JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 2105 OF 2025

CRESCENT BAHUMAN LIMITED & ANOTHER

Vs

SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN, ETC.

Petitioners by	**:**	**M/S Salman Akram Raja and Arslan Riaz, Advocates.**
Respondents by	**:**	**M/s Abdul Majid and Shehryar Kasauri, Advocates, for Respondents No. 3, 4 & 5.** **M/s Muhammad Waseem Ashraf Rana and Makhdum Ali Hamza, SPP for SECP.**
Date of hearing	**:**	**09.07.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, the Petitioners have challenged the legality and validity of the Show Cause Notice dated 14.04.2025 **("Impugned Show Cause Notice")** issued by the Director/Head Onsite Department of Securities and Exchange Commission of Pakistan **("SECP")** and prayed as under:-

> i. Declare the Impugned Show Cause Notice dated 14.04.2025 as unconstitutional, illegal, unlawful, without lawful authority, *void ab initio*; consequently, set aside the same;
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> ii. Declare that actions of the Respondent SECP in issuing the Impugned Show Cause Notice and/or proceedings with application filed by the applicants before SECP (with respect to matters which are sub judice before the Lahore High Court, Lahore) as *void-ab-initio*, unlawful and illegal;
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> iii. Restrain the Respondent SECP and its officials from attempting to interfere with judicial proceedings of pending Company Petition by taking any steps towards investigation into the affairs of the Petitioner Company.

2. The brief facts of the case as per contents of the instant writ petition are that in the year 2021, the Respondent No.3/Crescent Textile Limited **("CTL")** filed a Company Petition bearing C.O. No. 20002/2021 under Sections 286 and 287 of the Companies Act, 2017 **("Companies Act")** alleging oppression and

mismanagement of the affairs of Crescent Bahuman Limited **("Petitioner Company")** and *inter alia* claiming that the Petitioner Company had not followed the procedure with respect to issuance of right shares and purchase of land subsequently. The Petitioners appeared before the Lahore High Court, Lahore and filed their reply. Respondent No.1 i.e., SECP also filed its reply. On 16.06.2023, the Respondent No.3/CTL withdrew C.O. No.20002/2021. In 2024, another Company Petition bearing C.O. No. 34548/2024 was again filed by the Respondent No. 3/CTL, and by Mian Muhammad Anwar and Ahmad Shafi **("Respondents No. 4 and 5")** with the same assertions as were contained in its earlier Company Petition. The Petitioners as well as the Respondent No.1 i.e. SECP have filed their respective replies in the Pending Company Petition. Along with the Pending Company Petition, the Respondents No.4 & 5 also filed an application bearing C.M. No 1/2024 praying the Lahore High Court for appointment of Inspector in order to investigate the affairs of the Petitioner Company. Vide Order dated 30.06.2024, the Lahore High Court, Lahore, was pleased to issue notices on C.M. No. 1/2024 to the Petitioners and hence the request for investigation into affairs of the Petitioner's Company and the appointment of inspectors is pending before the Lahore High Court. Lahore. On 14.10.2024, the Respondent CTL and Respondents No.4 & 5 filed an application before the Respondent SECP reiterating all the allegations. The Petitioner Company filed a writ petition challenging the said application. Through its letter dated 01.11.2024, the Respondent No.1 i.e. SECP asked the Petitioner Company to respond to the application of the Applicants before SECP, and in para 3 of the said letter, the Petitioner Company was specifically asked to provide details of any litigation on the issue as well. Through its letter dated 18.11.2024, the Petitioner Company apprised the Respondent SECP regarding pending *lis* before the Lahore High Court. Lahore and asked it not to proceed further in the matter. However, through its letter dated 11.02.2025, the Respondent No.1 i.e. SECP again asked the Petitioner Company to provide all the information and documents with respect to the allegations of the Applicants before SECP. The Petitioner Company replied to the letter dated 11.02.2025 on 19.02.2025 and by attaching all the pleadings of earlier Company Petition as well as Pending Company Petition, again requested the Respondent SECP not to take further action in the matter as the matter is pending adjudication before the Lahore High Court, Lahore. The Respondent SECP again issued letter dated 03.03.2025 again asking the Petitioners to provide the information to it. The Petitioners again replied through letter dated 15.03.2025 highlighting for

