IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 2694 of 2017

Plaintiffs:	**Mrs. Zaibun Bashir Shawoo Bawany and others through Mr. Abdur Rehman Advocate.**
Defendants 1, 2 & 4 to 35:	**Mrs. Moin Majeed and others through Mr. Ijaz Ahmed Zahid Advocate.**
Defendants 53 & 54:	**Oxford Knitting Mills Pvt. Ltd and another through Mr. Rehman Aziz Malik Advocate.**

1) For hearing of CMA No. 3463/2018.

Dates of Hearing:	**28.11.2018, 06.12.2018, 20.12.2018, 21.12.2018**
Date of Order:	**21.12.2018**

O R D E R

Muhammad Junaid Ghaffar J.- This is a Suit for Declaration and Injunction and through listed application (**CMA No.17898/2017**) the Plaintiffs seek a restraining order against Defendants (more specifically against Defendant No.54) from selling or otherwise creating any third party interest in respect of Plot No.15, Sector 17, Korangi Industrial Area, Karachi measuring 12,272.22 square yards with construction thereof (Suit property) until final disposal of the Suit.

2. The precise facts as stated are that Plaintiffs and Defendants No. 1 to 52 are *inter-se* related with each other and are members and shareholders of Defendants No.53 and 54 ("Companies"). The precise grievance of the Plaintiffs is to the effect that; the Companies are not being managed properly, rather are being managed to the exclusion of the Plaintiffs, whereas, the shareholding, after demise of the sponsors of the Companies has not been devolved as per the legal share of the Plaintiffs, and therefore, firstly, the Plaintiffs seek rectification in the register of members of the Companies; and secondly, the Suit property for the time being cannot be sold by the Defendants. For the present

purposes through listed application it is only the selling of the property as above which is the cause of concern for the Plaintiffs.

3. Leaned Counsel for the Plaintiffs has contended that recently it came in the knowledge of the Plaintiffs that the Suit property is being sold by Defendant No.54 to the exclusion of the Plaintiffs consent, whereas, the provisions of Section 183 of the Companies Act 2017 have been violated; that the property is being sold without convening a General Meeting as required in law and so also without passing a proper resolution to that effect; that the core business of Defendant No.54 was in respect of textile fabrics and related material, whereas, the property in question is the only asset of Defendant No.54 which is being sold in violation of the aforesaid provision of law; that no notice of the purported meeting was ever served as provided in law; that the sale is not being conducted in a transparent manner; that the price being negotiated is also concealed and not put before all the shareholders; that such under valuation of the property for the purposes of Conveyance Deed would seriously prejudice the interest of the Plaintiff; that even otherwise, the documents placed on record regarding conduct of meeting do not fulfill the legal requirements; that all such documents are not proper and are backdated as per the Plaintiff's case; that no balance sheet was provided with the said notice of meeting; that no financial statements have been submitted, nor proper Annual General Meetings have been convened; therefore, the selling of property be stayed till final disposal of the Suit. In support learned Counsel has relied upon ***The Chief Executive and Directors, Mubarak Textile Mills Ltd. v. Abid Hussain, Executive Director, Corporate Supervision Department, SECP (2018 C L D 111), Messrs Kazmia Trust (Regd) through Authorized Person v. Messrs Kaz International (Pvt.) Ltd. and 5 others (2009 C L D 1713) and Siddique Muhammad Malik and 4 others v. Immad Iftikhar Malik and another (2000 C L C 477).***

