

Stereo HCJ DA 38

**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT,**  
**RAWALPINDI BENCH, RAWALPINDI**  
**JUDICIAL DEPARTMENT**

**Civil Original No.04 of 2023**

*Ch. Shaukat Ali Noon and another*    **V/S**    *Tehzeb Bakers (Pvt.) Limited and others*

**J U D G M E N T**

<b>Date of hearing</b>	<b>03.10.2023</b>
<b>Petitioner(s) by</b>	Mr. Saqib Shafique, Advocate.
<b>Respondent(s) by</b>	Mr. Kashif Ali Malik, ASC with Malik Ghulam Mustafa, Barrister Gulsher Ali and Qaisar Abbas Gondal, Advocates for Respondents No.1 to 4. Mirza Muzaffar Ahmed, Chief Prosecutor alongwith Fatima Shabbir and Shahzad Ali Rana, Advocates for Respondents-SECP.

*I intentionally say modern rules, because it must not be forgotten that the rules of the Courts of Equity are not, like the rules of the Common Law, supposed to have been established since time immemorial. <sup>1</sup>*

Sir George Jessel, Master of Rolls, UK Judiciary *in re Hallett's Estate* (1880) 13 Ch D 696, 710.

**JAWAD HASSAN, J.** This petition was filed by Ch. Shaukat Ali Noon and Ch. Muhammad Arshad Noon (the “*Petitioners*”) under Section 5 read with Section 286 of the Companies Act, 2017 (the “*Act*”) seeking **annulment of** fraudulent actions of the Respondents No.2 to 4 namely Liaqat Ali Noon, Khalil Ahmed Noon and Rashid Ahmed Noon (the “*Respondents*”) for ousting them from the running affairs of management/business of the Respondent No.1/Tehzeb

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<sup>1</sup>.“Should the Law be Certain?, The Oxford Shreival lecture given in the University Church of St Mary The Virgin, Oxford on 11th October 2011 delivered by Lord Mance, Judge UK Supreme Court”.

Bakers (Pvt.) Limited (the “*Tehzeb Bakers*”) with the following prayers:

1. *Decree of declaration as against the defendants that Tehzeb (Pvt) Ltd, Defendant No.1, is owned by Plaintiffs and Defendants No.2, 3 and 4 and all the plaintiffs, Defendant No.2,3 and 4 are equal partners 20% shareholders in the business and properties of Tehzeb (Pvt) Ltd, Defendant No.1 To declare that incorporation of company/Defendant No.1 in the name of Defendants No.2, 3 and 4 is fraudulent act, hence, void abinitio illegal and unlawful To declare that name and style of Tehzeb Bakers belongs to Plaintiffs and Defendants No.2, 3 and 4. To declare the incorporation of name and style Tehzeb as trademark, patent or copy before IPO, Trademark registry in the name of Defendants No.2,3, and 4 is illegal, unlawful and by way of act of fraud.*
2. *Decree of cancellation as against Defendants No.2, 3, 4 and 5 to cancel Form No.29 of Tehzeb (Pvt) Ltd and HIBAKE (PVT) Ltd.*
3. *Decree of mandatory injunction as against Defendant No.5 to incorporate the name of Plaintiffs as Directors and equal shareholders in Form No.29 in Tehzeb (Pvt) Ltd or wind up the company by way of liquidation of business and its assets. To pass decree of mandatory injunctions as against the Defendants No.2,3 and 4 to disclose all bank account and provide the details of the transaction conducted for last six years.*
4. *Decree of rendition of account as against Defendants No.2,3 and 4 to produce all the sale records, balance sheets, profit record from 2014 to 2023 in respect of Tehzeb Bakers, and its ancillary business, Safilo and Scoop of all even branches with the recovery of profit 40 percent (Rs.240 million per month) since May 2020 till the satisfaction of decree.*
5. *To pass the decree of permanent injunctions, to restrain the Defendants No2,3 and 4 from using name Tehzeb Bakers, Tehzeb (Pvt) Ltd as their ownership.*
6. *Any other relief this Hon’ble Court may award deem fit.*

