

2022 C L D 468

[Lahore (Rawalpindi Bench)]

Before Jawad Hassan, J

TARIQ IQBAL MALIK---Petitioner

Versus

Messrs MULTIPLIERZ GROUP PVT. LTD. and 4 others---Respondents

Civil Original No. 5 of 2021, decided on 1st March, 2022.

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

---Ss. 257 & 256---Investigation of company's affairs in other cases---Intertwined, doctrine of---Scope---Petitioner sought direction to the SECP (Securities and Exchange Commission of Pakistan) to start investigation into the affairs of the respondents under S. 257(1)(a)(ii) of the Companies Act, 2017 ('the Act')---Held, that petitioner, under the 'doctrine of intertwined', had to fulfill the requirements of S. 256 regarding locus standi of being member, qualification of member and company against whom the relief was being sought---Petitioner had no nexus with the respondents' companies, not being member of any of the company---Petitioner had filed the petition solely under S. 257 of the Act without fulfilling its preconditions---In case parties/persons having no link or nexus to the affairs of a company (by way of either membership/shareholding/holding office) were allowed to invoke the provisions of both Ss. 256 & 257 and other related provisions of the Companies Act, 2017 to have the affairs of a company investigated on account of matters that purely pertained to their commercial and business dealings with such a company, would in turn not only open flood-gates of litigation, but would also lead to; (i) a situation where the affairs of any company would be investigated in every such instance where there was an alleged breach of contract by the company in its business dealings with third party and; (ii) disputes in the normal course of business between a company and third party would end up requiring investigations into the affairs of a company, and; (iii) the laws and statutes dealing with and providing for legal remedies based on contract, sale of goods, specific performance etc. would more or less be rendered redundant---Petitioner had not approached the Commission to address any grievance and had directly knocked on the doors of the Court for issuance of direction without showing any proof of allegations or establishing himself to be member of such company---Petition was dismissed.

Mohammad Raza v. Crescent Industrial Chemical Ltd. and 5 others 2018 CLD 898; Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd. Lahore and others 2016 SCMR 213; Abdul Kareem Khan v. Messrs Haroon-Ur-Rasheed Textile Mills (Pvt.) Ltd. through Chief Executive and 13 others 2015 CLD 719; Light Metal and Rubber Industries (Private) Limited and others v. Sarfraz Qaudri 2011 CLD 1485 and Brother Steel Mills Ltd. v. Mian Ilyas Miraj and 14 others PLD 1996 SC 543 ref.

Deplix Smileagain Foundation v. Security and Exchange Commission of Pakistan and others 2019 CLD 861; Hira Textile Mills Ltd. v. Bank Al-Falah Ltd. 2022 CLD 285 and Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others 2016 SCMR 213 rel.

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

---Ss. 256 & 257---Investigation of company's affairs in other cases---Scope---Power conferred on (Securities and Exchange Commission of Pakistan) to investigate a company's affairs under S. 257 of the Companies Act, 2017 is without prejudice to its powers under S. 256---Although Ss. 256 & 257 are closely tied in, the power flows out of entirely different circumstances for the Commission to start an investigation---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 S. 221(5) or by the Registrar under S. 254(6)---Thus, if at all the Commission seeks to investigate into the affairs of a company on an application, it must be an application made by one of the persons or entities mentioned in S. 256 and none else---Section 257 envisages formations of opinion by the Commission as a pre-condition and that opinion must be based on the Commission's own inquiry and by application of independent mind---Cardinal feature of any exercise of power under S. 257 is that a fact specific balancing exercise is to be conducted by the Commission uninfluenced by an external source---Even the cognizance of a matter relating to investigation cannot be taken by a circuitous route, that is, by firstly receiving a complaint and thereafter (upon finding it to be outside the ambit of S. 256) invoking its powers under S. 257, whimsically and unreasonably, to serve a notice---To reiterate, any power to be exercised by the Commission under S. 257 has to be preceded by formation of an opinion and thereafter a show cause notice giving the company an opportunity of hearing can be issued.

