



PAKISTAN STOCK EXCHANGE LIMITED

PSX/N-394

N O T I C E

April 05, 2019

Reproduce hereunder letter No. CJPL/ACS/PSX/384 dated April 02, 2019 received from **Crescent Jute Products Limited**, alongwith **Order Issued by SECP for initiating Winding-Up Proceedings against the Company**, for information of all concerned.

CRESCENT GROUP



Crescent Jute Products Limited

1st Floor, 65-XX, Khayaban-e-Iqbal Road, Phase - III, DHA,
Lahore - 54792, Pakistan. Tel : + 92 42 37186438-9

CJPL/ACS/PSX/ 384

April 02, 2019

Mr. Hafiz Maqsood Munshi,
Manager Companies & Securities Compliance - RAD
Pakistan Stock Exchange Limited,
Stock Exchange Building, Stock Exchange Road,
KARACHI.

Subject: Order Issued by SECP for initiating Winding-Up Proceedings against the Company.

Dear Sir,

Reference to your letter no PSX/Gen-1383 dated March 29, 2019 on above mentioned subject.

We wish to inform you the company has filed writ petition no 225428/2018 before the Lahore High Court Lahore and status quo to be maintained ordered passed by the LHC. Copy of Writ Petition and LHC order are attached for your information and record please.

Thanks and regards

For Crescent Jute Products Limited


Chief Financial Officer

Enclosures As above

1/23

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 2957/2018

Crescent Jute Products Limited, through Chief Executive Officer, Mr. Humayun Mazhar,
having its registered office at 1st Floor, 65-XX, Khayaban-e-Iqbal Road, Phase III, DHA,
Lahore.

.... Petitioner

Versus

1. **Federation of Pakistan** through Secretary Ministry of Law, Justice and
Parliamentary Affairs, third Floor, R & S Block, Pak Secretariat, Islamabad.
2. **Ministry of Law, Justice and Parliamentary Affairs** through Secretary, third
Floor, R & S Block, Pak Secretariat, Islamabad.
3. **Executive Director**, Corporate Supervision Department (Company Law Division),
Securities and Exchange Commission of Pakistan (SECP), Islamabad.
4. **Appellate Bench**, Securities and Exchange Commission of Pakistan (SECP),
Islamabad.
5. **Registrar**, Company Registration Office, Lahore.

.... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:

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1. That the addresses of the Parties have been correctly supplied in the heading of the Petition, which are sufficient for the purpose of process, and all communication which may be issued by this Honorable High Court.
2. That the Petitioner (hereinafter "Petitioner Company") declares that the subject matter of the instant petition falls within the jurisdiction of this Honorable Court.

ISSUES

- I. That the instant Petition has been filed to safeguard the legal and constitutional rights of the Petitioner Company, and challenges, inter alia:
 - i. Section 33 subsection 1 (c) (hereinafter "Impugned Law") of The Securities and Exchange Commission of Pakistan Act, 1997 (hereinafter "SECP Act"), whereby Petitioner is barred from filing an appeal against Order of Executive Director/Respondent No. 3, granting sanction to Respondent No. 5, to initiate winding up proceedings against the Petitioner Company.
 - ii. Issuance of the order dated 17th March, 2017 (hereinafter the "Impugned Order", copy of which has been attached herewith as Annexure A) by Executive Director/Respondent No. 3 of the Security and Exchange Commission of Pakistan (SECP) as well as the order-in-appeal dated 17th May, 2017 (hereinafter the "Order dated 17.05.2017", copy of which has been attached herewith as Annexure B) of Respondent No. 4/Appellate Bench; and
 - iii. The inactions/inability of Respondents, being public functionaries, to ensure that the legal and codal formalities concerning the issuance of the Impugned Order are met.
(Such actions/ inactions/ inabilities of the Respondents are collectively hereinafter referred to as "Impugned Actions".)

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- II. That, in particular, the instant Impugned Actions of the Respondents violate Articles 2-A, 4, 5, 9, 10-A, 14, 18, 25, 37 and 38 of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter the "Constitution");
- III. That the instant Petition also seeks this honorable court's intervention to ensure that Respondents fulfill their statutory obligations under the Securities and Exchange Commission of Pakistan Act, 1997 (hereinafter the "SECP Act", copy of which has been attached herewith as Annexure C), as well as the rules and regulations made thereunder; and
- IV. That the instant Petition also seeks this honorable court's intervention against the Impugned Actions of the Respondents, for being in violation of, inter alia, the principles of natural justice and due process, as well as established principles of our jurisprudence.