the third time that the matter is being adjudicated upon by the Lahore High Court, Lahore and hence SECP cannot proceed in the matter. The Petitioner Company also filed a writ petition bearing W.P. No 1051/2025 before this court challenging the letters dated 11.02.2025 and 03.03.2025 by Respondent SECP, however, subsequently the Impugned Show Cause Notice dated 14.04.2025 was issued, upon which W.P. No. 1051/2025 was withdrawn on 21.05.2025 in order to challenge the Impugned Show Cause Notice through formal proceedings.

3. The learned counsel for the Petitioner submits that the impugned Show Cause Notice and ensuing proceedings are a direct interference with judicial proceedings pending before the Lahore High Court in the Company Petition. When a High Court is seized of a matter and all parties are before it, there is no occasion for SECP to unilaterally intervene. The Impugned Show Cause Notice is therefore liable to be declared illegal and *void ab initio*. It is a well-settled principle that when a matter is pending adjudication before a court of competent jurisdiction, parallel proceedings by a regulatory or administrative authority should not be allowed as they risk conflicting outcomes and cause unnecessary harassment. SECP has been a party to the High Court proceedings since 2021, and this fact has been repeatedly brought to its notice by the Petitioners. Despite being fully aware of the pendency, SECP has issued the impugned Show Cause Notice to the Petitioner Company, which is neither sustainable in law nor fact and constitutes an encroachment on the jurisdiction of the High Court. The Applicants before SECP have already moved CM No. 1/2024 before the High Court, seeking the appointment of inspectors under the same allegations. Vide order dated 30.06.2024, the High Court has issued notices on said application. Thus, the matter is actively under judicial consideration, and only the High Court is competent to adjudicate it. This position has also been specifically reiterated by the Petitioner Company through its various replies, particularly the reply dated 19.02.2025. Nevertheless, the SECP continues to ignore the Court's jurisdiction and insists on proceeding with the matter independently. The impugned Show Cause Notice seeks to pre-emptively determine issues already pending before the High Court and is therefore liable to be declared illegal on this ground alone. Additionally, it violates the Petitioners' constitutionally guaranteed right to due process under Article 10-A. SECP and its officials have been exerting undue pressure on the Petitioners to submit to its jurisdiction despite ongoing judicial proceedings. The Petitioners' repeated clarifications regarding the High Court's

seizing of the matter have been completely disregarded, reflecting a pre-determined attempt to initiate investigation regardless of legal propriety. Moreover, the Show Cause Notice has been issued in violation of Section 256 of the Companies Act. Under this provision, the SECP, comprising at least five commissioners as required under Section 5 of the Securities and Exchange Commission of Pakistan (SECP) Act, 1997 **("SECP Act")**, must form a written opinion, based on evidence, that investigation into the company's affairs is necessary. No such opinion has been formed, recorded, or mentioned in the Impugned Show Cause Notice, rendering it non-compliant with the statutory mandate. It is settled law that when a statute requires a matter to be handled in a particular manner, any deviation renders the action unlawful. The formation of such an opinion is *sine qua non* for invoking Section 256, and its absence alone invalidates the Show Cause Notice. Without prejudice to the above, the impugned Show Cause Notice is arbitrary, unjust, and mala fide. If allowed to continue, it may result in conflicting outcomes with the High Court proceedings. Any premature order by SECP may prejudice the outcome of the pending petition, which is contrary to the spirit of justice. The Show Cause Notice also violates the fundamental rights of the Petitioners under Article 18 of the Constitution of the Islamic Republic of Pakistan, 1973. The right to conduct lawful business is an inalienable right. In the business world, initiation of investigation by SECP signals suspicion of wrongdoing, often causing other businesses to avoid association. Such investigations have serious consequences, including potential winding-up proceedings. SECP's failure to consider these practical implications, especially when the matter is sub judice, evidences mala fide intent to cause unlawful harm to the Petitioner Company. Additionally, the Respondents have exercised powers unreasonably and without lawful justification. Despite being repeatedly informed of the matter's pendency before the High Court, the SECP has issued multiple letters and finally the Impugned Show Cause Notice without offering any rationale for bypassing the Court's jurisdiction. This conduct amounts to interference with judicial proceedings and usurpation of the Court's authority. He further submitted that Section 286(5) of the Companies Act, as is relied upon in the Impugned Show Cause Notice does not allow SECP to deal with the same issue as is pending adjudication before a court of law. Section 286(5) allows a shareholder only to avail a remedy available under the law (which is not already availed). In the instant case, the remedy sought to be availed by the Applicants before SECP, from the Lahore High Court, Lahore and SECP is

