JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 731 OF 2025

SIGN SOURCE LIMITED & ANOTHER

VS

SECURITIES & EXCHANGE COMMISSION OF PAKISTAN, ETC.

Petitioners by	**:**	**Mr. Muneer A. Malik, Salahuddin Ahmed and Amna Aftab, Advocates.**
Respondents by	**:**	**Barrister Arooj for Respondent No.1 (SECP).** **Hafiz Naeem, Advocate, for Respondent No.2 (CCP).** **M/s Arshad M. Tayebaly, Sameer Tayebaly, Aitzaz Manzoor and Aasim Shafi Advocates, for Respondent No. 4.** **M/s Makhdoom Ali Khan, Hussain Ali Almani and Furqan Mushtaq, Advocates for Respondent No.5.** **M/s Mustafa Ramday, Ahmed Junaid, Akbar Khan, Barrister Salman Ahmed Khan and Zaafir Khan, Advocates for Respondents Nos. 3 and 6.** **Barrister Jahanzeb Awan and Uzain Bin Shafi, Advocate for Applicants in CM No.862/2025.** **Mr. Muzafar Ahmed Mirza, Chief Prosecutor.** **Barrister Umar Azad Malik and Yasnain Raza, SPP.**
Date of hearing	**:**	**12.03.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition, the Petitioners [Sign Source Limited and Abid Hussain] seek directions (i) to the Respondents Nos.1 & 2 [Securities & Exchange Commission of Pakistan and Competition Commission of Pakistan] to ensure that the funds sent to the Respondent No. 5 [Greentree Holdings Limited **("Respondent No. 5/Greentree")**] by TRGP and TRGI are not used to finance, directly or indirectly, the purchase of shares by the Respondent No. 5/Greentree pursuant to the Public Announcement of Offer dated 15th January, 2025; (ii) to restrain the Respondent No. 5/Greentree from acquiring any shares in furtherance of the Public Announcement of Offer dated 15.1.2025; and (iii) to restrain the Respondent No. 3 [TRG Pakistan Limited **("TRGP")**] from giving effect any acquisition made under the Public Announcement of Offer. The Petitioners further seek declaration to the effect that the Public Offer made by the Respondent No. 5/Greentree is unlawful and liable to be recalled.

2. The brief facts of the case in hand as per Memo of the Petition are that the Petitioners hold 1,582,800 shares in Respondent No. 3/TRGP, a publicly limited company. The Petitioner No. 2, a Director in the Petitioner No. 1, was elected as one of ten Directors of TGRP/The Pakistan Company in an Extraordinary General Meeting on 11.01.2022. The respective shareholding of each of the Petitioners in TGRP is as follows:-

Name of Shareholders	**No. of shares**
Sign Source Limited	1,581,000
Abid Hussain	1,000

3. The TGRP has over 13,000 shareholders holding 545,390,665 shares. Initially, it fully owned TRGI (a Bermuda-based non-listed subsidiary) for international investments. Over the time, its stake in TRGI fluctuated and as of 30.6.2024, TGRP holds 60,450,000 shares (68.8% of TRGI's paid-up capital). Notably, TRGP's primary asset is its shareholding in TRGI. Some of the major shareholders who control the Board of TRGP as on 31.12.2024 were/are as follows:-

Name of Shareholders	**No. of Shares**	**Percentage of shareholding**
Greentree Holdings Limited	162,010,636	29.71%
Muhammad Ziaullah Khan Chishti	87,915,789	16.12%
Sarah Jennifer Poberskin (wife of Muhammad Ziaullah Khan Chishti)	32,098,400	5.89%`
Total	**282,024,825**	**51.71%**

4. It is further mentioned in Memo of the Petition that apart from the mentioned shareholders, the Petitioners are aware that a group holding approximately 14% of TRGP's share capital, known as the JS Group, is in conflict with TRGP's Board over certain decisions. The JS Group is engaged in litigation with TRGP and its controlling shareholders and is represented by two non-executive Directors namely Asad Nasir and Suleman Lalani. This group comprises of the following:-

Name of Shareholders	**No. of shares**	**Percentage of shareholding**
Jahangir Siddique & Co. Limited	26,949,561	4.94%
JS Bank Limited	24,583,760	4.51%
JS Infocom Limited	20,077,842	3.68%
Trustee of JS Bank Limited-Staff Gratuity Fund	3,500,000	0.64%
Energy Infrastructure Holding	3,500,000	0.64%

(Private) Limited		
Suleman Lalani	10,001	0.00%
Asad Nasir	500	0.00%
Total	78,626,664	14.41%