4. On the other hand, learned Counsel for Defendants No.1, 2 & 4 to 35 has referred to the relevant Forms i.e. Form-A and Form-E being maintained in respect of Defendants No.53 & 54 with Securities & Exchange Commission of Pakistan ("SECP") and has contended that the shareholding of the Plaintiffs and Defendants have devolved according

to the investment of the sponsors of the Companies and there is no dispute in this regard since long and now it is only when the property is being sold, that such an issue has been raised; that even otherwise, for the present purposes no relief has been sought to this extent in the listed application; that this shareholding is existing since last 50 years and therefore, there is no fresh cause of action to even agitate the same; that Plaintiffs have only 3.74% shareholding in Defendants No.53 and 6.24% in Defendant No. 54 which otherwise cannot control and manage affairs of these Companies; that in terms of Section 183 ibid a meeting is required to be convened which has been done and a proper resolution has been passed; therefore, the allegation to this effect is incorrect; that even otherwise, and without prejudice, there is no consequence of not passing a resolution which can have effect on the sale of the property and it is only an action of imposition of penalties which could be initiated by SECP; that at the most if a property is being sold on a lesser price as alleged, the Plaintiff can sue for recovery of money or purported losses, but cannot seek a restraining order against the Company; that in terms of Section 136 of the Companies Act, 2017, a Company Court, on a petition by members having not less than ten percent of the voting power can declare the proceedings of a meeting as invalid, whereas, the Plaintiffs do not have such voting power; hence, they are barred from seeking any remedy from a Civil Court for which they are not entitled or qualified in terms of the special law; that the Plaintiffs knowingly for this purpose and instead of attending the meeting, have come before this Court and obtained ad-interim orders; that if 94% members agree for selling the property or to conduct any other business, the Plaintiffs have no authority to agitate any such conduct of business; that such a small amount of shareholding cannot and must not be allowed to hold hostage a Company; that even otherwise, a Suit under Section 9 of the Civil Procedure Code in a Company matter, is barred through special law in terms of Section 5(2) of the Companies Act, 2017; that the Companies Act provides various mechanism and minimum requirement of shareholding to initiate actions against the Companies and if the same cannot be done under the Companies Act, 2017, then it is also barred under the ordinary jurisdiction of this Court. In support he has relied upon ***Bartlam v. Yates (1875 Chancery Division 13).***

5. Learned Counsel for the Companies has adopted the arguments of learned Counsel for other defendants, and additionally submits that all the allegations regarding shareholding and alleged exclusion of the Plaintiffs from these Companies is incorrect and false, whereas, since long no such objection was ever raised; that proper notices were issued on the last available addresses of the Plaintiffs with the Companies and were either delivered through courier or by hand or were picked up by the Plaintiffs themselves as per practice of collecting other correspondence etc.; that the record being maintained before SECP, initially through Form-E and now through Form-A, is up-to-date and no objections were ever raised by these shareholders; that the addresses are already mentioned in the documents filed with SECP and all notices have been duly issued on the said addresses; that since the Companies were not earning substantial profits from their original business, therefore, Defendant No.54 has decided to sell the property in question and reorganize the business and for such purposes meeting was convened with a proper notice and a resolution to that effect has been passed wherein, the 94% shareholding has consented to sell the property in question; that in terms of the Companies Act, 2017, the remedy being sought is otherwise time barred and the jurisdiction of this Court is not available. In support he has relied upon ***Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others (2016 S C M R 213), Muhammad Muzffaruddin Khan v. Brig. (Rtd.) Zaheer Qadir and others (2003 Y L R 42), Umer Khan v. Deputy Commissioner DIR (P L D 1990 Peshawar 91) and Mst. Neelofar Shah and another v. Messrs OFSPACE (Pvt.) Ltd. (2013 C L D 114).***

6. I have heard all the learned Counsel and perused the record. At the very outset, I may observe that this matter is pending before this Court since its filing in the year 2017 and ad-interim orders were operating, whereas, the learned Counsel for the Plaintiffs has time and again sought adjournment(s) and not proceeded with this matter as reflected from orders dated 25.10.2018, 13.11.2018, 22.11.2018. After a final caution, he made his submissions on 28.11.2018 and matter was adjourned to 6.12.2018. On 6.12.2018 Mr. Ijaz Ahmed Zahid learned Counsel for Defendant No.1, 2 & 4 to 35 completed his arguments and matter was adjourned to 20.12.2018 for arguments of

