned counsel, the order reflects no independent application of mind and appears to have been passed at the behest of Respondent No.3. It is further argued that the observation regarding removal of Respondent No.3 from the office of director without due process is factually incorrect, as notices of the Annual General Meeting (AGM) were duly issued to all directors, including Respondent No.3, with proof of service through Pakistan Post. Learned counsel submits that the board meeting held on 28.10.2024 was a routine meeting since the tenure of all directors, appointed on 28.10.2021,

had expired on that date. Regarding the observation that the audited accounts for the year ending 30.06.2024 were signed only by two directors, learned counsel submits that the same is in fully compliant with Section 232 of the Companies Act, 2017, which requires signatures of the Chief Executive and one director. It is also contended that the accounts were duly approved in the board meeting dated 27.11.2024. Learned counsel further submits that the objection regarding disclosure of Rs.322 million as payable to a related party is misconceived, as the accounts were duly audited and approved in accordance with law and the Impugned Order does not identify any violation of accounting standards or statutory provisions. It is also argued that Respondent No.3 was not "removed" but his tenure had expired in terms of Section 161 of the Companies Act, 2017, and therefore the use of the term "removal" in the Impugned Order is legally incorrect. Learned counsel next submits that the direction for investigation into the affairs of the petitioner company from incorporation till date is harsh, excessive and disproportionate, particularly when the complaint was filed by Respondent No.3 who himself managed the company's affairs until 28.10.2024. It is further contended that the Impugned Order travels beyond the scope of the show cause notice by introducing new allegations which were never put to the petitioners, thereby depriving them of an opportunity of hearing and violating Articles 4 and 10-A of the Constitution. Lastly, learned counsel submits that the remedy of appeal is illusory, as the Impugned Order is merely an interim investigation order against which no appeal lies under Section 33(1)(d) of the SECP Act, 1997 and prayed for allowing the petition. He placed reliance upon the case of *The Collector of Customs, Peshawar Vs. Messrs Jan's Builders (2019 PTD Trib. 1266)*, *Collector of Customs through Additional Collector of Customs Vs. Customs Appellate Tribunal and another (2022 PTD 1153)*, *Commissioner Inland Revenue Chennab Zone, RTO, Faisalabad Vs. Messrs Rose Food Industries, Faisalabad and another (2023 SCMR 2070)*, *The Collector Central Excise and Land Customs and others Vs Rahim Din (1987 SCMR 1840)*, *Faisal Ali Vs. District Police Officer Gujrat and another (2025 SCMR 92)*, *Commissioner Inland Revenue Vs Messrs RYK Mills (2023 SCMR 1856)*, *Attock Refinery Ltd Vs Executive Director Enforcement and Monitoring Division S.E.C.P and another (PLD 2010 SC 946)*, *Saif Power Limited Vs. Federation of Pakistan through Secretary Ministry of Law, Civil Secretariat Islamabad and others (2023 CLD 466)*, *Muhammad Safeer and others Vs Muhammad*

Azam and others (PLD 2024 Supreme Court 838). He prayed to allow the petition.