5. The Respondent No. 5/Greentree a 100% subsidiary of TRGI (The Bermuda Company), has been used by TRGP's Board to acquire TRGP shares, indirectly increasing their control using TRGP's own funds circumventing Section 86 of the Companies Act, 2017. Between 10.3.2022, and the present Respondent No. 5/Greentree's stake in TRGP rose from 10% to 29.71%. In April, 2021 TRGI sold its stake in Etelequote for $309 million, entitling TRGP to $120 million. The TRGP Board, on 17.12. 2021, decided to let TRGI retain the proceeds instead of direct distribution. These funds were later transferred to the Respondent No. 5/Greentree, which then used them to buy TRGP shares rather than holding them in trust. On 23.11.2024, the Respondent No. 5/Greentree, through AKD Securities, announced its intention to acquire 35.145% of TRGP's shares. On 15.1.2025, it issued a Public Offer. Despite the Respondent No. 5/Greentree having no revenue, it committed $52 million for share purchases, confirming its used funds intended for TRGP shareholders. The offer also raises legal concerns under the Securities Act, 2015 **("Securities Act")** and the Competition Act, 2010 **("Companies Act")**. The Petitioners filed complaints with the Respondent No. 1/SECP and the Respondent No. 2/CCP on 19.2.2025, requesting intervention against this unlawful acquisition, but the Respondent No. 1/SECP has not responded. Hence the instant Petition.

6. The learned counsel for the Petitioners argued that SECP, as the securities market regulator, must enforce Section 86 of the Companies Act, which prohibits public companies from providing financial assistance for share purchases. They contended that TRGP's funds, parked with the Respondent No. 5/Greentree with TRGP and TRGI's consent, are being used to acquire TRGP shares, consolidating the Respondent No. 5/Greentree's control; that the Respondent No. 1/SECP must intervene to prevent this transaction, as it violates public interest and shareholder rights; that additionally, the Respondent No. 4 [The Source International Group Limited], currently holding 29.71% of TRGP shares, seeks to acquire 35.145% more, increasing its stake to 64.475%—creating a monopolistic and anti-competitive environment in violation of Section 3 of the Competition Act; that the acquisition, valued at Rs. 14.37 billion, exceeds the Rs. 100 million threshold

under the Competition (Merger Control) Regulations, 2016, requiring prior approval from the Respondent No. 2/CCP, which has not been obtained. It is further argued that TRGI, 68.8% owned by TRGP, has used TRGP's own funds to buy its shares, effectively reversing control and turning the subsidiary into the parent company; and that there is no legal restraint preventing the Respondent No. 1/SECP from taking action, and the public offer itself is conditional on the Respondent No. 1/SECP's approval. In the last, the learned counsel prayed for acceptance of instant Writ Petition.

7. On the other hand, the learned counsel on behalf of the Respondents Nos. 1 to 6 argued that the instant Writ Petition is not maintainable on the grounds that a writ cannot be issued against private individuals, the Petitioners and the contesting Respondents are residents of Karachi and they have arrayed the Respondents Nos. 1 & 2 in order to justify the jurisdiction of this Court. They further argued that 13 petitions of similar nature pertaining to the same issue are pending before the Sindh High Court and the Petitioners have concealed this fact from this Court in order to get relief.

8. I have heard the learned counsel for the parties and have also perused the record with their able assistance.

9. The Petitioners representing themselves to be minority shareholders of the Respondent No. 3/TRGP, being a Public Limited Company, have filed this Constitutional Petition seeking direction to restrain the private Respondents from carrying out the purchase/buy back of its own shares, on the ground that the Respondent No. 1/ SECP is a regulator and under Section 86 of the Companies Act, no public company shall give financial assistance whether directly or indirectly in connection with the purchase made by any person of any shares in the company. The Petitioners have submitted complaints before the Respondent No.1/SECP regarding the acquisition of shares by the Respondent No. 3/TRGP which is in violation of Section 86 of the Companies Act. The relief/prayer which the Petitioners seek from this Court are as follow:-

> ***(i)*** *direct the SECP and the Competition Commission of Pakistan to ensure that the funds sent to Greentree by TRGP and TRGI are not used to finance, directly or indirectly, the purchase of shares by Greentree pursuant to the Public Announcement of Offer dated 15th January, 2025;*

(ii) *declare that having made the Public Offer made by Greentree is unlawful, and liable to be recalled.*

(iii) *restrain Greentree from acquiring any shares in furtherance of the Public Announcement of Offer dated 15th January, 2025 and restrain TRGP from giving effect any acquisition made under the same.*