Deplix Smileagain Foundation v. Security and Exchange Commission of Pakistan and others 2019 CLD 861; Hira Textile Mills Ltd. v. Bank Al-Falah Ltd. 2022 CLD 285 and Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others 2016 SCMR 213 rel.

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

---Ss. 256 & 257---Investigation of company's affairs in other cases---Scope---Bare perusal of Ss. 256 & 257 of the Companies Act, 2017 ('the Act') reveals that by and large protection is afforded to the rights and interests of the members of the company and it is necessary to collate S. 257 with S. 256 as the powers in these provisions are closely tied in and seemingly overlap---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 High Court---Therefore, the Commission (Securities and Exchange Commission of Pakistan), when deciding whether to order investigation into the affairs of the company under Ss. 256 & 257, may have to consider and weigh multiple factors, which inter alia includes the nature of the complaint and its source---Such exercise of discretion by the Commission has to be guided/determined by the facts and circumstances of the case and has to be exercised in good faith, without any bias, prejudice or ulterior motives---However, in terms of clause (a) of subsection (1) of S. 257, the Commission is obligated to appoint inspectors for conduct of investigation, if ordered by the Court of competent jurisdiction or upon passing of special resolution by the company---Accordingly, the power to appoint an Inspector under Ss. 256 & 257, vests with the Commission on an application by a member of the company or the Registrar of the Commission.

Deplix Smileagain Foundation v. Security and Exchange Commission of Pakistan and others 2019 CLD 861; Hira Textile Mills Ltd. v. Bank Al-Falah Ltd. 2022 CLD 285 and Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others 2016 SCMR 213 rel.

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

---Ss. 256 & 257---Investigation of company's affairs in other cases---Scope---Sections 256 & 257 of the Companies Act, 2017 being intertwined with one another, cannot be read in isolation to one another---Both sections are in pari materia and thus must be construed together---Ultimate outcome of the provisions being intertwined with one another leads to the conclusion that in order to invoke S. 257, it is mandated that any complainant must have some form of link or nexus to the affairs of a company---Section 256 categorically clarifies that the link or nexus required to have the affairs of any company investigated is the holding of membership in such company in the manner as is categorically mentioned in S. 256 of the Act.

Deplix Smileagain Foundation v. Security and Exchange Commission of Pakistan and others 2019 CLD 861; Hira Textile Mills Ltd. v. Bank Al-Falah Ltd. 2022 CLD 285 and Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others 2016 SCMR 213 rel.

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

---Preamble---Scope---Legislative intent of the Companies Act, 2017---Such intent is clear and obvious from the Preamble to the Act that it has been enacted to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic means for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interest in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith.

Barrister Asim Muzaffar Khan for Petitioner.

Nemo for Respondent No.1.

Syed Ishtiaq Haidar, Advocate Supreme Court for Respondent No.2.

Barrister Syed Ali Rizvi and Osama Shahid Khawaja for Respondents Nos.3 and 4.

Ibrar Saeed, Director SECP with Adeel Peter, Advocate/Legal Advisor for the Respondent No.5/SECP.

Malik Ahtesham Saleem, Assistant Attorney General of Pakistan.

Date of hearing: 1st March, 2022.

JUDGMENT

"The practice of commercial law as a barrister or solicitor, or for that matter as an arbitrator or mediator, is itself a form of commercial activity. Like all forms of commerce, it depends - if it is to function effectively - on trustworthiness and on adherence to standards of honesty (in the modern sense) and fair dealing by those engaged in it. If, as commercial lawyers, you demonstrate those virtues and employ your knowledge and skills to help resolve disputes or to use the law in other ways to oil the wheels of commerce, then I submit that that is something to be proud of".¹

(Lord George Leggatt, Justice of UK Supreme Court)

JAWAD HASSAN, J.---Through this Petition, the Petitioner has sought direction to the Respondent No.5/Securities and Exchange Commission of Pakistan, Islamabad (the "Commission") to start investigation into the affairs of the Respondents Nos.1 to 4 under section 257(1)(a)(ii) of the Companies Act, 2017 (the "Act").

