

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN GILGIT**

**Before:- Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.**

**Mr. Justice Javed Iqbal, Judge.**

**C. Misc. No. 126/2016**

**In**

**C. Appeal No. 79/2016**

**In**

**C.P.L.A. No. 114/2016**

Pak China Sost Port Joint Stock Company (Pvt) through Yuan Jiamin  
Chairman Pak China Sost Port Company and 02 others.

**Petitioners**

**VERSUS**

1. Zafar Iqbal Chairman Silk Route Dry Port Trust resident of Passu  
Gojal District Hunza and 01 other.

**Respondents**

**Present:-**

1. Mr. Amjad Hussain Advocate for the petitioners.
2. Malik Shafqat Wali, senior Advocate alongwith Mr. Rehmat Ali,  
Advocate-on-Record on behalf of the respondents.

**Date of Hearing:- 30-06-2017.**

**Date of Detail Judgment:- /08/2017.**

**JUDGMENT**

**JAVED IQBAL, J.....** This instant Judicial Misc. Petition for leave to appeal under section 305 and 309 of Companies Ordinance has been directed against the impugned judgment dated 25-10-2016, passed by learned Chief Court Gilgit-Baltistan, whereby the learned Chief Court Gilgit-Baltistan vide his judgment No. Jud. Misc. 01 of 2015 has accepted filed by the respondents.

2. Briefly facts of the petition, the respondents filed Jud. Misc. 01 application against the petitioners, on the plea, that, basic contract between inter-se has expired and for winding-up the joint venture company. That, a contract was signed between Xinjiang Jiuling Transport Company (private) and Silk Route Sost Dry Port Gilgit on 21<sup>st</sup> February 2002. Both companies incorporated with Registrar Joint Stock Companies Gilgit-Baltistan on 17-08-2004, in name of M/S Pak-China Joint Venture Sost Dry Port Trust Company private limited. Basic agreement was signed between inter-se in the year 2002, which the period was 10 years and same has expired. Fresh agreement on expiry of old one has not been executed. All the business carried out is illegal and without existence of fresh contract. The Chairman of Pak-China venture Company has failed to submit, the statutory report with the Registrar of Stock Companies, despite repeated letters to chairman of Pak-China venture Company. The chairman also failed to call upon general meeting after more than 02 years. The terms of office direction of company as per article 180 of Companies Ordinance is for three years, while the directors in JXC from Chinese side are five years. That, on 28<sup>th</sup> February 2014, in annual general meeting of Sost Dry Port Trust, a resolution has been unanimously passed by the general body and resolves that, any contract, resolution and meeting for extension of contract between the partners, without approval and supervision of Government of Pakistan shall be illegal, ineffective and has no force. Despite this, the petitioner again approached the respondents for negotiations or arbitration for settlement of dispute but in vain. Lastly the petitioner has only option to knock the door of jurisdiction of learned Chief Court Gilgit-Baltistan, and requested to windup the Pak-China venture Company.

3. The learned counsel of petitioners Mr. Amjad Hussain has contended that, the learned Chief Court Gilgit-Baltistan has quoted irrelevant laws to justify the impugned judgment. Court has failed to understand the true essence of law and its jurisprudence. The learned counsel asserts that, Chief Court Gilgit-Baltistan lacks jurisdiction in the matter. Securities and Exchange Commission of Pakistan is only competent forum to adjudicate the matter. Moreover, in accordance of the company conferred by the article of Association of Company. The board of directors has unanimously passed resolution for extension of the of the term of company by amend the articles of association, resultantly the term has been extended up to years 2022. Without challenging the decision of board of directors before any competent forum respondents has no locus standi to file the application for winding of company, and the respondent No. 1 has wrongly invoked the jurisdiction in learned Chief Court instead availing remedy from relevant forum, that is Securities and Exchange Commission of Pakistan, in the light of above discussion, the impugned judgment being coram non-judice and is liable to be set-aside.

4. On the other hand the learned counsel Malik Shafqat Wali, senior Advocate on behalf of the respondents contended that, the impugned judgment passed by the learned Chief Court Gilgit-Baltistan is well-reasoned and on solid grounds, all the terms and conditions have been discussed in detail judgment of Chief Court Gilgit-Baltistan, and he also contended that, a resolution has been passed unanimously by general body, that any contract resolution and meeting for extension of contract inter-se, without approval and supervision of Government of Pakistan shall be illegal. The learned Chief Court Gilgit-Baltistan has rightly windup the joint venture and rightly appointed two senior

Advocates M/S Haji Mirza Ali and Mr. Muhammad Hussain Shehzad as liquidators. There is no any ambiguity in judgment of Chief Court Gilgit-Baltistan.

