JUDGEMENT SHEET

IN THE ISLAMABADHIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Companies Original No. 01/2019

Yusra Medical & Dental College (Private) Limited through its Chief Executive/Director & others
Vs.
Securities and Exchange Commission of Pakistan through its Chairman & others

PETITIONER BY:	Mr. Aftab Rashid, Mr. Haroon ur Rashid, Mr. Feisal Rafiq Malik and Mr. Ahmad Shahzad Awan, Advocates. Mr. Babar Bilal, Advocate for the applicant in C.M No.517 of 2020.
RESPONDENTS BY:	Mr. Ibrar Saeed, Mr. Shahzad Ali Rana, Mr. Muhammad Waseem A. Rana and Mr. Adeel Peter, Advocates for SECP. Mr. Arif Khan, Advocate for PMDC. Raja Khurram Ejaz Thaqur, Advocate alongwith respondent No.3. Mr. Aqeel Akhtar Raja and Raja Muhammad Jawad Arslan, Assistant Attorney General.
DATE OF DECISION:	30.10.2024.

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BABAR SATTAR, J.- This is an application under Section 304 of the Companies Act, 2017 **("Companies Act")**, read together with Sections 301 and 302 of the Companies Act seeking the winding up of M/s Yusra Medical and Dental College Private Limited **("Company")**.

2. The learned counsel for the petitioner took the Court through the history of incorporation of the Company that was issued a certificate of incorporation on 31.10.2013. Yusra Medical and Dental College **("YMDC")** had been established under the auspices of a partnership firm named Yusra Medical and Dental College. It was registered pursuant to partnership

deed dated 20.12.2008. After the incorporation of the Company the partners became the initial shareholders of the Company. The primary purpose for the establishment of the Company as reflected in the Memorandum of Association of the Company was to impart medical and dental education and to run a hospital affiliated with the Medical and Dental College. Early on in the life of the Company disputes emerged between the shareholders. The Company also inducted new members in the year 2014. There were certain objections with regard to the induction and issuance of shares to the new shareholders as the manner in which shares were allocated and issued was not in accordance with the requirements of the company law. Ultimately, two different groups of shareholders emerged with one group being led by Brigadier Retired Dr. Mohammad Sultan Muzaffar **("SM Group")**, the other group led by Ch. Yar Muhammad **("YM Group")**. The differences between the two groups resulted in multifarious litigation amongst the shareholders and between the shareholders and the management. There was litigation with regard to the allotment of shares and with regard to the management of the Company. There was litigation with regard to who was authorized to make statutory filings on behalf of the Company. There were complaints filed with the Securities and Exchange Commission of Pakistan **("SECP")**, which undertook an investigation and produced an investigation report, which was also challenged before the High Court by the SM Group. Meanwhile, the YM Group filed an application under Section 290 of the Companies Ordinance, 1984 **("Companies Ordinance")**, which was dismissed by the Islamabad High Court

on the basis that the petitioner did not meet the threshold of twenty percent of shareholding required to file a petition under Section 290 of the Companies Ordinance (the details of this litigation is included in the memo of the petition). Finally, on 14.12.2018 the Ministry of National Health Services on the recommendation of the Pakistan Medical and Dental Council (PMDC) in pursuance of Section 22(2) of the Pakistan Medical and Dental Council Ordinance, 1962 **("PMDC Ordinance")**, accepted the scheme for adjustment of students registered with YMDC in other recognized institutions. Pursuant to exercise of power under Section 22(3) of the PMDC Ordinance the Federal Government terminated the recognition of YMDC w.e.f 14.12.2018.

3. The learned counsel for the petitioner submitted that the sole business of the Company was imparting medical and dental education to YMDC. With the withdrawal of recognition granted to YMDC and transfer of students enrolled with the YMDC to other colleges, the sole business of the Company came to an end. Further, due to shareholding disputes and litigation between shareholders the Company accumulated liabilities in the amount of Rs.700 Million and has been unable to pay salaries to faculty and staff or refund advance fees to erstwhile YMDC students and meet the other expenses of the Company. He submitted that in these circumstances, the Company was liable to be wound up in terms of Sections 301(f) and 301(k) of the Companies Act.