## **I. OVERTURE TO THE FACTS OF THE CASE**

2. Brief facts of the case, as per petition, are that in the year 1947 the deceased father of the “*Petitioners*” and the “*Respondents*” namely Ch. Hakim ud Deen Noon started business under the name and style of “*SMILA Bakery*” at Railway Road, Saddar, Rawalpindi. After his demise and selling out inherited land and the “*SIMLA Bakery*”, the “*Petitioners*” and the “*Respondents*” jointly started a business with

the name of “*Rahat Bakers*” at 41/A, Hospital Road, Rawalpindi. The above said name was thereafter changed to present nomenclature as “*Tehzeb Bakers*” due to filing of multiple suits between the parties. The business at the “*Tehzeb Bakers*” remained quite flourished and expanded to various branches i.e. (i) Chib Plaza Scheme-III, Chaklala, Rawalpindi, (ii) Karachi Company, Ramzan Plaza, Mangla Road Islamabad, (iii) F/11, Islamabad, (iv) Al-Rehmat Plaza, G-11, Islamabad, (v) Plot 17/18, Gol Market, I-8, Islamabad, (vi) Block A, Street No.1A, Main Road, PWD, Islamabad, (vii) G.T. Road Near Bahria Town, Phase-VII Gate, (viii) Main G.T. Road, Wah Cantt, Rawalpindi, (ix) F-10 Markaz and Commercial Market. Owing to such expansion of business and branches, the management was handed over to Khalil Ahmed Noon/Respondent No.3 who has control over all management, accounts administration of the businesses and all documents pursuant thereto were under his custody. The “*Petitioners*” claim to be shareholders/partners of “*Tehzeb Bakers*” whose respective shares have been denied by the “*Respondents*” which prompted the “*Petitioners*” to seek winding up of the “*Tehzeb Bakers*” through liquidation by filing the petition in hand.

## **II. ARGUMENTS OF THE PETITIONERS**

3. Mr. Saqib Shafique, Advocate for the “*Petitioners*” *inter alia* contended that the “*Petitioners*” are partners of “*Tehzeb Bakers*” on the basis of three partnership deeds dated 29.10.1994, 28.01.2002 and 02.12.2011 and are holders of 20% share each; that the “*Respondents*” fraudulently changed the name of M/s Hibake to “*Tehzeb Bakers*” without the knowledge of the “*Petitioners*” and registered it before the Respondent No.5/Security and Exchange Commission of Pakistan (the “*SECP*”) with fraud and collusion and such act is prejudicial to their rights of business coupled with right to due process; that all branches of “*Tehzeb Bakers*” are generating sale more than Rs.40 million on daily basis, 20% share out of which is being denied by the “*Respondents*”.

### **III. ARGUMENTS OF THE RESPONDENTS**

#### **(i) Arguments of Respondent No.5-SECP**

4. Mirza Muzaffar Ahmed, Chief Prosecutor SECP and Fatima Shabbir and Shahzad Ali Rana, Advocates filed report and parawise comments on behalf of the “SECP” and objected qua maintainability of this petition requiring threshold of 10% of shareholding of the “Petitioners” in “Tehzeb Bakers” to file an application in terms of Section 286 of the “Act” before this Court. In report and parawise comments, it has been stated that as per record M/s Hibake (Private) Limited was registered vide Certificate of Incorporation dated 20.01.2012 and vide Memorandum and Articles of Association, Khalil Ahmed Noon, Chaudhary Liaqat Ali Noon and Chaudary Rashid Ali Noon were reported as subscriber/members/directors having 5100, 4950 and 4950 shares respectively. It has further been stated that as per Form-26 dated 28.01.2013 the name of M/s Hibake (Private) Limited was changed to Tehzeb (Private) Limited vide certificate dated 18.02.2013 and presently, the above-named persons are existing shareholders of “Tehzeb Bakers”.

#### **(ii) Arguments of Respondents No.2, 3 & 7**

5. Mr. Kashif Ali Malik, ASC filed reply and *inter alia* objected to maintainability of petition on the ground that the “Petitioners” never remained members, shareholders, creditors or contributors of “Tehzeb Bakers” rather its management includes Khalil Ahmed Noon, Chairman/CEO, Ch. Liaqat Ali Noon, Director and Rashid Ali Noon, Director; that this petition lacks fulfillment of requirement of 10% shareholding in terms of Section 286 of the “Act”; that the “Petitioners” have no concern or connection with the properties owned and possessed by the “Respondents” other than the joint proprieties in respect of which suits for partition are pending before the court of competent jurisdiction; that the “Petitioners” have prepared forged, bogus and fabricated documents just to claim interest in the business of “Tehzeb Bakers”; that the “Petitioners” had no

right or interest in “*Tehzeb Bakers*” as it is under the sole proprietorship of the Respondent No.3; that the “*Petitioners*” have annexed forged and fabricated partnership deeds which were never executed by the “*Respondents*” as such the “*Petitioners*” claimed share in the business is absolutely incorrect and fallacious.