5. We minutely perused the record available on case file, and impugned judgment passed by learned Chief Court Gilgit-Baltistan with the assistance of arguments advanced by learned counsel of both the parties. We reproduce the chapter XII of Contract of Co-operative Business Operation. Article 33, Terms, Termination and Liquidation:-

The joint venture may be dissolved in following conditions,

(1) The terms of co-operation is expired.

(2) This joint-venture can be dissolved before expiration of the contract with the decision by the board of Directors in case of following conditions found.

(a) The joint venture cannot be operated further due to heavy loss.

(b) The joint venture cannot be operated further due to any party's breach of any provision of the contract.

(c) The purpose of joint-venture cannot be reached, and investment cannot be returned.

6. On the basis of above clause of contract, the General Body meeting Board of Directors, of Joint Venture Sost Dry Port held, and unanimously passed the resolution.

7. In the light of above resolution, the Chairman Silk Route Dry port Sost, filed above Jud. Petition before Chief Court Gilgit. The learned Chief Court Gilgit-Baltistan has passed exhaustive order, and discussed

almost every point, ultimately the learned Chief Court has ordered to windup M/S Pak-China Joint Venture Sost Dry Port and appointed official liquidators in Article of association of Joint Venture Company. Moreover in chapter X Articles of Association of Joint Venture the article 55 to 65 clearly indicates about liquidation and termination of company. The learned counsel of petitioners, first time in the instant appeal, asserts, that, the above matter for dissolution of joint-venture company be adjudicated before competent forum, the learned Chief Court Gilgit-Baltistan is not proper forum. This point should be agitated before trial court i.e. Chief Court by the petitioners. The petitioners cannot raise or agitated this factum in appellate forum.

8. We minutely examined the deed of agreement and Articles of Associations of Joint-venture Company. The agreement and Articles of Association has silent about Securities and Exchange Commission of Pakistan is only forum to adjudicate the matter. The next objection of the petitioners that, the Chief Court Gilgit-Baltistan lacks jurisdiction in the matter. We also studied the Companies Ordinance 1984. In said ordinance in section 7, empowers to High Court to adjudicate and decide all controversies arising in relation thereto, in respect of which no jurisdiction was conferred on any other authority. We also perused the judgments of various superior courts of Pakistan, in which, the courts have holds, that, the Securities and Exchange Commission of Pakistan has no authority or forum to adjudicate the matters, only the High Court has special power to determined and adjudicate the matters. We minutely examined the deed of agreement and Articles of Associations of Joint Venture Company. The agreement and Articles of Associations has silent about Securities and Exchange Commission of Pakistan is only forum to adjudicate the matter. The next objection of

the petitioners that, the Chief Court Gilgit-Baltistan lacks jurisdiction in the matter. Jurisdiction to adjudicate and decide controversies arising in relation thereto, in respect of which no jurisdiction was conferred on any other authority, like Joint Registrar, Registrar or Securities and Exchange Commission. The jurisdiction of high court under the Companies Ordinance with regard to companies within its jurisdiction is special and exclusive and no other court has jurisdiction. Jurisdiction conferred by section 7 is confined to matters which are expressly covered by the ordinance itself, such as winding to those not expressly provided for by the act. Section 7 is reproduced as under:-

**7. Jurisdiction of the Courts.- (1) The Court having jurisdiction under this Ordinance shall be the High Court having jurisdiction in the place at which the registered office of the company is situate.**

**Provided that the Federal Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any civil Court to exercise all or any of the jurisdiction by this Ordinance conferred upon the Court, and in that case such Court shall, as regards the jurisdiction so conferred, be the Court in respect of companies having their registered office within the territorial jurisdiction of such Court.**

**(2) For the purpose of jurisdiction to wind up companies, the expression "registered office" means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.**

**(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a Court other than the High Court or a Court empowered under sub-section (1).**

Citation about jurisdiction of security & exchange commission, quoted. CLD 2003 293.

9. The upshot of above discussion, we deem it proper to uphold the impugned judgment of learned Chief Court Gilgit-Baltistan the appeal is meritless and liable to be dismissed. The learned counsel for the petitioners could not point out any infirmity and illegality in the impugned judgment passed by learned Chief Court Gilgit-Baltistan, vide No. Judicial Misc. 01 of 2015 dated 25-10-2016. We are not inclined to grant leave. The leave to appeal is accordingly refused. However, the petitioners, may approach any legal forum for redressal of their grievances, if they so advised. This appeal is hereby dismissed. Parties to bear their own cost.

10. This appeal is dismissed in above terms.

**JUDGE**

**CHIEF JUDGE**

**Whether the case is Fit to be reported or Not?**