

2021 C L D 931

[Lahore (Rawalpindi Bench)]

Before Jawad Hassan, J

The ADDITIONAL REGISTRAR COMPANY---Petitioner

Versus

AL-QAIM TEXTILE MILLS LIMITED---Respondent

Civil Original No. 1 of 2011, heard on 3rd June, 2021.

(a) Companies Ordinance (XLVII of 1984)-

--S. 305-Companies Act (XIX of 2017), S. 301---Winding-up of company---Default in holding statutory meeting/two consecutive annual general meetings---Discretionary powers of Court---Scope---Court would not generally make the order of winding up in first instance but would desire such Company to file statutory report or to hold statutory meeting or to hold annual general meeting and would extend time---If Company had failed to comply with the order then Court would windup Company and the Directors in that case would be deemed to be personally liable for costs---In winding-up cases, utmost endeavour was to be made for survival of corporate sector rather than to dismantle it---For winding-up a Company the Court had to consider whether the substratum of the Company was gone, the object for which it was incorporated had substantially failed; and whether it was impossible to carry on the business except at loss, and no reasonable hope that the object of trading at profit could be attained and the existing or probable assets were insufficient to meet the liabilities---High Court observed that the Company was ready to comply with the statutory requirements and had already filed civil miscellaneous application for placing of documents and the application addressed to the Securities and Exchange Commission of Pakistan (SECP), an affidavit of the Chief Executive/Director of the Company seeking extension in period for holding annual general meetings had also been presented---Securities and Exchange Commission of Pakistan (SECP) was directed to decide the application within a period of one month from the receipt of certified copy of present order---Petition was disposed of accordingly.

In re: Alliance Motors (Pvt.) Ltd. 1997 MLD 1966 and Muhammad Ashraf Tiwana v. Pakistan and others 2013 SCMR 1159 rel.

Messrs Ali Woollen Mills Ltd. v. Industrial Development Bank of Pakistan PLD 1990 SC 763 ref.

(b) Companies Ordinance (XLVII of 1984)-

---S. 305---The Companies Act (XIX of 2017), S. 301---Winding-up of company---Discretion of Court---Default in holding statutory meeting/two consecutive annual general meetings---Scope---Making of a winding up order was discretionary because S. 305 uses the word "may" in relation to all the grounds given therein, and not "shall"---Discretionary powers conferred on the Court ought generally to be exercised consistently with, and was certainly to be informed by, equitable principles---Hallmark of equity jurisdiction was the flexibility inherent in the discretionary nature thereof---Flexibility and discretion, that is, to decide the case after taking into consideration all relevant matters that tend towards the justice or injustice of granting the remedy that was sought.

(c) Interpretation of statutes---

---Preamble---Scope---Preamble to a statute was though not an operational part of the enactment yet it was a gateway, which opens the purpose and intent of the legislature, which necessitated the legislation on the subject and also shed clear light on the goals which the legislator aimed to secure through the introduction of such law---Preamble therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law---Preamble though not a substantive and enforceable part of the enactment yet it provides primary guidelines about the object and scope of the legislation being its usher.

(d) Companies Act (XIX of 2017)---

---Preamble---Companies Ordinance (XLVII of 1984), Preamble---Distinction between the two statutes---No preamble was given with Companies Ordinance, 1984, but Preamble of the Companies Act, 2017, clearly demonstrates to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interests in corporate entities---Preamble of the Companies Act, 2017 plainly demonstrates for the establishment of the Securities and Exchange Commission of Pakistan for the beneficial regulation of the capital markets, superintendence and control of corporate entities---Preamble of the Act laid strong emphasis to control the matters relating to corporate entities which includes promoting development of corporate sector.

Abwa Knowledge Pvt. Ltd. and another v. Federation of Pakistan and another
PLD 2021 Lah. 436 ref.

Salaar Khan, Zainab Junjua, Sana Taha Gondal and Asfandyar Khan Pasha for
Petitioner.

Hassan Raza Pasha, Advocate Supreme Court, Kashif Ali Malik, Advocate
Supreme Court for Respondent.

Barrister Sardar Umar Aslam, Advocate Supreme Court for HBL.

Barrister Dr. Waseem Ahmad Qureshi, Advocate Supreme Court for Respondent.