3. Conversely, learned counsel for Respondents No.1 and 2 assisted by Learned Counsel for Respondent No 3 submitted that the Investigation Order has been passed strictly in accordance with law after due diligence and a preliminary fact-finding exercise. It is contended that Respondent No.3, who holds 25% shares in the petitioner company, reported that properties pledged for a loan obtained from MCB Bank Limited were allegedly already lien-marked against credit facilities of a related party, POML, which suggested possible double-pledging or misrepresentation and thus warranted scrutiny. Learned counsel further submits that Respondent No.3 had complained that he was removed from the management and deprived of proper representation on the Board of Directors despite being a major shareholder. According to counsel, although the petitioner company claimed that due process had been followed, no satisfactory documentary proof was furnished, therefore an investigation was considered necessary. It is also contended that the audited accounts for the year ending 30.06.2024 were signed by only two directors, while the petitioner company failed to produce supporting material such as attendance records of the board meeting in which the accounts were approved. Likewise, the accounts disclosed an amount of Rs.322 million as payable to a related party without providing complete particulars, which also required examination. Learned counsel further submits that removal of the company secretary on the same date when Respondent No.3 was allegedly removed as Chief Executive Officer and director raised suspicion, therefore the investigation was ordered to ascertain the factual position. It is argued that the review period for investigation was defined from the date of incorporation till 30.06.2025, particularly in view of questions raised by Respondent No.3 regarding funds involved at the time of incorporation. Counsel submits that prior to passing the Investigation Order, a show cause notice was issued and the petitioners were afforded due opportunity of hearing. Learned counsel further submits that in JCM No.15 of 2025 no restraining order was passed by the learned Company Bench, therefore the respondents proceeded in accordance with law. It is contended that the petition is devoid of merit and has been filed merely to avoid a lawful investigation. According to counsel, if the petitioners have acted lawfully, they should have no

hesitation in cooperating with the investigation team. Lastly, learned counsel submits that an investigation order passed under Section 256 of the Companies Act, 2017, in terms of Section 33 of the SECP Act, it is appeal-able. It is thus contended that the Investigation Order has been passed lawfully after affording due opportunity of hearing to the petitioners. He placed reliance upon the case of Dilsons (Private) Limited and others Vs Securities and Exchange Commission of Pakistan and another (**2021 CLD 1317**), Ofspace (Private) Limited Vs Federation of the Islamic Republic of Pakistan through Secretary Ministry of Finance Islamabad and 3 others (**2012 CLD 923**), B.R.R Guardian Modaraba and 8 others Vs. Federation of Pakistan through Secretary Ministry of Law and 2 others (**2025 CLD 319**), Tariq Iqbla Malik Vs Messrs Multiplierz Group PVT. LTD. and 4 others (**2022 CLD 468**) and prayed for dismissal of the Petition.

4. Heard arguments of the parties and perused the material made available before us on record.

5. Addressing the issue of maintainability of the Petition. The Contention of the Respondents' Counsel that Petition under article 199 of the Constitution of Islamic Republic of Pakistan, of 1973 (the constitution) was not maintainable in presence of the alternate remedy available under Section 33 of SECP Act, which provides for filing of an appeal against the order of Commission. Admittedly, statutory forum of appeal was available under section 33 of SECP Act, and Section 480 of TCA, and this Court sparingly interferes in the matters under its writ jurisdiction, where an alternate remedy by way of appeal or revision was available. The Writ jurisdiction of this Court is an extraordinary remedy and cannot be invoked as panacea for all grievances, particularly where an equally efficacious, alternative, and adequate statutory remedy exists. The doctrine of exception of remedies operates as jurisdictional bar precluding litigant from resorting to Constitutional remedies under Article-199 of the Constitution without first availing themselves of a statutory mechanism expressly provided by law. The underlying rationale of this doctrine is to prevent litigants from circumventing established statutory frameworks thereby ensuring that the extraordinary writ jurisdiction of the High Court is not diluted into an ordinary appellate forum.

6. The theory of an alternative remedy under Article-199 of the Constitution hinges upon two core considerations substantive sufficiency and comparative efficacy. A remedy cannot be deemed adequate if it fails to provide relief matching the nature and extent of the grievance. The doctrine of exception in constitutional intervention remains permissible in two scenarios, firstly; for the structural absence or substantive nullity of alternative remedies and secondly; the extraordinary circumstances where normally adequate remedies prove insufficient due to case specific factors. The exception doctrine operates as a narrowly tailored, requiring compelling justification to prevent abuse while ensuring access to justice when statutory channel fundamentally fail. Where the statutory procedure of obtaining relief proves unduly cumbersome, or where the attendant delay and expense would either render the alternative remedy in-eficacious or defeat its very purpose then exercise of extraordinary jurisdiction under Article-199 of the Constitution can be invoked.