#### **IV. DETERMINATION BY THE COURT**

6. At the very outset it is observed here that the Supreme Court of Pakistan in its judgment reported as “GOVERNMENT OF SINDH THROUGH SECRETARY EDUCATION AND LITERACY DEPARTMENT and others versus NIZAKAT ALI and others” (2011 SCMR 592) has held that every Court prior to taking cognizance and adjudicating upon an issue should first resort to the question of assumption of its jurisdiction and if it comes to the conclusion that jurisdiction can be assumed only then the issue can be adjudicated upon. The question regarding assumption of jurisdiction and its exercise has very comprehensively been dealt with and decided by the Supreme Court of Pakistan in the case titled “FAUJI FOUNDATION and another versus SHAMIMUR REHMAN” (PLD 1983 SC 457). Therefore, in the light of above referred case law, the question of assuming jurisdiction is being decided at first instance.

7. The “*Petitioners*” have filed this petition under Section 5 read with 286 of the “*Act*”. Part II of the “*Act*” deals with jurisdiction of the Court and Section 5 of the “*Act*”, starts with, “the Court having jurisdiction under this Act shall be the High Court having jurisdiction in the place at which the registered office of the company is situated”. The term “registered office” is also defined under Section 21 of the “*Act*” which demonstrates that the registered office will be the one where all communications and notices would be addressed to the company. Further there is a requirement to be fulfilled by a company to notify its registered office under Regulation 4 of the Company (General Provisions and Forms) Regulations, 2018. Pertinently, there is no dispute with regard to location of registered office of “*Tehzeb Bakers*” by the “*Petitioners*” and the “*Respondents*” which is 41/A,

Hospital Road, Saddar Rawalpindi and said address of registered office is also mentioned in Form-21, placed on record by the “SECP” in its report. In view thereof, this Court has the jurisdiction to entertain petition under Section 5 of the “Act” in the light of judgment passed by this Court in “M/s MANDVIWALLA BUILDERS & DEVELOPERS AND MANGLA VIEW RESORT (PVT.) LIMITED versus M. AWAIS SHEIKH CEO MANGLA VIEW RESORT AND MANGLA GARRISON HOUSING (PVT.) LIMITED and others” (2023 CLD 885 Lahore) (Rawalpindi Bench).

7. Next core question arising out of instant proceedings and requires determination is whether the “Petitioners” are members or shareholders of “Tehzeb Bakers” and whether they have fulfilled the requirements to avail remedy under Section 286 of the “Act” which 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.*

*(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. ....”*

(emphasis added)

8. Perusal of the above-quoted provisions clearly manifests that the basic requirement for seeking intervention of this Court by a member or creditor of a company under Section 286 of the “Act” is to be a member having not less than ten percent (10%) of issued share capital of a company or be a creditor having not less than ten percent (10%) of the paid-up capital of a company. Moreover, the next requirement is that such a member or creditor has to satisfy this Court by making an application that the affairs of the company are being conducted, or are likely to be conducted, in (a) an unlawful manner, or (b) fraudulent manner, or (c) a manner not provided for in its memorandum, or (d) a manner oppressive to any of the member(s) or creditor(s), or (e) a manner that is unfairly prejudicial to the public interest. If the Court is of the opinion that the affairs of the company are being conducted, or are likely to be conducted, as aforesaid and winding up of the company will unfairly prejudice the members or creditors, the Court may make any order it thinks fit with respect to (a) regulating the conduct of the company's affairs in future, or (b) the purchase of the shares of any members of the company by other members of the company or by the company.

9. Mr. Saqib Shafique, Advocate, counsel for the “Petitioners”, when confronted, on what basis, the “Petitioners” claim themselves as members and shareholders of “Tehzeb Bakers”, he could not satisfy the Court through any document however, replied that the “Petitioners” claim it on the basis of three partnership deeds, registration of Trademark of Noon Group constituted jointly by the