Date of hearing: 3rd June, 2021.

JUDGMENT

JAWAD HASSAN, J.---This judgment will decide the winding-up petition, pending for almost a decade, filed by the Additional Registrar of Company, Securities and Exchange Commission of Pakistan ("SECP") on certain grounds, which have been complied with by Al-Qaim Textile Mills Limited (the "Company") during the proceedings of the case. The petition has been filed by SECP under sections 305, 309 and 321 of the Companies Ordinance, 1984 (the "Ordinance") for entreating following reliefs:

- "(i) To direct that the Respondent be windup on account of its aforesaid contraventions of the law;
- (ii) To appoint an Official Liquidator acceptable to the Petitioner to take charge of the assets and properties, accounts and management of the Respondent with full powers under the Companies Ordinance to liquidate the Respondent;

- (iii) To grant any other relief which this Hon 'ble Court may consider fit and proper in the circumstances of the present case; and
- (iv) To grant to cost of the petition."

I. BACKGROUND OF THE CASE

2. The Additional Registrar of SECP has filed this petition for winding up against the Company which is a public listed company incorporated on 09.09.1986 to undertake textile spinning business at Lahore and Karachi Stock Exchanges. The petition has been filed on account of failure of the Company to comply with certain statutory requirements of the Ordinance.

H. PETITIONER'S SUBMISSIONS

3. Mr. Salaar Khan, learned counsel for SECP argued that the Company has failed to hold its annual general meetings for the year ended 30.06.2007 and 30.06.2008 which is in clear violation of section 158(1) of the Ordinance. He further argued that SECP in terms of section 170 of the Ordinance, directed the Company vide letter dated 14.10.2008 to convene the meeting but the Company failed to comply with aforesaid directions. Mr. Salaar Khan next argued that on failure of the compliance by the Company, show cause notices were issued by the SECP to the Company under section 309(b) read with section 305 of the Ordinance on 05.12.2008. Further show cause notices in terms of sections 171, 173 read with 476 of the Ordinance and section 193 read with section 476 of the Ordinance were also issued on 01.04.2009, 18.03.2009 and 09.03.2009 respectively. SECP vide its letter dated 05.12.2008, scheduled a hearing on 07.12.2009 but no one appeared for the Company; however, in order to meet the ends of justice, the matter was again fixed for final hearing on 23.12.2009 but no one appeared this time as well. Due to non-submission of replies and the non-appearance for the hearings, SECP approached the Commission for grant of sanction in terms of Clause (b) of section 309 of the Ordinance for filing this winding up petition which was accordingly allowed on 23.12.2010. The Company has preferred review application against the aforesaid order and request made therein was refused which finally culminated into grant of sanction to file winding up petition.

HI. RESPONDENTS' SUBMISSIONS

4. Mr. Hassan Raza Pasha, ASC for the Respondent argued that the Company remained closed from June 2007 to July, 2010 due to financial crises in the country as a result whereof the Company could not convene annual general meetings and conduct audit of accounts for the aforesaid period yet it has revived its business with Rs.80 million turn over per month. He further states that the Company on 28.11.2011 filed an application under section 170 of the Ordinance before the SECP by mentioning all the reasons, as aforesaid, but that application was turned down with the observation to approach this Court. He, at the outset, stated that the Company is ready to comply with statutory requirements of the Ordinance by filing all the documents and as per order dated 12.05.2014, the Court already directed to revive the business which was from time to time filed by the Respondent with SECP. He adds that the grounds as alleged by learned counsel for the Petitioner are not valid to wind up the Company as it will adversely affect the whole industry and create huge unemployment. In order to strengthen his arguments, he has relied on "Saudi Pak Industrial and Agricultural Investment Company Limited v. Chief Limited" (2020 CLD 339). Lastly, stated that the grounds taken by the SECP for winding up the Company has substantially been complied with by the Company in terms

of judgment passed by this Court in "Parks and Horticulture Authority v. Muhammad Saleem" (2018 PLC (C.S.) 12).