7. In the present case if the petition is not entertained on the score that eventually on culmination of investigation a final order shall be passed by the SECP, then it will defeat the cause of justice, and would put Petitioner Company under undue distress. Since SECP has ordered for investigation into affairs of Petitioner Company and order is interim in nature, in order to examine its validity and legality, powers of judicial review conferred to this Court under article 199 of the Constitution can be invoked, and writ against an interim order of investigation was equally competent, as remedy of appeal was cumbersome and would not provide expeditious justice to the parties. Reference in this regard is made to the case of *Attock Refinery Ltd Vs Executive Director Enforcement and Monitoring Division S.E.C.P and another (PLD 2010 SC 946)*.

8. Adverting to the legality of the impugned order. The crux of the controversy involved in the present *lis* is that the petitioner No 2 Adeel Ahmed Khayam and Respondent No 3 Shoukat Khayam are shareholders of paid up capital share to the extent of 25 % each, whereas Abubakar Masood and Nadeem Afzal Khan are 50 % shareholders of paid up share capital of the Petitioner Company. Respondent No 2 was selected as Chief Executive Officer (CEO) of Petitioner Company on 28.10.2021 for a period of three years. Petitioner No 2 was also elected as Director on the said date. Tenure of all the directors and CEO was set to expire on completion

of three years envisaged under section 161 of TCA. To elect new directors and CEO, a notice dated 02.10.2024 was issued to all the members, for election scheduled on 28.10.2024. Respondent No 3 chose to absent himself from process, whereas Petitioner No 2 and Nadeem Afzal Khan attended the meeting in office and Abubakar Masood attended the meeting through video link. Members present in the meeting were selected as directors and Petitioner No 2 was selected as CEO of Petitioner Company. This led to filing of a complaint dated 17.03.2025 by Respondent No 3 to Respondent No 1 (SECP) leveling allegations of fraud and opening of login ID of SECP portal through coercive tactics. SECP issued show-cause notice to the Petitioner Company and after hearing the parties, passed impugned order for investigation into its affairs.

9. In its complaint, filed on March 17 2025, (available at page 285 of Court file) Respondent No 3 put forth following set of allegations in para No 4 of the complaint, which is reproduced below for ease:

"4. Summary of the allegations being leveled against the Company and its directors are as follows:

- 1. Mr. Shoukat Khayam, verbally complained to President Muslim Commercial Bank, Pakistan, that properties which were assigned as collateral to obtain loans from Dubai Islamic Bank, Korangi Branch, Karachi, were already lien marked for obtaining facilities extended to Pakistan Oil Mills (Pot.) Ltd., which is a related party of M/S A.K. Garments (Pvt.) Ltd.*
- 2. The Company obtained a financial facility by creating charge in favour of United Bank Ltd., for obtaining a financial facility to the tune of Rs 134 Million without any intimation to the Chief Executive Officer /Director. (Form 10 - Annexure 3). The documents /other documents submitted to the bank contained the signature of Abu Bakar Masood which apparently were false/fabricated/forged by Mr Masood Pervez (father of Abu Bakar Masood), as the former is not residing in Pakistan. There appears to be widespread siphoning of funds by obtaining loans /financial facilities from banks for personal gains.*
- 3. The Company fraudulently reported the retirement of Director / Chief Executive Officer, Mr Shoukat Khayam on 28 October 2024 vide Form 9 dated 19 November 2024 by gaining unauthorized access of the login credentials of applicant, Mr Shoukat Khurram. Formal complaint was lodged with SECP vide complaint dated 19 November 2024. No proper notice of Annual General Meeting was served to the applicant Mr. Shoukat Khurram.*

4. *The Company has failed to keep/ maintain proper books and accounts. Financial statements for the year ended 30 June 2024 have not been audited. It has neither been provided to the applicant nor has been filed with Securities and Exchange Commission of Pakistan.*