exactly the same and hence Section 286(5) of the Companies Act does not apply to instant case.

4. On behalf of Respondents, it is argued that the instant petition is premature and misconceived. The issuance of the Show Cause Notice by the Respondents No.1 & 2 is a fact-finding exercise aimed solely at seeking clarifications into the affairs of the petitioner company and requiring relevant documents in exercise of its statutory powers envisaged in the Companies Act. It constitutes the preliminary step in the regulatory process and is strictly in line with the principles of due process as envisioned under the applicable law. Because the process remains at a preliminary non-adjudicatory stage, and any determination shall be made only after due consideration of the requisite material furnished. Hence invoking the extraordinary jurisdiction of this Court at this juncture is legally untenable and liable to be dismissed. That the contention, that no legal remedy is available to the Petitioner is also misconceived and contrary to the established company's legal framework. Because, the issuance of a Show Cause Notice is a preliminary procedure grounded in the principles of natural justice, wherein parties are afforded a fair and meaningful opportunity of hearing. Henceforth, the failure to submit a response against Show Cause Notice, or the submission of an inadequate or evasive reply, shall leave the Commission with no recourse but to initiate investigation proceedings under Section 256 of the Companies Act, which may, in due course, lead to the disposal of the said proceedings or may culminate in civil or criminal proceedings, depending on the nature of findings in the investigation report. Whereupon the Court shall then decide whether to convict or acquit the party under the applicable law. Moreover, extensive statutory appellate mechanisms outlined under the Companies Act, read with the SECP Act, make it abundantly clear that effective remedies are readily available to the Petitioner. The availability of these statutory remedies renders the constitutional jurisdiction legally untenable, premature and misconceived and liable to be dismissed on the sole ground. That the pendency of Company Petition No. 34548/2024 before the Lahore High Court, Lahore under Section 286 of the Companies Act does not bar any person from exercising the statutory remedy or action available under the applicable law. This is consistent with the provision of Section 256 (5) of the Companies Act, which makes it expressly clear that nothing in this section shall limit or restrict the right of person to seek additional remedies or to take action available under any other provisions of the applicable law. Similarly, in the instant matter, an application

was submitted before SECP under section 256 of the Companies Act seeking initiation of investigation proceedings into the affairs of the Petitioner's company. Because of the fact that the provisions of Section 286 (5) of the Companies Act do not affect the mandate of the Commission to proceed under section 256, which squarely fall within the statutory mandate of the Commission. Henceforth, in compliance with procedural requirements of the applicable law, a Show Cause Notice was issued to the Petitioner, calling for specific documents and information. Wherein, despite being afforded multiple fair and meaningful opportunities, the petitioner has persistently failed to furnish the requisite material to date, rather the petitioner has instead relied solely on the excuse of pendency of litigation before the Lahore High Court (i.e. W.P 34548/2024) and instead of complying with the lawful request to furnish the requisite data, the petitioner has filed successive writ petitions, first W.P. No. 1051/2025 (dismissed as withdrawn vide order dated 21-05-2025), and now the second W.P. No. 2105/2025, seeking to pre-empt and obstruct the exercise of a lawful regulatory process. Such conduct is impermissible and not in line with the applicable provisions of the law. That, the proceedings initiated by the Respondents are regulatory in nature and not adversarial. The letters dated 11-02-2025 and 03-03-2025, addressed to the Petitioner Company merely sought specific information relevant to issues highlighted in the complaint. Whereupon, failure to submit the requisite documents by the petitioner's company and submit a satisfactory response, left the Commission with no recourse but to issue the instant Show Cause Notice which was issued strictly in accordance with law, affording the Petitioner a further opportunity of hearing and compliance. It is also reiterated that mere issuance of the Show Cause Notice constitutes a fact-finding exercise within the statutory mandate of the SECP, intended solely to seek clarification and obtain relevant documentation from the Petitioner's company as per the principles laid down by the Courts in plethora of judgments i.e. 2016 SCMR 842, 2016 PTD 1158, 1996 CLC 516, 2010 CLD 774, 2012 CLD 394, 2020 PTD 110 and 2000 SCMR 1017. Therefore, no adverse or coercive action has been taken at this stage. The process remains consultative and procedural, aimed at forming a prima facie opinion before determining any further course of action under the Companies Act. The Petitioner has been granted multiple opportunities, yet has consistently failed to cooperate with the regulatory process. They further submitted that the present petition is vitiated by concealment of material facts and a clear misstatement made on behalf of the Petitioner. It has been