Mr. Rehman Aziz Malik learned Counsel for the Companies and on such date he also completed his arguments, whereas, Court was informed that Mr. Abdur Rehman learned Counsel for the Plaintiffs is busy before Hon'ble Supreme Court. Since the roster was about to end, matter was adjourned to 21.12.2018 and on such date Counsel for the Plaintiffs was asked to make his rebuttal, if any, to which he was not prepared on the ground that he was assigned work by the Hon'ble Supreme Court in some matter, therefore, he could not prepare the rebuttal. Counsel was then asked to come prepared on 24.12.2018 which was the last day of the roster of this bench to which he was not agreeable and requested for a date after winter vacations. Such request was not allowed as no reasonable ground was made out for seeking such adjournment, whereas, this bench was only available till 24.12.2018 and therefore, the application was decided by means of a short order on 21.12.2018. It may also further be noted that since Counsel for plaintiffs was not able to make any rebuttal as noted hereinabove, therefore, the documents placed on record by the Counsel for the Companies through statement on 20.12.2018 while making his arguments have not been considered, rather discarded as it would not be in the interest of justice. It may further be observed that since Affidavit in rejoinder is already on record, therefore even otherwise, if rebuttal was not made, no serious prejudice could have been caused.

7. The precise facts have already been discussed hereinabove and the present application is only to the extent that the Defendant No.54 be restrained from selling the property in questions. And this is premised on Section 183 of the Companies Act, 2017, as according to the Plaintiffs, the requirements of this Section have not been fulfilled, rather violated. It is the case of the Plaintiffs that firstly, no notice of any such meeting was ever served upon them, and secondly, even if such notice was issued, they were issued at a wrong addresses; hence, the purported meeting convened was unlawful and the resolution passed therein, cannot be acted upon. It would be advantageous to refer to the relevant provisions of Section 183 ibid which reads as under:-

> **"183. Powers of board.**—(1) The business of a company shall be managed by the board, who may exercise all such powers of the company as are not by this Act, or by the articles, or by a special resolution, required to be exercised by the company in general meeting.

(2) The board shall exercise the following powers on behalf of the company, and shall do so by means of a resolution passed at their meeting, namely-

(a) …..

(b) …..

(c) …..

(d) …..

(e) …..

(f) …..

(g) …..

(h) …..

(i) …..

(j) …..

(k) …..

(l) …..

(3) The board of a company shall not except with the consent of the general meeting either specifically or by way of an authorisation, do any of the following things, namely.-

(a) sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing; and

Explanation.—For the purposes of this clause-

(i) "**undertaking"** shall mean an undertaking in which the investment of the company exceeds twenty percent of its net worth as per the audited financial statements of the preceding financial year or an undertaking which generates twenty percent of the total income of the company during the previous financial year;

(ii) the expression "**sizeable part"** in any financial year shall mean twenty five percent or more of the value of the assets in that class as per the audited financial statements of the preceding financial year;

(b) sell or otherwise dispose of the subsidiary of the company;

(c) remit, give any relief or give extension of time for the repayment of any debt outstanding against any person specified in sub-section (1) of section 182.

(4) Nothing contained in sub-section (3) shall entitle a listed company to sell or otherwise dispose of the undertaking, which results in or may lead to closure of business operation or winding up of the company, without there being a viable alternate business plan duly authenticated by the board.

(5) Any resolution passed under sub-section (3) if not implemented within one year from the date of passing shall stand lapsed.

> (6) Any contravention or default in complying with requirement of this section shall be an offence liable to a penalty of level 2 on the standard scale and shall be individually and severally liable for losses or damages arising out of such action."