10. The primary relief claimed in the petition is from private juristic persons, which cannot be agitated under the Constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan. The august Supreme Court has recently maintained, in the case of *Pakistan Olympic Association & others versus Nadeem Aftab Sindhu & others* reported in **2019 SCMR 221** that invocation of Article 199 of the Constitution was narrated with respect to a person performing public functions in connection with the affairs of the Federation, or a Province or a local authority as the case may be. Under no circumstances, can the Respondents Nos. 3 to 6, be considered as persons performing public functions in connection with the affairs of the Federation or a Province or a local authority, rather they are private limited companies which are to be purely governed by the Companies Act. Further reliance in this regard is placed on the judgments reported as **(i)** *Senator Khalida Ateeb versus The Province of Sindh through Chief Secretary, Government of Sindh, Karachi and others,* **PLD 2024 Sindh 273**; **(ii)** *United Bank Limited versus Muhammad Ashraf,* **PLD 2020 Lahore 400**; **(iii)** *ADK Investment Management Limited versus JS Investment Limited*, **2020 CLD 596**; **(iv)** *Munir Ahmed versus Province of Sindh through Secretary, Board of Revenue, Karachi*, **2021 CLC 1704**; **(v)** *Civil Aviation Authority versus Province of Sindh through Chief Secretary, Karachi,* **2021 MLD 1106**; **(vi)** *Noor Badshsh versus United Bank Limited,* **2019 PLC (CS) 1433**; **(vii)** *Zahid Hussain versus the Chairman Selection Committee/Chairman Balochistan Public Service Commission,* **2017 CLC 426**; **(viii)** *Toyota Frontier Motors (Pvt) Limited versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar*, **2016 YLR 1631**; **(ix)** *Amanullah Khan versus Government of Khyber Pakhtunkhwa through Chief Secretary, Civil Secretariat, Peshawar*, **2015 YLR 2728**; **(x)** *Noor Badshah versus United Bank Limited,* **2015 PLC (CS) 468**; **(xi)** and *Pharmax Pakistan (Pvt) Limited versus Government of Pakistan,* **2000 CLC 628**.

11. The Petitioners being minority shareholders of the company of the Respondent No. 3/TRGP have share of 0.3%, hence, being minority shareholder,

they cannot challenge the day to day affairs/proceedings of a company. That is why under Section 286 (1) of the Companies Act, only shareholder having shares not less than 10% can file petition under the Companies Act before the Company Court. For ready reference, the relevant Section is reproduced hereunder:-

> *"**286. Application to Court.—(1)** If any member or members holding not less than ten percent of the issued share capital of a company, or a creditor or creditors having interest equivalent in amount to not less than ten percent of the paid up capital of the company, complains, or complain, or the Commission or registrar is of the opinion, that the affairs of the company are being conducted, or are likely to be conducted, in an unlawful or fraudulent manner, or in a manner not provided for in its memorandum, or in a manner oppressive to the members or any of the members or the creditors or any of the creditors or are being conducted in a manner that is unfairly prejudicial to the public interest, such member or members or, the creditor or creditors, as the case may be, the Commission or registrar may make an application to the Court by petition for an order under this section."*

12. The Petitioners' counsel agitated that under Section 86 of the Companies Act, there is prohibition of purchase by company or giving of loans by it for purchase of shares. Any violation of this Section shall be an offence liable to a penalty of level I of the Standard Scale. Under Section 479 of the Companies Act Level I penalty amounts to Rs.25,000/- and up to Rs.500/- per day during which the default continuous. If it is presumed for the sake of arguments that the private respondents are held for the offence under Section 86 of the Companies Act in that case there is penalty provided under Section 479 of the Companies Act and for that violation, the private respondents and the proceedings of a company cannot be halted under the writ jurisdiction of this Court.

13. The registered offices of Respondents Nos. 3 to 6 are located in Karachi and under Section 5 of the Companies Act, the court having jurisdiction under this Act shall be the High Court that has jurisdiction in the location of the company's registered office. This means that the jurisdiction lies with the Sindh High Court, Karachi as the offices of the Respondents No. 3 to 6 are registered at Karachi, and not within the jurisdiction of this Court.

14. The Petitioners have not disclosed before this Court regarding the pendency of 13 petitions before the Sindh High Court in which the Petitioners are Respondents, the details of which are as under:-

Sr. No.	**Case**	**Court**	**Date of ad-interim order**
1.	Suit No.1035/2022	Sindh High Court	07.07.2022

2.	Suit No.1587/2022	Sindh High Court	21.10.2022
3.	Suit No.1589/2022	Sindh High Court	19.10.2022
4.	Suit No.1599/2022	Sindh High Court	24.10.2022
5.	JCM No.18/2023	Sindh High Court	-
6.	Suit No.19/2023	Sindh High Court	06.01.2023
7.	Suit No.1445/2023	Sindh High Court	31.08.2023
8.	Suit No.1603/2022	Sindh High Court	28.09.2023
9.	JCM No.22/2024	Sindh High Court	-
10.	JCM No.01/2025	Sindh High Court	-
11.	JM No.05/2025	Sindh High Court	31.10.2025
12.	JCM No.04/2025	Sindh High Court	13.02.2025
13.	JCM No.05/2025	Sindh High Court	-