5. Mr. Hassan Raza Pasha stated that the Company, is the one of few industries in the remote area of Chakwal which gives employment to the people of locality and if such winding up order is passed, it will create huge impact on economy and livelihood of the people because the issues raised in the petition in hand are not of serious in nature which fact is also agreed by learned counsel for the Petitioner. In response, on the issue of substantial compliance, learned counsel for the Petitioner has placed on (PLD 1989 Supreme Court 222), "Shoaib Mushtaq v. Muhammad Qasim and others" (2013 CLC 487), "The State through Regional Director ANF v. Imam Bakhsh and others" (2018 SCMR 2039) and "Munda Eleven Cricket Club v. Federation of Pakistan and 4 others" (PLD 2017 Lahore 802).

6. Mr. Kashif Ali Malik, ASC submits that due to bad impact of

COVID-19 upon economic conditions, the various Courts across the world are giving moratorium to the Companies. He argued that in developing countries like Pakistan, judicial forums should provide opportunities to sick industries to revive and to restart their business and winding up will amount to economic death of not only of the company itself but also all employees of the Company. He relied on In the Matter of "Suo Motu action regarding Combating The Pandemic of Corona Virus (COVID-19)" (2020 SCMR 987). He also relied on judgment passed by this Court in "M.C.R. (Pvt.) Ltd, Franchisee of Pizza Hut v. Multan Development Authority and others" (2021 CLD 639).

7. Barrister Sardar Umer Aslam, ASC representing Habib Bank Limited (the "Bank") states that the Bank filed a recovery suit against the Company to recover an amount of outstanding loan which was decreed and thereafter, execution petition was filed which was challenged before this Court. However, during proceedings of execution, this winding up petition was instituted by the Company. He further states that the Bank had to join the proceedings on the apprehension that in case the winding up petition is allowed; other creditors may not stand in line ahead of them and their rights may be protected. Barrister Sardar Umer Aslam, ASC however, pointed out that the Bank reached to settlement with the Company, hence, is not pressing for winding up as it was never the intention of the Bank to have the Company wound up rather the intent was merely to secure its interest in case winding up was allowed. He argues that the Company should not be wound up as currently 764 associate Members are registered with Chakwal Chamber of Commerce and some active Corporate Members have annual turnover above 50 million. Around 10 to 15 industries are operational in district Chakwal including six (06) cement factories, four (04) flour mills, two (02) textile mills, one (01) medicine and one (01) shoe industry which are contributing a major part in increasing revenue of district Chakwal. Barrister Sardar Umer Aslam, ASC lastly states that the Company, has paid the loan of the Bank and as such winding up should not be allowed as it will amount to economic death of a running and live commercial organization. In order to strengthen this argument, he has relied on "Saudi Pak Industrial v. Chenab Ltd." (2020 CLD 339) wherein this Court has held that "winding-up of a company should be treated as an extreme remedy and should not be dealt with casually as it would amount to economic death of a running and live commercial organization".

IV. PROCEEDINGS IN THE COURT.

8. I have considered the submissions made by learned counsel before me, carefully perused the case record and scanned all the cases cited before us at the Bar.

9. This winding up petition was tiled by SECP on 29.09.2011 on the grounds of non-complying certain statutory requirements of. the Ordinance which include not undertaking business for many years, not holding annual general meetings of the Board of Directors of the Company and non-filing of company audit accounts etc. While the petition was pending, the counsel for the Respondent Company made a statement on 12.05.2014 that the Company has revived its business and defaults alleged in the petition were due to some financial constraints and in order to remove aforesaid defaults, the Company will approach SECP along with all evidence with regard to revival of business like their sales tax returns, income tax returns, accounts, audit report etc. and if the Company satisfies the Registrar of SECP that they have revived their business and are able to run the respondent Company bonafidely by complying with all the statutory requirements, the Registrar shall file a report accordingly within 45 days from today. The said report was filed by SECP on 11.03.2017 with the observation that the Company has failed to file information/documents with regard to revival of the Company. The case was finally heard by this Court on 01.06.2021 and 02.06.2021.