10. On receipt of complaint, SECP issued a Show Cause Notice dated 24.03.2025 to the Petitioner Company, containing the gist of allegations set out in para 4 of the application filed by Respondent No 3. Petitioner Company filed reply to show cause notice. Besides contesting allegations in show cause notice, Petitioner Company asserted that the proceeding before SECP may be put into halt as the Petitioner Company had filed a JCM No 15 of 2025 before this Court. SECP, however, concluded its preliminary proceedings and vide impugned order dated 30.06.2026 appointed team of the officers to investigate into the affairs of Petitioner Company. Para 10 of the order being relevant is reproduced below:

"10. Without limiting the scope of investigation, the inspectors shall conduct investigation into the affairs of the Company for the period since incorporation till date ('Review Period'). However, iff required the team may examine any record, paper or transaction prior to the Review Period, and shall furnish a report thereon, inter alia whether or not the following are in accordance with the provisions of applicable law and best practices of corporate governance;

- i. Whether the applicant's removal from management / Board was lawful and aligned with governance practices.*
- ii. Whether changes in board appointees/resignations followed due process.*
- iii. Whether statutory records, including board and AGM minutes are properly maintained.*
- iv. Whether approval process for financial statements complied with legal requirements*
- v. Whether the Company has been affording the applicant its shareholders' right to inspect the record of the Company and to provide other information, and*
- vi. To verify other concerns made by the applicant referred in para 3 above.*

11. The statutory framework applicable for adjudicating the complaints regarding affairs of the Company is the Companies Act 2017, particularly, Sections 256 and 257, which are reproduced hereunder for ease of reference:-

256. Investigation of affairs of company. Where the commission is of the opinion that it is necessary to investigate into the affairs of a Company

(a) On the application of the members holding not less than one tenth of total voting power in a company having a share capital;

(b) On the application of not less than one tenth of the total members of a company not having share capital;

(c) On receipt of a report under sub-section (5) of Section 221 or on the report by the registrar under sub-section (6) of section 254;

it may order an investigation into the affairs of the Company and appoint one or more persons as inspectors to investigate into the affairs of the Company and to report thereon in such manner as the Commission may direct:

Provided that before making an order of investigation, the Commission shall give the company an opportunity of being heard.

(2) While appointing an inspector under sub section (1), the commission may define the scope of investigation, the period to which it is to extend or any other connected or incidental to the investigation.

(3) An application by members of a company under clause (a) or (b) of sub-section (1) shall be supported by such evidence as the commission may require for the purpose of showing that the applicants have good reason for requiring investigation.

(4) The Commission may before appointing an inspector, require the applicants to give such security for payment of the costs of the investigation as the Commission may specify.

257. Investigation of company s affairs in other cases.---

Without prejudice to its power under section 256, the Commission:

(a) shall appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct, if

(i) the company, by a resolution in general meeting, or

(ii) the Court, by order, declares that the affairs of the company ought to be investigated by an inspector appointed by the Commission; and

(b) may appoint one or more competent persons as inspectors to investigate the affairs of a company and to report thereon in such manner as the Commission may direct if in the opinion of the Commission there are circumstances suggesting

(i) that the business of the company is being or has been conducted with intent to defraud its creditors, members or any other person or for a fraudulent or unlawful purpose, or in a manner oppressive of any of its members or that the company was formed for any fraudulent or unlawful purpose; or

(ii) that persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance, breach of trust or other misconduct towards the company or towards any of its members or have been carrying on unauthorized business; or

(iii) that the affairs of the company have been so conducted or managed as to deprive the members thereof of a reasonable return; or

(iv) that the member of the company have not been given all the information with respect to its affairs which they might reasonably expect; or
(v) that any shares of the company have been allotted for inadequate consideration; or
(vi) that the affairs or the company are not being managed in accordance with sound business principles or prudent commercial practices; or
(vii) that the financial position of the company is such as to endanger its solvency:
Provided that, before making an order under clause (b), the Commission shall give the company an opportunity to show cause against the action proposed to be taken.