8. Insofar as reliance on Section 183 (ibid) is concerned, it is only sub-section (3) as above which is relevant and provides that the Board of Directors of a Company (whether private or public) shall not, except with the consent of the General Meeting either specifically or by way of an authorization, sell, lease or otherwise dispose of the undertakings or a sizeable part thereof unless the main business of the company comprises of such selling or leasing, and in view of the explanation attached thereto, it is not in dispute that this condition of convening a meeting for this purpose applies on Defendant No.54. Whereas, the case of the Company in question is that such meeting has been properly convened and authorization obtained. However, in my view, even if such meeting was not convened as contended on behalf of the Plaintiffs, it is not that the entire transaction is void and can be stayed by the Court for such violation. I am in full agreement with the submission of the learned Counsel for Defendants No. 1, 2, & 4 to 35 that this provision, if violated, would only go against the Directors of Defendant No.54 and not otherwise. There are no consequences provided in the said Section, if the same is violated, except imposition of penalties on the Directors of the Company. It does not provides and stipulates that any such sale of the property would also be void and illegal, therefore, no reliance can be placed on this provision in support of the Plaintiff's case. The case law relied upon in this regard is though not binding in nature, being decisions of SECP, but nonetheless, they are also to that effect only. Once it has come on record that the provision of law on which the entire case of the Plaintiffs is premised, (at least for the listed application), does not provide any such restriction or authority, even on the Company Judge, to restrain the Company from selling its assets in violation of the said provision, viz. convening of the meeting and passing of a resolution, then at least, for the purposes of an injunctive relief in this Suit for Declaration and Injunction, this Court is divested of such powers.

9. Notwithstanding this, in this matter admittedly it appears that notices were issued to all members and shareholders and a proper meeting has been convened, whereas, a resolution as required in law has been passed. The objection that notices were not received does not

appear to be attractive at this stage of the proceedings as it is the responsibility of the Plaintiffs / members to get their addresses changed or corrected in the record of the Companies. Section 55 of the Act, ibid, provides that notice is to be sent on the address supplied by a member to the Company, and it could be done in various modes. Counsel for the Plaintiffs was repeatedly asked to assist the Court that whether they had ever informed the Company regarding change in address as contended to which the Counsel frankly conceded that no such material is available on record. Therefore, the presumption is that notices were issued at the given address and they were properly served as the onus of being otherwise is upon the Plaintiffs and not the Companies. Moreover, at this injunctive stage mere allegation of the Plaintiffs without any supporting material, cannot be taken into consideration so as to believe and come to the conclusion that no such meeting was ever held and this is for the reason that a proper attendance sheet has been placed on record which reflects that the remaining 94% of the members / shareholders were present in the meeting. Even otherwise, insofar as the case of the Plaintiffs is concerned, it is not in dispute that they only hold 6% of the shareholding in Defendant No.54 which is selling the property in question. Such shareholding is much below the minimum shareholding of 10% required to take recourse to the special provisions of the Companies Act, 2017 in respect of any grievance against the Company. Therefore, it is but natural that they are not in a position to make any complaint to this effect under Section 136 of the Companies Act, 2017. However, this would not mean that due to this disqualification they would be entitled to seek an injunction against the Companies under the ordinary civil jurisdiction of this Court. The special law has provided a mechanism as to how a Company is to be run and how the management can make decisions with Board Meetings and the minimum requirement of voting. It is not in dispute that in this case the 94% shareholding of the Defendants is against the 6% of the Plaintiffs. In that case it would not be appropriate to keep the company hostage on the whims and desire of the Plaintiffs. The method and procedure of Corporate Governance are provided under the Companies Act and the rules made thereunder, and if this is allowed in the manner as pleaded by the Plaintiffs, then no Company would ever be in a position to run and manage its affairs as it is only the members and the minimum requirement of shareholding which could enable the

Company to smoothly run its affairs. For the sake of arguments even if it is assumed that no meeting was held as contended and no resolution was ever passed; but would that allow the Plaintiffs to overrule a fresh resolution with a maximum of 6% of the shareholding. The answer would be a definite "No". Therefore, even otherwise, no case for an injunctive relief is made out.

10. In view of hereinabove facts and circumstances of this case, by means of a short order on 21.12.2018 the listed application was dismissed and these are the reasons thereof.

J U D G E

ARSHAD/