4. The learned counsel for SECP raised a preliminary objection that there exists the shareholding dispute between the members of the Company and disputes that had been born out of such controversy are pending adjudication before various forums. It was submitted that the instant petition was not duly authorized in terms of Section 301(a) of the Companies Act as the filing of the winding up petition had not been approved by a special resolution comprising two-thirds of the members of the Company and had been approved by three of the four original members of the Company. The said members did not comprise thirds of the members of the Company as the Company had issued and allotted additional shares in 2014 and the first such loss of shares had been recognized by SECP by registering the Form-A by the Company. He submitted that other than raising the issue of maintainability, SECP did not contest the grounds of winding up the Company on merits.

5. Respondent No.3, in person, and his counsel detailed the history of dispute between the SM Group and the YM Group. It was contended that the petition was not duly authorized as it had not been filed with the approval of a special resolution passed by the Company. It was emphasized that the SM Group had been responsible for depletion of assets and liabilities of the Company. It was, however, not contended by respondent No.3 that the Company was a going concern, was financially viable and was operating the business of a medical and dental college that it was conceived to do.

6. During the pendency of the petition various applications were received from employees, students and other claimants and notices were issued in relation to them. The Company has not seriously contested the said applications and has admitted that the Company owes dues to its faculty and staff and as well as the erstwhile students of YMDC. The applicants were therefore heard by the Court. The contention of the applicants, who fell within the category of faculty and staff, as well as the applicants that fell within the category of erstwhile students of YMDC, was also that the Company was no longer running any business and was liable to be wound up and liquidated in order to pay the debt it owes to various categories of creditors.

7. Let us first consider the objection to the maintainability of the petition. It has been contended by SECP that the petition was not duly authorized, as in order for a company to seek winding up in terms of Section 301 of the Companies Act, the petition must be approved through a special resolution, which in terms of Section 2(66) of the Companies Act means a resolution passed by a majority of not less than three-fourths of the members of the company. The objection is misconceived. Section 301 of the Companies Act lists the circumstances in which a company can be wound up. And a company having resolved through a special resolution that it ought to be wound up by the Court, as provided under Section 301(a) of the Companies Act, is only one such circumstance. The circumstances in which a company can be wound up as listed under Section 301 of the Companies Act are to be read disinjunctivly. Section 301(a) of the Companies Act merely

provides that even a solvent company can be wound up by the Court in the event that members of the company through a majority vote of three-fourths of the total members resolved that the company ought to be wound up. This is the plain reading of Section 301 of the Companies Act. It is further supported by provisions of Section 347 of the Companies Act, which provides that company can be voluntarily wound up if it passes a special resolution that the company is to be wound up. In such case too, any party can then file an application with the Court that the winding up of the company ought to be under the supervision of the Court. Thus, the threshold for voluntary winding up under Section 301(a) and Section 347(b) of the Companies Act is the same. An agreement between the members of the company, supported by a majority vote of three-fourths of members of the company, that the company ought to be wound up has nothing to do with the other circumstances mentioned in Section 301 of the Companies Act in which a company is to be wound up notwithstanding the desires of three-fourths of the members of such company.

8. It is not the contention of the petitioner that the instant petition is seeking winding up in terms of Section 301(a) of the Companies Act. The case before the Court is that the Company is liable to be wound up in terms of Sections 301(f) and 301(k) of the Companies Act. The instant petition has been filed by the Chief Executive/Director of the Company and is supported by a board resolution. It has not been contended before the Court that the board resolution has not been duly authorized. There is nothing before the Court to conclude, therefore, that the petition

is not duly authorized in terms of Section 304 of the Companies Act read with Sections 301 and 302 of the Companies Act.

9. Section 304 of the Companies Act deals with the manner in which applications for winding up are to be treated by the Court. In Section 304(e) of the Companies Act provides that, *"the Court shall not give a hearing to a petition for winding up a company by the company until the company has furnished with its petition, in the prescribed manner, the particulars of its assets and liabilities and business operations and the suits or proceedings pending against it."* The memo of the petition includes particulars of the assets and liabilities of the company together with its business operations and the litigation that embroils the Company. Section 304 of the Companies Act provides that one of the applicants that can file a petition for winding up can be the company itself. Section 304(e) of the Companies Act then prescribes the requirements that must be satisfied in the event that the company is the applicant for its own winding up. Section 304 of the Companies Act does not require that a winding up application filed by the company must be supported by a special resolution. The Court therefore finds that the objection to maintainability of the petition is without merit.