incorrectly asserted in the instant writ petition that this is the first writ petition in the subject matter, filed before this Court. In fact, the Petitioner had previously instituted W.P. No. 1051/2025 before the same Court, which was dismissed as withdrawn vide order dated 21-05-2025, and now the second W.P 2105/2025 has been filed before this Court. The concealment of this prior proceeding, filed on identical grounds and involving the same cause of action, same parties, constitutes a serious attempt to mislead this Court, and renders the present petition liable to dismissal on this ground alone.

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

6. The Petitioners have challenged the Impugned Show Cause Notice issued by the Respondent No.1, i.e. SECP, under Section 256 of the Companies Act on the ground that a Company Petition under Sections 286 and 287 of the Companies Act is pending before the Lahore High Court, Lahore, which was filed by Respondents No.3 to 5 against the Petitioners, including Respondent No.1, in the similar matter. In that Company Petition, Respondent No.1 filed an application bearing C.M No.1 of 2024 before the Lahore High Court, Lahore, for appointment of an Inspector in order to investigate the affairs of the Petitioner Company, in which notice has been issued, which is still pending and that when a matter is pending before a Court, whether the SECP can issue a Show Cause Notice under Section 256 of the Companies Act?, is the moot question to be decided in the instant Writ Petition.

7. The SECP has issued the Impugned Show Cause Notice under Section 256 of the Companies Act, upon receiving an application filed by the Crescent Textile Mills Limited, i.e. Respondent No.3, requesting for investigation into the affairs of the Petitioner Company. The applicant raised various concerns regarding regulatory and financial violations/irregularities on the part of the Petitioner Company and its Directors, which are reproduced in detail in the Impugned Show Cause Notice. In the Impugned Show Cause Notice, it is clearly mentioned that the matter is pending adjudication before the Lahore High Court, Lahore in Company Petition No.34548 of 2024, whereby similar relief has been sought by the applicants under Section 286 of the Companies Act. It is contended that Section 286(5) of the Companies Act clearly provides that the operation of said Section will not prejudice the rights of shareholders to any other remedy or action. For ready reference, Section 286 of the Companies Act is reproduced as under:-

*"**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.*

(2) If, on any such petition, the Court is of opinion— (a) that the company's affairs are being conducted, or are likely to be conducted, as aforesaid; and (b) that to wind-up the company will unfairly prejudice the members or creditors; the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of purchase by the company, for, the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in, or addition to, a company's memorandum or articles, then, notwithstanding anything in any other provision of this Act, the company shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; and the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so modified accordingly.

(4) A copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar for registration; and if the company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a penalty of level 1 on the standard scale.

(5) The provisions of this section shall not prejudice the right of any person to any other remedy or action."