I. CONTEXT

2. Brief alleged facts of the case are that the Petitioner is a businessman and running a real estate agency with the name and style of "Beacon Investment", against which the Respondents Nos.1 to 4 have committed a serious fraud; that the Respondent No.1/Messrs Multiplierz Group Pvt. Ltd. introduced and advertised a real estate project with the name and style of the "Palm Residential Apartments", near Sohan Interchange, 532 Service Road, Dhoke Kala Khan (the "Palm Project"), whereupon the Petitioner entered into a work service agreement i.e. Authorized Dealership Platinum Status Agreement to sell and book apartments/units of the Palm Project against a predetermined commission and also booked around 22 apartments (mentioned in paragraph No.8 of the Petition); that the Respondent No.1 falsely introduced itself as owner of the Palm Project while it was only involved in marketing. Subsequently the Petitioner came to know that the Palm Project is not an approved project of either the Capital Development Authority (CDA) or the Rawalpindi Development Authority (RDA). Thereafter the Petitioner inspected the site and came to know that the management of the Respondent No.1 has fled away after collecting millions of rupees. The Petitioner raised voice against the said fraud and also sent legal notice to the Respondents but all in vain. The Palm Project suffers from many other irregularities by which the public at large has been cheated. Hence, this Petition seeking direction to the Commission to conduct investigation into the matter.

II. PETITIONER'S SUBMISSIONS

3. Barrister Asim Muzaffar Khan, Advocate submitted that the Respondents Nos.1 to 4 have committed serious fraud, misfeasance, breach of trust by collectively launching a bogus and fraudulent Palm Project and collected a huge money from the public at large including the Petitioner. He adds that the Respondent No.1, who is a sales and marketing company could not collect money from the public at large, therefore, the matter should be taken seriously and the Commission be ordered to probe and scrutinize its memorandum and articles of associations and determine the culprits involved in public fraud. Learned counsel strengthened his arguments by relying on the judgment reported as "Deplix Smileagain Foundation v. Security and Exchange Commission of Pakistan and others" (2019 CLD 861).

III. RESPONDENTS' SUBMISSIONS

4. Despite publication in newspaper, no one appeared on behalf of the Respondent No.1, therefore, it is proceeded against ex parte.

Submissions on behalf of the Respondent No.2

5. Syed Ishtiaq Haidar, ASC for the Respondent No.2 has objected to the maintainability of this Petition on the ground that the Petitioner has no locus standi to file this Petition.

Submissions on behalf of the Respondents Nos.3 and 4

6. Barrister Syed Ali Rizvi, Advocate for the Respondents Nos.3 and 4 also objected to the maintainability of this Petition being premature because the Petitioner did not file any Application before the Commission and any other relevant forum. He adds that the

Petitioner is not holding 10% share as mandatory requirement of the law. Further submits that section 257 has to be read with section 256 of the Act, because it can be invoked without prejudice to its power under section 256 *ibid*. He also relied on the judgments cited as "Mohammad Raza v. Crescent Industrial Chemical Ltd. and 5 others" (2018 CLD 898), "Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd. Lahore and others" (2016 SCMR 213), "Abdul Kareem Khan v. Messrs Haroon-Ur-Rasheed Textile Mills (Pvt.) Ltd. through Chief Executive and 13 others" (2015 CLD 719), "Light Metal and Rubber Industries (Private) Limited and others v. Sarfraz Qaudri" (2011 CLD 1485) and "Brother Steel Mills Ltd. v. Mian Ilyas Miraj and 14 others" (PLD 1996 SC 543).

Submissions on behalf of Respondent No.5/Commission.

7. Mr. Adeel Peter, Advocate for Respondent No.5/Commission also objected to the maintainability of this Petition by relying on the arguments advanced by learned counsel for the Respondents Nos.2 to 4.

IV. DETERMINATION BY THE COURT

8. The controversy raised hinges on the scope, extent and nature of the powers of the Commission in terms of section 257 of the Act and the record reveals that the Petitioner through this Petition has sought direction under section 257(1)(a)(ii) of the Act to the Respondent No.5/SCEP to start investigation of the affairs of Respondents Nos.1 to 4.