12. A bare perusal of the above referred provisions, made it abundantly clear that although Sections 256 and 257 of TCA are closely tied in, the power flows out of entirely different circumstances for the SECP to start an investigation. Reduced to its core, under Section 257, the SECP can appoint one or more competent persons as inspectors to investigate the affairs of a company and report thereon as directed. This power is exercised in two principal scenarios: (a) mandatorily, where the company by resolution in a general meeting or the Court by order declares that an investigation is warranted; and (b) at the Commission's discretion, where circumstances suggest, inter alia, that the company's business is being or has been conducted with intent to defraud creditors, members or others for a fraudulent or unlawful purpose, in an oppressive manner or where there is evidence of fraud, misfeasance, breach of trust, unauthorized business, deprivation of reasonable return to members, inadequate disclosure of information, allotment of shares for inadequate consideration, unsound business practices, or financial instability endangering solvency. Whereas Section 256 is engaged on the happening of an event either on an application by members (holding certain threshold voting power) or on a report compiled under subsection (5) of Section 221 or by the registrar under subsection (6) of Section 254. Thus, if at all the SECP sought to investigate into the affairs of a company on the basis of a shareholder's application, it falls under Section 256, powers driven thereunder were discretionary in nature.

13. From the facts and evidence on record, it is evident that the Impugned order was passed on an application filed by member having more than 10 % voting power under section 256 of TCA and the powers of

SECP to order for an investigation through inspectors in that provision of law were discretionary in nature. It is a settled notion of law that discretionary powers are exercised with caution, in a fair and transparent manner. In hunt to explain, whether SECP exercised its discretion within the bounds of law in a free, fair and transparent manner, it would be essential to examine the contents of complaint filed by Respondent No 3.

14. On receipt, SECP was required to examine the complaint within the statutory framework of TCA. This statutory threshold is not a mere formality; it serves as a critical safeguard designed to prevent undue interference in a company's internal affairs by individual shareholders or regulators without sufficient backing. It was imperative for SECP to determine that whether the complaint was filed with honest intentions and the same disclosed sufficient material to issue a show cause notice and then to proceed further under section 256 of TCA. If SECP on independent application of mind found that the complaint was motivated with malice and was filed with a motive to disrupt the Company's routine affairs, then proper course was to discard such frivolous complaints.

15. Upon a cursory glance at the gist of allegations contained in the application filed by Respondent No 3, it transpired that the core controversy started from the alleged removal of Respondent No 3 as CEO of the Petitioner Company. In its reply to show cause notice submitted on 23rd April 2025, Petitioner Company replied to all the charges in negation. SECP, however did not find such submissions sufficient therefore ordered an investigation by framing issues to be answered by investigators. The issues framed by SECP, revealed that answer to all the issues was available in reply to show-cause notice, in the manner that Respondent No 3 was elected on board and CEO for a period of three years which ended on 27.10.2024, hence he stood removed /retired from the board by the operation of law itself. Respondent No 3 knew the expiry date of tenure of Board, being CEO he was required to set a date for fresh elections, rather he chose to fly abroad leaving company affairs in doldrums. Notice of the AGM was given on 02.10.2024 and Respondent No 3 chose to remain absent from AGM, whereas 3 members were present and they elected new board members and CEO. The accounts of the Company were audited by an independent auditor and filed with SECP, no discrepancy was reported in the accounts. The accounts were signed by

two directors per statutory requirement. Respondent No 3 has not made such complaint that he was not afforded shareholders' right to inspect the record of the Company, nor such allegations were raised in the complaint, on the contrary, therefore cannot form the part of investigation. It was a matter of common understanding, that since its incorporation, Respondent No 3 acted as CEO of the Petitioner Company having access in all its affairs, therefore, any complaint on his part should have been substantiated with evidence, which *prima facie* lacked in the present case. The other concern shown by the Respondent No 3 related to the obtaining of collateral loans for Pakistan Oil Mills for which Respondent No 3 did not file any proof that collateral loans in any manner harmed the financial status of the Petitioner Company.