“*Petitioners*” and the “*Respondents*”, before the Registrar of Trademark on 01.01.2009 and registration of trademark of business of SCOOP and SAFILO, that was the part and parcel of “*Tehzeb Bakers*”, registered before the Registrar of Trademark on 22.03.2008 and 30.09.2010. As noted that these partnership deeds are not the documents to declare the “*Petitioners*” as the members or shareholders of the “*Tehzeb Bakers*” because neither their names are reflected in the Memorandum and Article Association nor in the record of the “*SECP*” therefore, on the point, the petition is not maintainable, reasons for this would be discussed in later part of this judgments. While exercising the right of rebuttal, Mr. Kashif Ali Malik, ASC pointed out that the partnership deeds, relied upon by the “*Petitioners*” are forged and fabricated one as they have been prepared in collusion with each other just to claim interest in the business of “*Tehzeb Bakers*” whereas the actual fact of the matter is that the “*Petitioners*” never remained associated with the business of “*Tehzeb Bakers*”. They also pointed out that the building of registered office of “*Tehzeb Bakers*” was procured by the Respondent No.3/Chaudhary Khalil Ahmad Noon on twelve years lease vide Lease Deed dated 26.12.1993 and his name was registered with CBR, now FBR on 15.10.1995 and first branch of Rahat Bakers was established by him at the registered office in year 1995 and that Rahat Bakers was further registered with FBR on 15.03.1996 by said Chaudhary Khalil Ahmed Noon as a sole proprietor, pursuant to which tax returns have been filed being its sole proprietor. He further pointed out that the “*Petitioners*” have no concern, whatsoever, with the properties of the “*Respondents*” however, suits with regard to other joint properties are pending before the court of competent jurisdiction at Rawalpindi and Islamabad.

10. Be that as it may and without commenting upon the legality or authenticity of partnership deeds referred to above, the “*Petitioners*” in order to invoke Section 286 of the “*Act*” have to fulfill mandatory requirement being members and holding threshold of 10% issued

share capital of “*Tehzeb Bakers*”. Pertinently, a company consists of members, though it has its own separate legal entity and its members are the persons who constitute the company as a corporate body. In the case of a company limited by shares, the shareholders are the members. The terms “members” and “shareholders” are usually used interchangeably, being synonymous, as there can be no membership except through the medium of shareholding. Thus, in general, every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, a person may be a holder of shares by transfer but will not become its member until the transfer is registered in the books of the company in his favour and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares yet he continues to be a member of the company until the transfer is registered and his name is removed from the register of members maintained by the company. In a company limited by guarantee, the persons who are liable under the guarantee clause in its Memorandum of Association are members of the company. Likewise, in an unlimited company, the members are the persons who are liable to the company, each in proportion to the extent of their interests in the company, to contribute the sums necessary to discharge in full, the debts and liabilities of the company, in the event of its being wound-up. The person desirous of becoming a member of a company must have the legal capacity of entering into an agreement in accordance with the provisions of the Contract Act, 1972. It is to be noted that though the term ‘members’ has not been defined under Section 2 of the “*Act*” but Section 2(21) of the Companies Ordinance, 1984 (Repealed) specifies the attributes that qualify a person to be a member of a Company. The said section reads as under:

*"member" means, in relation to a company having share capital, a subscriber to the memorandum of the company and every person to whom is allotted, or who becomes the holder of, any share, scrip or other security which gives him a voting right in the company and whose name is entered in the register of members, and,*

*in relation to a company not having a share capital, any person who has agreed to become a member of the company and whose name is so entered.*

*Underlying for emphases*

11. Likewise, Section 118 of the “Act” also specifies the attributes that qualify a person to be a member of a Company which reads as:

***118. Members of a company.***—*The subscribers to the memorandum of association are deemed to have agreed to become members of the company and become members on its registration and every other person-*  
*(a) to whom is allotted, or who becomes the holder of any class or kind of shares; or*  
*(b) in relation to a company not having a share capital, any person who has agreed to become a member of the company;*  
*and whose names are entered; in the register of members, are members of the company.*

*Underlying for emphases*

12. Above two provisions of law define the modes of becoming a member of a company, firstly by subscribing to memorandum; secondly by allotment of shares and thirdly by entering their name in the register of members of a company in terms of Section 119 of the “Act”. It is pertinent to mention here that though the “Petitioners” claim themselves as members and shareholders of “Tehzeb Bakers” but none of the modes, mentioned above, which create obligation upon them, have been fulfilled for invoking Section 286 of the “Act”. Thus, the present case, however, cannot benefit from the rule expressed by the foregoing provisions of the statutes and in absence of clear statutory intendment to the contrary, the above requirements setting out the essential attributes of a member, cannot therefore, be disregarded. In this view of the matter, it is held that the “Petitioners” never remained the members or shareholders of “Tehzeb Bakers” hence, the prayers made by them cannot be acceded to.

13. During the course of arguments, Mr. Kashif Ali Malik, ASC argued that M/s Hibake (Pvt) Limited was originally registered with the SECP by the Respondent No.3/Chaudhary Khalil Ahmed Noon as

sole proprietor and thereafter its name was changed by filing application before the “SECP” by said Chaudhary Khalil Ahmed Noon as is evident from Form 26 dated 28.01.2013. It has further been stated that aforesaid Respondent also got the copyrights of “*Tehzeb Bakers*” which was duly registered in the Register of Copyrights under Serial No.26484, Registration No.35887 by the Registrar of Copyrights under Copyrights Ordinance, 1962 read with Rule 7(2) of the Copyrights Rules, 1967. It has further been added that trademark of “*Tehzeb Bakers*” was also got registered by the Respondent No.3 in the register of Trademarks vide Registration No.319709, under the Trademark Ordinance, 2001.