(i) Legislation

9. Before proceeding to determine and decide the controversy, it is expedient to reproduce relevant sections 256 and 257 of the Act of 2017, which are as under:

"256. Investigation into affairs of Company. -

(1) 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 the total voting power in a company having 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 the receipt of a report under subsection (5) of section 221 or on the report by the registrar under subsection (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 subsection (1), the Commission may define the scope of the investigation, the period to which it is to extend or any other matter connected or incidental to the investigation.

(3) An application by members of a company under clause (a) or (b) of subsection (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 the 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.---(1) 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 special resolution, or

(ii) the Court, by order, declares that the affairs of the company ought to be investigated; 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 its opinion 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 unauthorised 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 members 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 of 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 of being heard.

(2) While appointing an inspector under subsection (1), the Commission may define the scope of the investigation, whether as respects the matters or the period to which it is to extend or otherwise."

The previous Companies Ordinance 1984 also had similar powers in its sections 263 and 265.

(ii) Judicial Precedents

10. If we thoroughly examine the judgments concerning the above provisions of the Act and the Ordinance, the case titled "Hira Textile Mills Ltd. v. Bank Al-Falah Ltd." (2022 CLD 285 [Lahore]) has set aside a show cause notice issued on complaint filed by

the creditors of the company to appoint inspectors to investigate its affairs. It was held as follows:

"4. There are two ways by which the powers conferred upon the Commission may be engaged in different circumstances set out in clauses 'a' and 'b' respectively of section 257. Clause 'a' of section 257 delineates that the Commission is obligated to appoint a competent person as inspector to investigate the affairs of a company if the company resolves by special resolution or the Court under the Act, 2017 declares that the affairs of a company ought to be investigated. Clause 'b' of subsection (1) of section 257 gives power to the Commission to investigate the affairs of a company on its own but prior to that it has to form its opinion that there are circumstances suggesting one of the grounds to exist which have in fact been spelt out by the legislature in clause 'b' of subsection (1) of section 257. All of these factors relate to the corporate affairs of a company and has a direct nexus to the regulatory authority of the Commission. Thus the powers of the Commission under this provision are circumscribed and the Commission does not have a carte blanche in such matters.

5. Be that as it may, it is apparent from the contents of the show cause notice that the proceedings were set in motion on a complaint received by the Commission from the Banks. It will now be necessary to collate section 257 with section 256 as the powers in these provisions are seemingly overlapping. The power conferred on the Commission to investigate a company's affairs under section 257 is without prejudice to its powers under section 256. There is, however, a subtle distinction which will be brought to fore in the following discussion.

6. Although sections 256 and 257 are closely tied in, the power flows out of entirely different circumstances for the Commission to start an investigation. Reduced to its core, 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 Commission seeks to investigate into the affairs of a company on an application, it must be an application made by one of the persons or entities mentioned in section 256 and none else. Neither MCB Bank nor Bank Alfalah (as the creditors of the petitioner-company) were entitled to make an application under section 256. The cognizance of a matter relating to investigation cannot be taken by a circuitous route, that is, by firstly receiving a complaint and thereafter (upon finding it to be outside the ambit of section 256) invoking its powers under Section 257, whimsically and unreasonably, to serve a notice on Hira Textile. This is misdirection of law and which then led through the rest of the decision-making powers. The sweep of the powers under section 257 is distinct and separate from section 256 and one cannot be confused with the other. Section 257 envisages formations of opinion by the Commission as a pre-condition and that opinion must be based on the Commissions' own inquiry and by application of independent mind. Clause (b) of subsection (1) of section 257 discountenances a fishing enquiry but the discretion exercised by the Commission must have source in material which, prima facie, establishes malfeasance in any of the forms mentioned in that provision. A fact specific balancing exercise is to be conducted by the Commission uninfluenced by an external source. This is the cardinal feature of any exercise of power under section 257. The scope of the two provisions viz. sections 256 and 257 cannot be muddled by the Commission to the detriment of the corporate entities. That is why it is a better option for the

Commission to proceed under section 256(1)(c) on receipt of a report, to rule out infecting its discretion with bias and arbitrariness.