10. The stance of SECP is that the Company has not complied with statutory requirement of the Ordinance therefore, order for its winding up should be passed as the Company has never turned up pursuant to notices issued by SECP. While the version of the Company is that as it has revived its business now and improved its commercial viability with Rs.80 million turnover per month, therefore, it should not be wound up because the grounds taken in this petition are of minor in nature and if order for winding up is passed, it will not only affect the whole industry of the country but also will create huge unemployment. It is pertinent to mention here that during the pendency of this petition; the Company, on 03.06.2021 has filed C.M. No. 11 of 2021 for placement of certain documents which are regarding functioning and showing recent working condition on monthly basis, an application made to Additional Registrar SECP on 06.04.2021 seeking permission for holding Annual General Meetings under sections 132 and 223 of the Act along with Affidavit and audit reports pertaining to year 2007 to 2010. However, the fact of filing aforesaid application with documents is not disputed by learned counsel for SECP.

11. As the basic issue involved in this petition was non-filing of audit accounts, holding of meetings and non-complying with the statutory requirements of the Ordinance yet the Company is ready to comply with the requirements of the Ordinance for which it has filed application dated 06.04.2021 which, according to learned counsel for the Petitioner-SECP, is still pending before the SECP. Therefore, it will now be appropriate to examine the moot question involved in the present matter:

Whether a public listed company should be wound up for not complying with statutory obligations?

V. LEGAL PATHOLOGY OF THE WINDING-UP

12. The instant petition has been filed under section 305 of the Ordinance, which has enlisted the circumstances in which a company may be wound up by this Court. Under this Section, a company may be wound up if the company, among others, default in delivering the statutory report to SECP or in holding the statutory meeting or any two consecutive annual general meetings; suspends its business for a whole year; or if the Court is of opinion that it is just and equitable that the company should be wound up:

"305. Circumstances in which company may be wound up by Court. - A company may be wound up by the Court-

(b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two consecutive annual general meetings;

(c) if the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;

...

(e) if the company is unable to pay its debts;

(h) if the Court is of opinion that it is just and equitable that the company should be wound up;

The corresponding provision in the Companies Act, 2017 is section 301, which is reproduced as follows:

"301. Circumstances in which a company may be wound up by Court.--A company may be wound up by the Court-

(b) if default is made in delivering the statutory report to the registrar or in holding the statutory meeting; or

(c) if default is made in holding any two consecutive annual general meetings; or

(d) if the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years; or

...

(f) if the company is unable to pay its debts; or

(i) if the Court is of opinion that it is just and equitable that the company should be wound up; or

(m) if a listed company suspends its business for a whole year."

13. Section 314 of the Ordinance had also listed powers of the Court while dealing with such winding up petitions. In this regard, the Court has wide powers, among others, to dismiss it with or without costs, or adjourn it, or make an interim order, or order for the winding up, or take any order that it deems just.

"314. Powers of Court on hearing petition.--(1) On hearing a winding up petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally subject to the limitation imposed in section 9 or make any interim order, or an order for winding up the company or any other order that it deems just; but the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where the petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing that other remedy.

(3) Where the petition is presented on the ground of default in delivering the statutory report or in holding the statutory meeting or any two consecutive annual general meetings, the Court may, instead of making a winding up order, direct that

the statutory report shall be delivered or that a meeting shall be held, and order that costs to be paid by any persons who, in the opinion of the Court, are responsible for the default."

Similarly, the corresponding Section 308 in Companies Act, 2017 is reproduced as follows:

"308. Powers of Court on hearing petition.---(1) The Court may, on receipt of a petition for winding up under section 304 pass any of the following orders, namely-

- (a) dismiss it, with or without costs;
- (b) make any interim order as it thinks fit;
- (c) appoint a provisional manager of the company till the making of a winding up order;
- (d) make an order for the winding up of the company with or without costs; or
- (e) any other order as it thinks fit:

Provided that an order under this subsection shall be made within ninety days from the date of presentation of the petition:

Provided further that before appointing a provisional manager under clause (c), the Court shall give notice to the company and afford a reasonable opportunity to it to make its representations, if any, unless for special reasons to be recorded in writing, the Court thinks fit to dispense with such notice:

Provided also that the Court shall not refuse to make a winding up order on the ground only that the assets of the company have been mortgaged for an amount equal to or in excess of those assets, or that the company has no assets.

