

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

C.P No. D-2997 of 2022

Petitioners : Shamim Feroz and Faisal Feroz through
Abdul Moiz Jafferri, Advocate.

Date of hearing : 17.05.2022

ORDER

YOUSUF ALI SAYEED, J. The Petitioners profess to collectively hold 25% of the issued and paid-up capital of the Respondent No.2 Company and to also be two of its six directors. In that capacity, they have invoked the jurisdiction of this Court under Article 199 of the Constitution, alleging an omission on the part of the Securities and Exchange Commission of Pakistan (the “**SECP**”) in the discharge its statutory function by failing to attend to their complaints of malfeasance on the part of the majority shareholders/directors of the Respondent No.2 in the conduct of its affairs.

2. Laying down their allegations, the Petitioners have averred that the Respondent No.2 is a dormant company, with a scheme of restructuring having been proposed in order to distribute its assets amongst its shareholders, however, the majority shareholders have engaged in willful mismanagement by concealing the financial statements, not holding regular board meetings and AGMs, not filing timely statutory returns and ousting the Petitioners from any kind of decision making.

3. It is alleged that the majority shareholders have thus acted in a manner that is oppressive to the Petitioners, but while the various acts of omission and commission on their part have been brought to the attention of the SECP, which has the power and authority to regulate and supervise the affairs of the Respondent No.2, no action has been taken to date.
4. In that backdrop, it has been prayed *inter alia* that this Court may be pleased to:

- I. DECLARE that the actions of the Respondent Company are illegal and in violation of the mandated provisions of the Companies Act, 2017;
- II. DIRECT the Respondent No. 1 to inspect the books of accounts including bank statements, financial ledgers and minute books of the Respondent Company under section 221 of The Companies Act, 2017;
- III. DIRECT the Respondent No. 1 to regulate the affairs of the Respondent Company in accordance with the Companies Act, 2017 and Securities & Exchange Commission of Pakistan, 1997 and impose any penalties applicable;
- IV. DIRECT the Respondent No. 2 to provide copies of all the minutes and notices (with proof of delivery) of board meetings and AGMs to the Petitioners from 2015 onwards and allow the viewpoint of the same to be included in the same and also for all future board meetings and AGMs;
- V. DIRECT the Respondent No. 2 to provide copies of Form A and Form 29 filed with Respondent No. 1 together with the confirmation of date of filing from 2016 to date;
- VI. RESTRAIN the majority shareholders of Respondent No. 2 from further violations of the Companies Act, 2017 and oppressing the Petitioners including the act of muting the Petitioners from participating in board meetings and AGMs;...”

5. In the given context, it merits consideration at the outset that the majority shareholders/directors have not even been joined as parties to the proceeding. Moreover, a Petition under Article 199 of the Constitution even otherwise does not lie for the given purpose in the wake of the alternate remedies available under Part IX or Part X of the Companies Act 2017, particularly Section 286 read with Sections 287 and 288 or Section 301 read with Sections 304 and 308 thereof.

6. In fact, as it transpires, the Petitioners have already filed a Judicial Companies Miscellaneous Application before this Court on the Original Side, bearing JCM No. 05 of 2021 (Shamim Feroz & another v/s Feroz Feeds Limited & others), seeking commencement of proceedings for the winding up of the Respondent Company.

7. Under the given circumstances, we are of the view that the instant Petition is not maintainable. Hence while granting the request for urgency, we dismiss the Petition *in limine* along with other pending miscellaneous applications.

Judge

Chief Justice