7. It does not matter whether the show cause notice has been mentioned as having been issued under section 257 of the Act, 2017 whereas a holistic reading of the show cause notice makes it abundantly clear that the proceedings were not initiated by the Commission on its own and under its suo motu powers conferred by section 257 by forming an independent and bipartisan opinion yet it was started on the complaint of certain financial institutions claiming to be the creditors of the petitioner company and simultaneously alleging default in the contractual obligations by that company. 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 Commission. That is why the power to investigate into the affairs of a company have been circumscribed by the provisions of section 256 and in case the Commission seeks to do so on its own, once again the power has to be confined to the grounds mentioned in clause '13' of subsection (1) of section 257. To reiterate, any power to be exercised by the Commission under section 257 has to be preceded by formation of an opinion and thereafter a show cause notice giving the company an opportunity of hearing can be issued. In this case, there is no formation of opinion by the Commission which is conspicuous by its absence. Once again, this shows clearly that the Commission acted mechanically on a complaint filed by the creditors of the company which was reflexively treated and did not apply its mind while forming an opinion.

8. In view of the above, this petition is allowed. The show cause notice impugned herein is set aside. However, it is made clear that the Commission may proceed to investigate into affairs of the petitioner-company by following the mandate of law, as adumbrated (emphasis added)."

11. Similarly, in the case of "Depilex Smileagain Foundation v. Security and Exchange Commission of Pakistan and others" (2019 CLD 861 [Lahore]), this High Court has highlighted the necessary conditions concerning sections 256 and 257 of the Act as follows:

"12. The Commission is empowered to exercise discretion under section 256 of Act of 2017, which discretion is regulated and subjected to the conditions prescribed therein, existence of such conditions need not to be reiterated as the controversy does not relate to the appointment of inspectors under section 256, *ibid*. In terms of clause (a) of subsection (1) of section 257 of Act of 2017, the Commission is obligated to appoint inspectors for conduct of investigation, if ordered by the Court of competent jurisdiction or upon passing of special resolution by the company. However, under clause (b) of subsection (1) of section 257, *ibid*, the Commission may appoint inspectors to conduct investigation if in its opinion there are circumstances suggesting existence of the conditions prescribed, which circumstances are enumerated therein. One common feature of sections 256 and 257 of Act of 2017 is that before making an order of investigation, the Commission is required to give company an opportunity of being heard. No such concession/opportunity was provided under section 29 of Act of 1997.

13. Now the question is that whether such circumstances and factors exist, which warrant or necessitate action under section 29 of Act of 1997 by the Commission. The Commission, when deciding whether to order investigation into the affairs of

the company under sections 256 and 257 of Act of 2017, may have to consider and weigh multiple factors, which inter alia includes the nature of the complaint and its source. If complaint is filed by the requisite number of the members, the Commission may resort to section 256 of Act of 2017, provided material is available to assist in formation of opinion. Likewise, under section 257 of Act of 2017, the Commission without prejudice to its powers under section 256, may proceed accordingly, as the situation may warrant in view of the clauses (a) and (b) of subsection (1) of section 257.

14. The exercise of discretion by the Commission would be guided/determined by the facts and circumstances of the case but has to be exercised in good faith, without any bias, prejudice or ulterior motives. The reasons/circumstances mentioned in the order dated 11.01.2019 are sufficient to initiate investigation.

.....