(2) Where a petition is presented on the ground that it is just and equitable that the company should be wound up, the Court may refuse to make an order of winding up, if it is of the opinion that some other remedy is available to the petitioners and that they are acting unreasonably in seeking to have the company wound up instead of pursuing the other remedy. "

14. If we look at the case law with respect to the powers of the Court to wind up a Company, it has been held in "Nazeer Ahmed Khan v. Admore Gas" (2015 CLD 203) as follows:

"10. Learned counsel for the petitioner submitted that the law was well settled that the pendency of a suit or other such proceedings to recover the same debt as formed the basis of the winding up petition was no bar to the latter, and the company could be wound up if a case was otherwise made out. He relied on a number of decisions, which will be considered presently. With respect, in my view, the principle is stated too broadly. It ought to be regarded as more nuanced, This is so because it must be kept in mind that ultimately the making of a winding tip order is discretionary: section 305 uses the word "may" in relation to all of the grounds given therein, and not "shall". It is well settled that even if the Court concludes that a company is unable to pay its debts within the meaning of the Companies Ordinance it may yet, in its discretion, refuse an order of winding up. Now, company law is in many respects the child of equity. The discretionary powers conferred on the Court ought generally to be exercised consistently with,

and should certainly be informed by, equitable principles. Of course, it is a fundamental rule that discretionary power is not exercised in an arbitrary, perverse or capricious manner, but is guided by sound judicial principles. At the same time, it must also be remembered that the hallmark of equity jurisdiction is the flexibility inherent in the discretionary nature thereof - flexibility and discretion, that is, to decide the case after taking into consideration "all relevant matters that tend towards the justice or injustice of granting the remedy that is sought such as hardship, laches, unfairness, the lack of clean hands and so on, and by weighing them against each other in order to decide whether the particular relief that is in question should be granted in an absolute, partial or conditional form or else refused" (Equitable Remedies by Dr. I.C.F. Spry, 9th ed. (2014), Pg.4)."

15. While discussing the essentials of winding up of the company, the Court has held in *Re Alliance Motors (Pvt.) Ltd* (1997 MLD 1966 [Karachi]) that where default was made in delivering statutory report to Registrar or in holding statutory meeting, Court would not generally make the order of winding up in first instance but would desire such Company to file statutory report or to hold statutory meeting or to hold annual general meeting and would extend time. Therefore, if Company had failed to comply with the order then Court would wind up Company and the Directors in that case would be deemed to be personally liable for costs. In another case, "*Messrs Ali Woollen Mills Ltd. v. Industrial Development Bank of Pakistan*" (PLD 1990 SC 763), the honorable Supreme Court has held that where the "substratum of a company" has gone, the winding-up of the Company would be just and convenient and substratum of company when deemed to be gone so as to entitle the Court to pass a winding up order:

"The substratum of the Company would be gone, as the company's mill was closed since 1983 and it had been incurring losses year after year with no immediate prospects of reversing the position. The substratum of the company must be deemed to be gone so as to entitle the Court to pass a winding up order when the subject-matter of the Company was gone or the object for which it was incorporated had substantially failed, or it was impossible to carry on the business of the company except at a loss or the existing or probable assets were insufficient to meet the existing liabilities."

16. In addition, the Sindh High Court of Sindh has also held in "*Mrs. Syrma Mahnaz Vayani v. Molasses Export Company (Pvt.) Ltd.*" (2013 C L D 1229 (Sindh)) as follows:

"15. Heard the learned counsel. The object of winding-up the company is to release the assets of the company and pay its debts in accordance with law. It is also well settled principle that in the winding up cases utmost endeavor should be made for survival of corporate sector rather than to dismantle it. A company may be wound up on any of the ground mentioned under section 305 of Companies Ordinance. The conjoint effect of sections 305 and 306 of the Companies Ordinance made it clear that the court has discretion to order or not to order winding up of a company after taking into consideration of relevant facts. Winding up proceedings cannot be used as lever for pressuring a company to pay its disputed debts. For winding up a company the court has to consider whether the substratum of the company is gone, the object for which it was incorporated had substantially failed, whether it is impossible to carry on the business except at loss, and no reasonable hope that the object of trading at profit can be attained and the existing or probable assets are insufficient to meet the liabilities."

