Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 556 of 2015

Ohad Motors (Pvt.) Ltd.

Vs

Engineering Development Board, etc.

PETITIONER BY: Mr. Mubeen Ullah, Advocate.

RESPONDENT BY: Mr. Muhammad Sarwar Malik, Advocate.
Mr. Javed Iqbal Janjua, Departmental Representative on behalf of Engineering Development Board.

DATE OF HEARING: 26.01.2021.

BABAR SATTAR, J.- The petitioner has challenged show cause notice (***"SCN")*** dated 19.02.2015 issued by respondent No.1 to the petitioner asking to show cause as to why its assembly/manufacturing certificate should not be cancelled on grounds stated within the SCN.

2. Learned counsel for the petitioner submits that the SCN was issued, *inter alia*, on the basis of fact finding committee constituted by respondent No.3 regarding assignment of registered Trade Mark no. 223805 ("**Trade Mark"**) to the petitioner with effect from 25.11.2013. The learned counsel states that the said Trade Mark is in the field and the fact finding committee of respondent No.3 has not come to any conclusion regarding assignment of said Trade Mark. He further states that the SCN refers to concealment of certain information that in fact related to

obligations of Metro Hi-Tech Industries from whom the petitioner had purchased rights to the Trade Mark that was assigned to it and any court orders passed against Metro Hi-Tech Industries did not encumber petitioner's rights in the Trade Mark. The learned counsel also states that clause (xii) of SRO 656(I)/2006 dated 22.06.2006 vests in respondent No.1 the authority to "suspend or not revalidate certificate for assembly or manufacturing of vehicles" and not the power and authority to cancel assembly/manufacturing certificate as stated in the title of the SCN.

3. Learned counsel for the respondents has read out para 7 of the SCN and submits that the respondent No.1 had only sought an explanation from the petitioner as opposed to passing any adverse order; that the SCN clearly stated that in the event of petitioner's failure to satisfy respondent No.1 the assembly/manufacturing certificate would be suspended and that respondent No.1 never claimed the authority to cancel such certificate; that the reply of SCN was filed by the petitioner on 14.01.2015 but that the petitioner rushed to file the instant petition before such reply could be considered by respondent No.1 and consequently the instant petition was premature and based on apprehension alone and against the settled principle that issuance of show cause notice is not an adverse order creating a grievance for purposes of Article 199 of the Constitution. In support of his contentions he relies on *"Iram Shahadi vs. Principal School of Nursing Mayo Hospital Lahore"* [2017 PLC (CS) 943], *"Deputy Commissioner of Income Tax/Wealth Tax Faisalabad vs. Messrs Punjab Beverage Company (Pvt.) Ltd."* [2007 PTD 1347], *"Syed Ali*

Abbas Gardezi vs. Government of Pakistan, etc." [2010 PLC (CS) 478] and *"Muhammad Iqbal vs. Government of Punjab"* [2015 PLC (CS) 1503].

4. I have heard the arguments of the learned counsels and perused the record.

5. It is true that it is only suspension of the assembly/ manufacturing certificate that is mentioned in para 7 of the impugned SCN as the consequence of failure of the petitioner to satisfy respondent No.1 in relation to grounds stated within the SCN even though the heading of the SCN does mention the word 'cancellation'. Para 7 clearly puts the petitioner on notice that its failure to satisfy respondent No.1 would lead to suspension of the assembly/manufacturing certificate and not its cancellation. The penalty prescribed by respondent No.1 in case of petitioner's failure to answer to the grounds stated within the SCN falls within the authority vested in respondent No.1 under SRO No. 656(I)/2006, and on this count the impugned SCN does not suffer from any jurisdictional defect.

6. It is settled law that a writ petition is only maintainable when it is filed by an aggrieved party and this forms the first component of the maintainability test under Article 199 (i) of the Constitution and that a writ is not maintainable against a show cause notice, which cannot be regarded as an adverse order. A show cause notice does not give rise to a cause of action to a person for purposes of Article 199 as held in *"Mughal-e-Azam Banquet Complex through Managing Partner v. Federation of*

Pakistan through Secretary and 4 others" [2011 PTD 2260]. The cause of action stated in this writ petition is premature falls foul of the 'Ripeness' doctrine, as enumerated by the learned Lahore High Court in *Mughal-e-Azam Banquet Complex*, in the following terms:

> *"The other aspect of the matter is that mere issuance of Show-Cause Notice does not mean than the case will invariably be decided against the petitioner and there is always a possibility that the same may be decided in favour of the petitioner. Laying challenge to a show cause notice is, therefore, no different than filing a petition on the basis of an apprehension or a speculation. Such a petition is premature and not ripe for adjudication. "Just as a case can be brought too late, ...it can be brought too early, and not yet be ripe for adjudication... until the controversy has become concrete and focused, it is difficult for the Court to evaluate the practical merits of the position of each party." The basic rational behind the "Ripeness" doctrine is "to prevent the courts through avoidance of premature adjudication, from entangling themselves, in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties." "Ripeness" requires that an issue be sufficiently formed and felt to be a justifiable controversy...As courts insist on a concrete context, that context enables them to better see the problems that they are supposed to redress. As courts insist on completed agency action, that insistence may (1) eliminate the waste of courts deciding disputes that might be mooted as an agency runs its course, (2) assure the courts of the knowledge gained from applied agency expertise, and (3) provide them with a record already developed by the agency.*

7. Learned counsel for the petitioner has not made out a case that the impugned SCN suffers from a jurisdictional defect or that respondent No.1 is coram non judice for purposes of adjudicating the impugned SCN or that the said SCN suffers from maladfide.

8. In view of the above, the instant petition is not maintainable and is consequently **dismissed** with costs.

(BABAR SATTAR)
JUDGE

Saeed