8. The Company Petition filed by the Respondents No.3 to 5 is filed under Sections 286 and 287 of the Companies Act against the Petitioners and others regarding the mismanagement and misfeasance of the Petitioner Company. The

same petitioners have filed a complaint/application to the SECP vide complaint dated 14.10.2024, regarding regulatory and financial violations/irregularities on the part of the Petitioner Company and its Directors. The provision under Section 286(5) provides that under this Section, the right of any person shall not be prejudiced if any other remedy is available to him. Thus, keeping in view the said provision of law, the Impugned Show Cause Notice is issued on 14.04.2025 in order to investigate into the affairs of the Petitioner Company, and for that matter, Inspectors are to be appointed. For the initiation of the investigation, Petitioners are asked to appear in person to clarify the points raised in the Impugned Show Cause Notice, but instead of appearing before the Commission, the Petitioners challenged the said Show Cause Notice before this Court.

9. Before initiating proceedings under Sections 256 and 257 of the Companies Act, it is imperative for the SECP to determine its own independent opinion and to conduct an inquiry regarding the allegations leveled by the complainant and as to whether that investigation leads to the issuance of a Show Cause Notice or not. Section 257 of the Companies Act envisages formations of opinion by the Commission as a precondition and that opinion must be based on the Commission's own inquiry and by application of independent mind. The power of 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. Investigation into the affairs of a company is a serious matter and entails consequences both financial and ones relating to the goodwill of a corporate entity, and these powers are to be exercised by keeping in view multiple factors which includes the nature of the complaint and its source. Such exercise of discretion by the Commission needs to be guided/determined by the facts and circumstances of each case and has to be exercised in good faith, without any bias, prejudice, or ulterior motives. Reliance is placed upon judgments titled *"Tariq Iqbal Malik Vs. Messrs Multiplierz Group Pvt. Ltd and 4 others"* reported as **2022 CLD 468 [Lahore (Rawalpindi Bench)]** and *"Hira Textile Mills Ltd. Vs. Bank Al-Falah Ltd"* reported as **2022 CLD 285 [Lahore]**.

10. Under Section 257 (1)(b) of the Companies Act, some guidelines are given for the SECP that need to be fulfilled before initiation of investigation. For ready reference, Section 257(1)(b) of the Companies Act, is reproduced hereunder:-

*"**257**. Investigation of company's affairs in other cases.—(1) Without prejudice to its power under section 256, the Commission—*
(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 or 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."

11. Upon reviewing the Impugned Show Cause Notice, it appears that the contents of the complaint filed by Respondents No. 3 to 5 were merely reproduced, and the Notice was issued without any indication that the SECP conducted an inquiry into the complaint, applied their independent mind, or formed an opinion warranting an investigation into the company's affairs. The mandate of Sections 256 and 257 of the Companies Act, that the Commission has to apply its independent mind and form an opinion upon receiving an application/complaint regarding the affairs of a company subject to conditions specified in Section 257(1)(b) of the Companies Act.

12. It is to be mentioned here that Section 286(5) of the Companies Act provides that the operation of Section 286 thereof does not prejudice the rights

of shareholders to any other remedy or action, but subject to the conditions/instances provided under Section 257(1)(b) of the said Act. The SECP has already filed a Civil Miscellaneous Petition before the Company Court at Lahore, which should be pursued in accordance with law. However, the Impugned Show Cause Notice issued by the Commission appears to have been issued without independent application of mind or formation of any opinion, as is evident from a plain reading of its contents and language. Respondents No. 3 to 5 filed a Companies Petition under Sections 286 and 287 of the Companies Act before the Company Court at Lahore, while simultaneously lodging a complaint with the SECP based on the same set of allegations.

13. In light of the above discussion, the Impugned Show Cause Notice dated 14.04.2025 is declared unlawful for the reasons that it was issued without the SECP forming an independent opinion or conducting a preliminary inquiry as mandated by Sections 256 and 257 of the Companies Act, 2017; it encroaches upon the pending proceedings before the Lahore High Court in Company Petition No. 34548/2024, where similar relief (investigation into the Petitioner Company's affairs) is already sub judice; and it fails to demonstrate compliance with the statutory prerequisites under Section 257(1)(b) of the Companies Act, rendering it procedurally defective. Consequently, the Writ Petition is **allowed** to the extent that the Impugned Show Cause Notice is set aside as *void ab initio*.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this ____ day of August 2025.

JUDGE

Sajid/-