22. A concern is expressed while making submissions that what are those distinctive circumstances/factors, which led the Commission to invoke section 29 of Act of 1997 and not to proceed under sections 256 and/or 257 of Act of 2017. It is evident from bare perusal of sections 256 and 257 of Act of 2017 that by and large protection is afforded to the rights and interests of the members of the company. The petitioner company is not a public limited, listed or non-listed, but incorporated under section 42 of Ordinance of 1984 - limited by Guarantee - closely managed by the members - wherein there are few instances of differences/disagreements amongst the members, unless some disgruntled/dissatisfied members revolt against excessive majority. In these circumstances, there is rarely an opportunity to ascertain/identify fraudulent and illegal conduct of business, if carried out by the members for collective benefit. And if the members are happy/content and acting in unison, hardly any situation would arise - unless some creditor objects to the conduct of business - necessitating investigation or appointment of inspectors. This case is different, wherein no concern has been raised by existing member, but information was brought to the knowledge of the Commission, which then proceeded to order investigation. There is nothing to substantiate bad faith on the part of the Commission. The exercise of discretion under section 29 of Act of 1997 is justified in view of allegations. The concern is misconceived and overlooked the scheme of law. The report, when complied, is not itself a legal decision, nor are the opinion of the inspectors expressed therein binding upon any person in the manner that a judgment of the courts is. It is merely an expression of findings and opinions of inspectors (emphasis added)."

12. While dealing with a dispute between major shareholders of a company due to alleged manipulation in the company record and bogus entries in the register, the honorable Supreme Court in the case of "Mian Javed Amir and others v. United Foam Industries (Pvt.) Ltd., Lahore and others" (2016 SCMR 213) has observed as follows:

"20. The learned Company Judge has also erred in law while directing the SECP to appoint an Inspector who shall submit a report as to whether a case under section 305 is made out or not. Suffice it to observe that the power to appoint an Inspector under sections 263 and 265, vests with the Commission on an application by a member of the company or the Registrar of the Commission. The areas in which the Inspector was directed to investigate falls within the jurisdiction

of the Company Court and can be investigated and looked into by a Company Judge itself (emphasis added)."

(iii). Anatomy of Sections 256 and 257 of the Act

13. It is by now a well-settled principle in the case of Hira Textile Mills Ltd. supra that the power conferred on the Commission to investigate a company's affairs under section 257 is without prejudice to its powers under section 256 of the Act. Although sections 256 and 257 of the Act are closely tied in, the power flows out of entirely different circumstances for the Commission to start an investigation. 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 section 221(5) or by the registrar under section 254(6). Thus, if at all the Commission seeks to investigate into the affairs of a company on an application, it must be an application made by one of the persons or entities mentioned in section 256 and none else. Section 257 envisages formations of opinion by the Commission as a pre-condition and that opinion must be based on the Commissions' own inquiry and by application of independent mind. A cardinal feature of any exercise of power under section 257 is that fact specific balancing exercise is to be conducted by the Commission uninfluenced by an external source. Even the cognizance of a matter relating to investigation cannot be taken by a circuitous route, that is, by firstly receiving a complaint and thereafter (upon finding it to be outside the ambit of Section 256) invoking its powers under section 257, whimsically and unreasonably, to serve a notice. To reiterate, any power to be exercised by the Commission under section 257 has to be preceded by formation of an opinion and thereafter a show cause notice giving the company an opportunity of hearing can be issued. In this case, there is no record if the Petitioner ever approached the Commission for starting such investigation or formation of opinion by the Commission which is conspicuous by its absence.

14. It is evident from bare perusal of sections 256 and 257 of the Act that by and large protection is afforded to the rights and interests of the members of the company and it is necessary to collate section 257 with section 256 as the powers in these provisions are closely tied in and seemingly overlapping. 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 this Court. Therefore, the Commission, when deciding whether to order investigation into the affairs of the company under sections 256 and 257 of the Act, may have to consider and weigh multiple factors, which inter alia includes the nature of the complaint and its source. Such exercise of discretion by the Commission has to be guided/determined by the facts and circumstances of the case and has to be exercised in good faith, without any bias, prejudice or ulterior motives. However, in terms of clause (a) of subsection (1) of section 257 of the Act, the Commission is obligated to appoint inspectors for conduct of investigation, if ordered by the Court of competent jurisdiction or upon passing of special resolution by the company. Accordingly, the power to appoint an inspector under sections 256 and 257 of the Act, vests with the Commission on an application by a member of the company or the Registrar of the Commission. However, this Petition is silent about any shareholding of the Petitioner in the Respondent No.1/Company.

15. The legislative intent of the Act is clear and obvious from its Preamble that it has been enacted to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic

means for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interest in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith.