10. Nobody having appeared before the Court including, *inter alia*, SECP, the respondent shareholders, and the interveners such as faculty and staff and students, has contested the basic argument of the Company that the substratum of the Company is gone and the business of the Company stands

suspended. Article III(A) of the Memorandum of Association of the Company provides that the Company was established with the primary object of imparting medical and dental education. Running a medical and dental college is a licensed activity and can only be undertaken by an entity that is recognized and approved by PMDC. It is not contested that YMDC was recognized as a medical and dental college in 2010 and such recognition was withdrawn w.e.f 14.12.2018. The Company impugned the notification dated 14.12.2018 recalling the recognition granted to it and approving the scheme for adjustment of YMDC students in other recognized medical and dental colleges, which challenge did not succeed and the petition impugning the aforesaid notification was dismissed by the Islamabad High Court. In these circumstances, this Court is satisfied that the sole business of the Company was to establish and run a medical and dental college, the recognition for which was withdrawn by the Federal Government on the recommendation of PMDC by notification dated 14.12.2018. And the Company is no longer legally authorized to impart medical and dental education to run YMDC and or enroll students for such purpose. Consequently, the ground for winding up under Section 301(k) of the Companies Act is made out.

11. Further, while there is a dispute between the SM Group and the YM Group as to who is responsible and liable for running the Company out of business and accumulating liabilities, it is not contested that the Company is a going concern and is able to pay its debts. It is a matter of record that respondent No.3 had filed an application under Section 290 of the Companies

Ordinance alleging mismanagement and further that the Company may be unable to pay its debts. The same assertions have been made by interveners, who either as faculty members and staff have not received their salaries, or as students are claimants for recovery of fees paid by them to YMDC. In view of this, together with details of liabilities mentioned in the memo of the petition, this Court is satisfied that the Company is unable to pay its debts and the ground under Section 301(f) of the Companies Act for winding up is therefore also made out. This Court is also satisfied that the Company is not carrying out any business but has certain assets that will continue to be depleted over time. Retaining the Company in its present form will not serve the interests of either the members or the creditors and it is therefore just and equitable that the Company be wound up in terms of Section 301(i) of the Companies Act.

12. For the aforementioned reasons, the Court finds that the Company is liable to be wound up in terms of Sections 301(f), 301(i) and 301(k) of the Companies Act. This Court notes that there is a dispute amongst the members as to their respective shareholdings in the Company and the Forms filed by the Company listing its members remain contested amongst the members and have also not been recognized by SECP. This Court, however, has ample power under Section 323 of the Companies Act to rectify the register of members and cause assets of the companies to be collected and applied in discharge of the Company's liabilities after making a winding up order in view of the reports filed by the Official Liquidator. This Court shall, in exercise of its powers under Section 323 of the

Companies Act, determine the entitlement of those claiming to be members and shareholders of the Company after perusing the reports filed by the Official Liquidator in terms of Section 323 of the Companies Act, after affording any member aggrieved by such reports an opportunity to be heard.

13. For the aforementioned reasons, the petition is **allowed**. It is directed that the Company be wound up. Mr. Muhammad Aizaz Qadeer, Director Advisory and Assurance, Bellwether Consulting, Office No.1102, 11th Floor, Green Trust Tower Jinnah Avenue, Blue Area, Islamabad, is appointed as the Official Liquidator in terms of Section 315 of the Companies Act. Let the Official Liquidator file an application for approval of its proposed remuneration in terms of Section 317 of the Companies Act. Let the petitioner also make a statement of its affairs to the Official Liquidator in terms of Section 320 of the Companies Act. The Official Liquidator shall be free to convene a meeting of all individuals who claim to be shareholders of the Company as well as all individuals who claim to be creditors (in the capacity as faculty, staff, students or otherwise) in order to make a note of their claims and interests for purposes of discharge of responsibilities by the Official Liquidator.

14. Let the matter be fixed on 15.01.2025 for filing of the initial reports by the Official Liquidator as required under Section 321 of the Companies Act.

(BABAR SATTAR)
JUDGE

A. Rahman Abbasi.