17. Under section 305 of the Ordinance, a Company may be wound up if the Company, among others, defaults in delivering the statutory report to SECP or in holding the statutory meeting or any two consecutive annual general meetings; suspends its business for a whole year; or if the Court is of opinion that it is just and equitable that the Company should be wound up. However, under section 314(1) of the Ordinance, the Court has discretionary powers to dismiss the winding up petition with or without costs, adjourn it conditionally or unconditionally subject to limitations, make any interim order, order for winding up of the Company, or pass any other order that it deems just. Similarly, under section 314(3) of the Ordinance, where the petition is presented on the ground of default in delivering the statutory report or in holding the statutory meeting or any two consecutive annual general meetings, the Court may, instead of making a winding up order, direct that the statutory report shall be delivered or that a meeting shall be held, and order that costs to be paid by any persons who, in the opinion of the Court, are responsible for the default. It has already been elaborated in the above case law that where default was made in delivering statutory report to Registrar or in holding statutory meeting, the Court would not generally make the order of winding up in first instance but would desire such company to file statutory report or to hold statutory meeting or to hold annual general meeting and would extend time. Therefore, if Company had failed to comply with the order, then Court would wind up Company and the directors in that case would be deemed to be personally liable for costs. Even otherwise, ultimately the making of a winding up order is discretionary because Section 305 uses the word "may" in relation to all the grounds given therein, and not "shall". The discretionary powers conferred on the Court ought generally to be exercised consistently with, and should certainly be informed by, equitable principles. At the same time, it must be remembered that the hallmark of equity jurisdiction is the flexibility inherent in the discretionary nature thereof - flexibility and discretion, that is, to decide the case after taking into consideration all relevant matters that tend towards the justice or injustice of granting the remedy that is sought. Similarly, it is also well settled principle that in the winding up cases, utmost endeavor should be made for survival of corporate sector rather than to dismantle it. A Company may be wound up on any of the ground mentioned under Section 305 of the Ordinance. The conjoint effect of Sections 305 and 306 of the Ordinance made it clear that the Court has discretion to order or not to order winding up of a company after taking into consideration all relevant facts. For winding up a Company the Court has to consider whether the substratum of the Company is gone, the object for which it was incorporated had substantially failed, whether it is impossible to carry on the business except at loss, and no reasonable hope that the object of trading at profit can be attained and the existing or probable assets are insufficient to meet the liabilities.

VI. SECP BEING THE REGULATOR

18. Before proceeding further, it is imperative to note that SECP is established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (the "Act"). The Commission is defined under section 2(g) of the Act and established under Section 3 of the Act. The Commissioners are appointed under section 5 of the Act and the Chairman is appointed under Section 6 of the Act amongst the Commissioners. The powers and functions of the SECP are mentioned under section 20 of the Act including the powers of the Commission to be responsible for the performance of the Act. As per the preamble of the Act, the new Companies Act, 2017, it is the mission of SECP to promote an efficient and transparent capital market, develop the corporate sector and protect the investor through responsive policy measure, effective regulation and enforcement of best governance practices. The preamble to a statute is though not an operational part of the

enactment yet it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also shed clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, is therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law. In the Ordinance, the Preamble was not given but preamble of the Act clearly demonstrates to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interests in corporate entities. More particularly, the Preamble of the Act plainly demonstrates for the establishment of the Securities and Exchange Commission of Pakistan for the beneficial regulation of the capital markets, superintendence and control of corporate entities. The Preamble of the Act laid strong emphasis to control the matters relating to corporate entities which includes promoting development of corporate sector. The Preamble of a statute though not a substantive and enforceable part of the enactment yet it provides primary guidelines about the object and scope of the legislation being its usher. This Court in its recent judgment "Abwa Knowledge Pvt. Ltd and another v. Federation of Pakistan and another" (PLD 2021 Lahore 436) has elaborately discussed and laid down the functions of PMC as a regulator and held that if a Regulator is restrained from performance of its function it will negate the very purpose of law, which chalk out the functionality of such Regulator by observing that "The functions of a Regulator are comprehensive and exhaustive ranging from formulation of policies, regulations etc. in furtherance of the cause of legislation to administratively govern and oversee the implementation of those policies/rules/regulations to ensure that the same are observed in the very spirit in which the law intended it. If a Regulator is barred from exercising any of such functions, the purpose of law will not only be compromised but the intent behind making of such law will also be jeopardized."