15. In addition to this, the Petitioners also filed Arbitration proceedings at United States of America titled as under:-

> "ZIA CHISHTI, individually and derivatively on behalf of TRG PAKISTAN LIMITED and THE RESOURCE GROUP INTERNATIONAL LIMITED, NASSER MAHMOOD, individually and derivatively on behalf of THE RESOURCE GROUP INTERNATIONAL LIMITED, **ABID HUSSAIN, individually and derivatively on behalf of TRG PAKISTAN LIMITED, and SIGN SOURCE LIMITED**, derivatively on behalf of TRG PAKISTAN LIMITED,
>
> *Claimants,*
>
> v.
>
> MOHAMMAD KHAISHGI, HASNAIN ASLAM, MOHAMMAED ALI JAMEEL, JOHN LEONE, PATRICK MCGINNIS, PINEBRIDGE GLOBAL EMERGING MARKETS PARTNERS II, L.P., **TRG PAKISTAN LIMITED, and THE RESOURCE GROUP INTERNATIONAL LIMITED**,
>
> *Respondents,*
>
> And
>
> TRG PAKISTAN LIMITED and THE RESOURCE GROUP INTERNATIONAL LIMITED,
>
> *Nominal Respondents.*

16. It is a well-established principle of law that a party seeking equitable relief must come to the Court with clean hands. In the present case, the Petitioners have willfully concealed material facts from this Court. Consequently, this Court is not inclined to exercise its discretion in favor of the Petitioners. Reliance is placed on *Fazal Hussain versus Deputy Director, Administration & Housing Management, Kot Lakhpat Housing Project Township Lahore* reported as **PLD 1987 Lahore 297**. Furthermore, in case titled *Telecard Limited through Authorized Representative versus Federation of Pakistan through Secretary Ministry of Information and Technology and another* reported as **2017 CLC Note 81,** the Hon'ble Sindh High Court has held that:-

> *"From the perusal of order and judgments passed by Lahore High Court, Islamabad High Court and the august Supreme Court, demonstrate that the petitioner has already agitated almost identical grounds and claims before*

the superior Courts and failed to get any advantageous verdict in its favour. Therefore, the petitioner by the concealment of certain relevant facts preferred the instant petition for the similar nature relief which have already been declined by the superior Courts."

17. The Petitioners have also arrayed the SECP as the Respondent No.1 and CCP as the Respondent No.2 in the petition. The Petitioners lodged their complaint with the Respondent No. 1/SECP and the Respondent No. 2/CCP vide e-mail dated 19.02.2025 requesting them to restrain the Respondent No. 5/Greentree and its Manager from proceeding any further on the public offer to safeguard the interest of the investors and to intervene in the illegal takeover of the company by the Respondent No. 5/Greentree using funds which were to be distributed to the shareholders of TRGP. The Petitioners, without awaiting the outcome of those complaints, filed the present Writ Petition just five days later, on 22.02.2025. By doing so, they failed to provide a reasonable period of time and opportunity for the resolution of their complaints, and proceeded to file the instant Writ Petition without any justifiable cause, making them party to this matter. The main dispute is between the shareholders and it seems that there is no claim of efficacious remedy agitated in the instant Writ Petition from a person performing public functions in connection with the affairs of the Federation.

18. The discussion delineated supra, it is pertinent to record that the learned counsel for the Petitioners has not adverted to any fundamental right(s) that may have been infringed by any of the Respondents, before this Court. While, I have no cavil to any person expecting to maximize their return on investment, such an expectation cannot, under any circumstances give rise to an actionable claim within the Constitutional jurisdiction of this Court.

19. In light of these observations, this Court is of the opinion that the present Writ Petition is not maintainable against private juristic persons. The primary dispute is between the shareholders of a company, which falls exclusively under the jurisdiction of the Companies Act. Accordingly, the instant writ petition is **dismissed as being not maintainable**.

CM No. 862 of 2025 [Impleadment Application]:

20. This is an application filed on behalf of the Interveners/Proposed Respondents under Order I Rule 10(2) read with Section 151, CPC, seeking their impleadment as necessary and proper parties to the present petition. The petitioners

have already filed JCM No. 22/2024 before the Sindh High Court concerning the same matter; therefore, their application for impleadment cannot be entertained, as they have already sought redress before the appropriate forum, the Sindh High Court. Furthermore, since the main Writ Petition has been dismissed as not maintainable, the present application is also dismissed.

CM No.749/2025 [Vacation of Stay]:

21. Since main Writ Petition has been dismissed on the point of maintainability, hence, the instant application for vacation of stay has become infructuous and is also dismissed accordingly.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of March, 2025.

JUDGE

--/Mehboob/--