16. In view of the foregoing cannons and guidelines vis-à-vis the general principles set to evaluate and interpret a Statute and more particularly the concept of holistic examination of any law as opposed to singular picking and choosing certain sections/provisions of the law whilst ignoring others, sections 256 and 257 of the Act being intertwined with one another, cannot be read in isolation to one another. It may even be said that both sections 256 and 257 of the Act are in pari materia and thus must be construed together. The ultimate outcome of the said provisions being intertwined with one another leads to the conclusion that in order to invoke section 257 of the Act, it is mandated that any complainant must have some form of link or nexus to the affairs of a Company. Section 256 of the Act categorically clarifies that the link or nexus required to have the affairs of any company investigated is the holding of membership in such company in the manner as is categorically mentioned in Section 256 of the Act.

(iv). Doctrine of Intertwined

17. In order to discuss the Doctrine of Intertwined whether section 257 of the Act can be invoked straightway without referring to section 256 of the Act, can be seen from the facts of this case. It is evident that the Petitioner filed this petition only under section 257 of the Act with the following prayers:

"In the circumstances mentioned above, it is therefore, very graciously prayed from this honorable High Court that order be issued in the following respect.

1. Start of investigation under section 257(1)(a)(ii) requiring an order by the Honorable Court, Company Bench, to be made directing investigation by Respondent No.5 in the instant matter against the Respondents Nos.1, 2, 3 and 4;
2. Commission be directed to take necessary action and appoint investigators in the instant matter;
3. Any other order that the Honorable High Court deems fit and necessary be also passed in the interest of justice".

18. When confronted to counsel for the Petitioner whether the petition in hand can be filed against the Respondents without complying with requirement of section 256 of the Act, learned counsel states that the Petitioner has only invoked section 257 of the Act and not section 256 thereof. While, learned counsel for the Respondent Barrister Syed Ali Rizvi states that section 257 has to be read with section 256 of the Act because it starts with the powers of the Commission to investigate into the affairs of the Company. It is evident from the record that the Petitioner is only a real estate dealer and is neither the member or shareholder of any Respondents against which he is seeking relief by making aforementioned prayer before this Court. It is pertinent to mention here that under the Doctrine of Intertwined, the Petitioner has to fulfil the requirements of section 256 of the Act regarding locus standi of being member, qualification of member and company against whom the relief is being sought but in the present case, the Petitioner being a person has no nexus with the Respondents' companies, not being member of any of the Respondents company as is evident from the record of SECP. He has filed this petition

solely under section 257 of the Act without fulfilling the preconditions as elaborated in the case of "Depilex Smileagain Foundation (2019 CLD 861 [Lahore]), supra.

19. This view is further supported from the contrary argument (i.e. the stance taken by the Petitioner) that in case parties/persons having no link or nexus to the affairs of a Company (by way of either membership/shareholding/holding office) are allowed to invoke the provisions of both Sections and other related provisions of the Act to have the affairs of a company investigated on account of matters that purely pertain to their commercial and business dealings with such a company, would in turn not only open flood-gates of litigation, but would also lead to (i) a situation where the affairs of any company would be investigated in every such instance where there is an alleged breach of contract by the company in its business dealings with third party, (ii) disputes in the normal course of business between a company and third party would end up requiring investigations into the affairs of a company, (iii) the laws and statutes dealing with and providing for legal remedies based on contract, sale of goods, specific performance etc. would more or less be rendered redundant.

20. Even otherwise, the Petitioner has not approached the Commission to address any grievance and has directly knocked on the doors of this Court for issuance of direction without showing any proof of allegations or establishing himself to be member of such company. When confronted what is locus standi of the Petitioner and how he can file this Petition because he is not member of the Respondent No.1/Company, learned counsel for the Petitioner could not reply satisfactorily and only reiterated the submissions made in the Petition.

(v). Conclusion

21. As a sequel to above discussion, the Petitioner has failed to establish his locus standi keeping in view the doctrine of intertwined hence, this petition has no merits, which is hereby dismissed.

SA/T-12/L

Petition dismissed