16. From its face, complaint of Respondent No 3 appeared to be a malicious attempt to jeopardize the smooth functioning of Petitioner Company. Respondent No 3 was selected as Director and CEO for a period of three years ending 27.10.2024. Instead of complying with the statutory provisions of Section 161 of TCA to go for elections, he flew abroad and did not even participate in the election process. Being CEO of the Petitioner Company it was responsibility of Respondent No 3 to file required statement of accounts for the fiscal year 2023-2024 but he failed, which established his malice and predetermination to avenge Petitioner Company, might be for the reasons that. Respondent No 3 knew in advance that for the next tenure, he would not be allowed to continue as CEO.

17. It is essential to recognize that initiating a formal investigation into a company's internal affairs is a profound and far-reaching step. Such an action can have significant consequences, not only in terms of financial liabilities but also in terms of damaging the company's reputation and goodwill. Therefore, the law has deliberately placed strict limitations on the exercise of this power. Under Section 263, investigations based on shareholder complaints must follow a defined legal route, including specific thresholds and procedural safeguards. It goes without saying that an investigation into the affairs of a company is a serious matter and entails consequences both financial and ones relating to goodwill of a corporate entity and these powers cannot be lightly used by the SECP. Reliance in this regard is placed upon *Saif Power Limited Vs. Federation*

of Pakistan through Secretary Ministry of Law, Civil Secretariat Islamabad and others (2023 CLD 466)

18. It is a settled principle that due process constitutes a fundamental Constitutional right and no proceedings may be lawfully initiated except in strict adherence to due process and the prescribed procedural formalities. It is a well-settled principle of law that any exercise conducted without due process of law is unconstitutional, illegal and void. It is also a well-settled and established principle of law that when the legislature requires the doing of a thing in a particular manner then it is to be done in that manner and all other manners or modes of doing or performing that thing are barred.

19. Accordingly, the SECP being the regulator must have acted fairly and have dealt with this matter within the bounds of its jurisdiction, reasonable time and in accordance with the law, ensuring that its actions do not infringe upon the rights of the parties. More particular SECP was required to ensure that purported action was taken in good faith, through judicious application of mind and was fair, transparent and free from ulterior motives. It is established principle of law that actions based upon malice and ulterior motives cannot hold the field and are liable to be struck off. We are of the view that the malice in fact as well as malice in law were established from the conduct of Respondents. For the reasons that the Respondent No 2 without application of independent mind issued show cause notice on a frivolous complaint and then ordered for an investigation though Respondent No 3 did not provide any material in support of allegations as mandated under section 256 (3) of TCA.

20. Reliance in this regard is placed on the dicta laid down by Honorable Supreme Court of Pakistan in the case of SAID ZAMAN KHAN and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Defence and others reported as **2017 S C M R 1249** has held that

82. All judicial and quasi-judicial forums for that matter even the Executive Authorities exercise only the powers conferred upon them by law so as to fulfill the mandate of such law and to achieve its declared and self-evident purpose. However, where any action is taken or order passed not with the intention of fulfilling its mandate or to achieve its purpose but is inspired by a collateral purpose or

instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive. Mere allegations, in this behalf, do not suffice. Malice of fact must be pleaded and established at least prima facie on record through supporting material.

83. All persons purporting to act under a law are presumed to be aware of it. Hence, where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by the law under which it is purportedly taken malice will be implied and act would be deemed to suffer from malice in law or constructive malice. Strict proof of bad faith or collateral propose in such cases may not be required.

21. In view of the above discussion, the instant writ petition is accepted. The Impugned Order dated 30.06.2025 appointing the investigators to investigate into the affairs of Petitioner Company is set aside. The complaint filed by Respondent No 3 before SECP also stands dismissed.

JUDGE

JUDGE

HEAD OF CONST. BENCHES

Approved for reporting