19. The August Supreme Court of Pakistan in "Director General, FIA and others v. Kamran Iqbal and others" (2016 SCMR 447) laid down the similar principle by holding that:

"indeed, preamble to a Statute is not an operative part thereof however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of Murree Brewery Company Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC 279). It is equally well-established principle that while interpreting a, Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same."

20. Similarly, the honorable Supreme Court has also held in "Muhammad Ashraf Tiwana v. Pakistan and others" (2013 SCMR 1159) that:

"5. The SECP as such is amongst the most important regulatory authorities directly impacting the economic lift of the citizens of Pakistan. It may also be noted that amongst the various functions and powers of SECP which have been mentioned in section 20 of the Act, there are a number of functions which relate directly to the economic well-being of the people of Pakistan. By way of illustration only, it may be mentioned that in section 20(6), the SECP has been specifically ordered and mandated inter alia, "to maintain the confidence of

investors in the securities markets by ensuring adequate protection for such investors". The Securities and Exchange Ordinance, 1969 which, as noted above, is also administered by SECP deals with the capital markets in Pakistan. By virtue of that statute too, the SECP is required "to provide for the protection of investors" (Preamble). It is worth noting that the market capitalization just through the stock exchanges in Pakistan is in excess of Rs.4,000,000,000,000 (rupees four trillion). The investments made in unlisted companies (private or public) and in other sectors such as insurance etc., regulated by SECP, is in addition to and may even be -in excess of the said figure. Millions of Pakistani citizens and institutions and quite a few foreign investors and their investments are directly affected by the quality of regulation of companies, securities markets and the statutes/rules etc. administered by SECP."

21. Moreover, this Court during proceedings of the case, passed an order on 02.06.2021 which reads as:

"Perusal of record reveals that vide order dated 12.05.2014, when learned counsel for the Respondent/A1-Qaim Textile Mills Ltd. (the "Company") stated that the Company has revived its business and defaults, alleged in this petition, were due to some financial constraints, Mr. Babar Sattar, ASC (now elevated as Judge of Islamabad High Court) submitted that the Petitioner would not be interested merely in winding up of the Company, however its past record is not commendable as they never turned up pursuant to the notices issued by the Petitioner. In response, thereof learned counsel for the Respondent/Company undertook that they will approach the Petitioner within ten (10) days with all evidence regarding revival of their business and if they satisfied the Petitioner regarding bona fide revival and completion of all the statutory requirements, the Petitioner/SECP will file report before this Court".

22. In addition to above, today during the proceedings of the case, the counsel for the Company Mr. Hassan Raza Pasha, ASC has stated that the Company is ready to comply with the statutory requirements of the Ordinance and for this purpose it has filed C.M. No.11 of 2021 for placing of documents which includes statement as shown by the Company with regard to its revival with Rs.80 million turn over per month, employment of 345 people including contract labour, payment of income tax as Rs.8 lacs per month, sales tax of Rs.1.4 million per month, social security contribution Rs.230225 per month, EOBI contribution Rs.176020/- per month and electricity bill Rs.13.66 million per month. Along with aforesaid application, the application addressed to the SECP dated 06.04.2021, pendency of which has been verified by Mr. Salaar Khan, counsel for the SECP, an affidavit of the Chief Executive/Director of the Company seeking extension in period for holding annual general meetings for the year ended 30.06.2015, 30.06.2016, 30.06.2017, 30.06.2018, 30.06.2019 and 30.06.2020 and Half Yearly Accounts for the period December 2007 to December, 2010, have also been presented. Mr. Salaar Khan, counsel for the SECP states that SECP will not pursue this winding up petition as already the application of the Company, as referred to above, is pending, which will be decided as per law.

23. Since the SECP is regulator of entire companies' law in Pakistan including the Companies Act, 2017 with the power and function as provided under Part VI of the SECP Act, therefore, the SECP is directed to decide the aforesaid application dated 06.04.2021 after providing an opportunity of hearing and verifying record produced by the Company, within a period of one month from the receipt of certified copy of this order. The

Respondent will approach SECP along with attested copy of this order. This petition is accordingly disposed of in view of the statement of learned counsel for the parties.

ZH/A-58/Lah.

Order accordingl