14. A ground of possessing trademark and copyrights registration rights in the name of the “*Petitioners*” and the “*Respondents*” have also been agitated with the stance that the “*Petitioners*” and the “*Respondents*” constituted Noon Group which was registered before the Registrar of Trademark on 01.01.2009, where the Petitioner No.1 was appointed as Executive of the Group and further the parties started other businesses of SCOOP and SAFILO that too were registered in trademark register on 22.03.2008 and 30.09.2010. Needless to add that the issues with respect to trademark or intellectual property rights cannot be settled through this petition as this issue has already been dealt with by this Court in “*NADEEM KIANI versus M/s AMERICAL LYCETUFF PVT LIMITED etc*” (2021 CLD 7) holding that “*while dealing with an application under Section 286 of the “Act”, the Court cannot look into dispute inter se the parties and this Section cannot be invoked for settlement of disputes in respect of intellectual property rights between the parties in which other forums are available under the relevant laws*”. Therefore, in view of the above said dictum laid down by this Court, this ground is turned down.

15. In the case in hand, the record submitted by the SECP verifies the stance of the “*Respondents*” by reporting that M/s Hibake (Private) Limited, having registered office at 41-A, Hospital Road,

Saddar, Rawalpindi (Annex-H Page 40) was registered vide Certificate of Incorporation dated 20.01.2012 (Annex-A Page 5) and as per Memorandum of Association and Articles of Association, Chaudhary Liaqat Ali Noon, Chaudhary Khalil Ahmad Noon, and Chaudhary Rashid Ali Noon, the “*Respondents*” were reported as subscriber/members/directors having 5100, 4950 and 4950 shares respectively. Further, as per Form 26 dated 28.01.2013 (Annex-D, Page 22), a request was made by “*Tehzeb Bakers*” after passing a special resolution under Section 39 of the Companies Ordinance, 1984 for change of the name from M/s Hibake (Private) Limited to the “*Tehzeb (Private) Limited*” which request was acceded to under Section 40 of the “*Ordinance*” vide certificate dated 18.02.2013 (Annex-E Page 25). The “*SECP*” has also reported that vide Form 29 dated 25.10.2021, received in its office on 31.03.2022, following appointments were reported:

<b>Sr.No.</b>	<b>Name</b>	<b>Designation</b>
1	Khalil Ahmad Noon	Director
2	Chaudhary Liaqat Ali Noon	Director
3	Chaudhary Rashid Ali Noon	Director
4	Khalil Ahmed Noon	Chief Executive Officer

16. Notably, M/s Hibake (Private) Limited was registered with the “*SECP*” on 20.01.2012 by the Respondent No.3/Khalil Ahmed Noon as sole proprietor but interestingly, the “*Petitioners*” did not agitate the matter before the concerned forums at the relevant time regardless of the fact that a remedy of rectification of register does lie with this Court under Section 126 of the “*Act*”, detailed interpretation of which alongwith its pathology, anatomy and judicial anthology has been given by this Court in “*ABDULLAH KHAN USMANI versus SECURITY & EXCHANGE COMMISSION OF PAKISTAN and others*” (2022 CLD 821). Furthermore, the “*Petitioners*” could approach the “*SECP*” regarding fraud of the “*Respondents*” in the affairs of “*Tehzeb Bakers*” and could get information through online service/SDMS portal provided by the SECP or alternatively by

lodging complaint or writing an email or even through the phone provided for resolving complaints or even could contact through fax; but none of these methods were ever used by the “*Petitioners*” to strengthen their version and they remained mum for almost ten years and now this petition has been filed on 21.03.2023 which is also hit by period of laches.

17. It is noted that the documents annexed with this petition do not show that the affairs of the Company are being conducted in an unlawful and fraudulent manner because the annexed documents includes the deeds of partnership, letter of trademark registry and agreement between the parties (Annex-G Page 31); hence the “*Petitioners*” have not brought on record anything which would constitute and lead to the conclusion that they are the members or shareholders of “*Tehzeb Bakers*” or that its affairs are being conducted in violation of Section 286 of the “*Act*”.

18. In view of above, this petition is without any merits and is, therefore, **dismissed**.

**(JAWAD HASSAN)  
JUDGE**

***Approved for Reporting***

*Announced in Open Court on 19.12.2023*

**JUDGE**

*Usman\**