FACTUAL BACKGROUND

3. That the instant Petition is being filed through Mr. Humayun Mazhar, Chief Executive Officer of Crescent Jute Products Limited/Petitioner Company, who is fully aware of the facts of the case and has been authorized by the Petitioner Company, vide its Board Resolution/Authority Letter to institute legal proceedings concerning the instant matter. A Copy of the Board Resolution/Authority letter has been attached herewith as Annexure D.
4. That, by way of background, the Directors of Petitioner Company, were issued a show-cause notice dated 9th January, 2017, bearing No. CSD/ARN/282/2016-2194-95.
5. That the SCN dated 09.01.2017 alleged, inter alia, that the Petitioner Company is liable to be wound up under section 305(c) as it has suspended business for a whole year.
6. That the Petitioner Company, vide its letter dated 23rd January, 2017 (hereinafter the "Reply dated 23.01.2017", copy of which has been attached herewith as

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Annexure E), submitted a response to the SCN dated 09.01.2017. The Reply dated 23.01.2017 clearly stipulated, inter alia, the judicial definition/interpretation of the word 'suspend' in cases of companies/business, and prayed that the SCN dated 09.01.2017 be "withdrawn", as the Petitioner Company has not been suspended and has in fact made "concerted efforts to, inter alia, revive and restructure the business" of the Petitioner Company.

7. That thereafter, Respondent No. 3 fixed the date i.e. 2nd February, 2017 for personal hearing on the issues mentioned in the SCN dated 09.01.2017. However, a short adjournment was sought on behalf of the Petitioner Company in order to prepare and adequately assist Respondent No. 3 regarding the same.
8. That, Respondent No. 3 graciously accepted the request of the Petitioner Company, and fixed the case for hearing on 9th March, 2017.
9. That on 9th March, 2017, the Petitioner Company submitted its written reply to the show cause notice. The Petitioner Company's submissions substantiated, inter alia, the following facts:
 - i. The Petitioner Company has not, in strict sense, suspend the business; and
 - ii. The Petitioner Company has, with the prior approval of its shareholders, decided to diversify its business and is in the process of making the requisite arrangements with the banks and other financial institutions; and
 - iii. That the Petitioner Company is settling its liabilities with the creditors and have deposited Rupees Sixty (60) Million in the court for this purpose; and
 - iv. The Petitioner Company is actively in the process of selling its assets under the authorization of a special resolution; and
 - v. The Petitioner Company is active on the stock exchange; and
 - vi. The Petitioner Company shall draw its prospective future plans after the settlement of its existing liabilities; and
 - vii. That it is the basic right of shareholders (members) and/or creditors to decide when to close or wind up the Petitioner Company and this decision cannot be made by Respondent No. 5, specifically when the Petitioner Company is complying with all the statutory requirements.

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10. That, however, Respondent No. 3, after hearing the matter, on 17th March, 2017 passed the Impugned Order, authorizing, inter alia, "the Registrar, Company Registration Office, Lahore to present a petition for winding up of Crescent Jute Products Limited"

11. That aggrieved by the decision/observations of Respondent No. 1, the Petitioner Company filed an appeal against the Impugned Order before Respondent No. 2.

12. That at the time of the filing of the Appeal, Registrar of Respondent No. 4, raised a preliminary objection that the matter cannot be heard as there lies no appeal under section 33 of the SECP Act against the sanction given to the Registrar, to start/initiate legal proceedings.

13. That the Petitioner Company agitated the issue, vide its letter dated 25th April, 2017 (hereinafter "Letter dated 25.04.2017", copy of which is attached herewith as Annexure F), that the maintainability of appeal has to be decided by Respondent No. 4, and not the Registrar. Pursuant thereto, Registrar acceded to the Appellant's request and the case was fixed for hearing on 11th May, 2017, before Respondent No. 4.

14. That, on 11th May, 2017, the Petitioner Company argued inter alia, before Respondent No. 4, that the:

- i. Impugned Order is void- ab- initio as the Respondent No. 5 is not authorized to seek sanction for winding up of Petitioner Company if the Company has suspended its business. Furthermore, the word "suspended" is not defined in the law and cannot be construed in the narrow meaning; and
- ii. Section 309 (c) of the Companies Ordinance 1984 (hereinafter "Companies Ordinance", copy of relevant provisions are attached herewith as Annexure G) limits the power of Respondent No. 5 to file the winding up petition only after carrying out the investigation into the affairs of the company; and
- iii. The Registrar (Respondent No. 5) does not have the power to file the winding up petition in case the Petitioner Company has suspended its

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business, therefore, the officer does not derive that power; and

- iv. The word "Sanction" against which appeal cannot be filled under the SECP Act does not, inter alia, means every sanction, but is limited to sanction given for investigation and inspection under the relevant provisions.

15. That on 17th May, 2017, Respondent No. 4/Appellate Bench upon hearing the arguments, passed the Order dated 17.03.2017 against the Petitioner Company, holding therein, inter alia, that the Appeal is not maintainable in terms of the bar contained under the Impugned Law, thus, the same "cannot be admitted". In this regard, it is imperative to note that the arguments of the Petitioner Company were not fully recorded in the Order dated 17.03.2017 and a bare perusal of the same reveals that the same is not a reasoned/detailed and speaking order.

16. That it is essential to note that the copy of Impugned Order was received by the Petitioner Company on 29th May, 2017. Moreover, the legal counsel of the Petitioner Company, vide letters dated 22nd June, 2017 and 6th July, 2017, had requested Respondent No. 4 to provide a certified copy of the Order dated 17.03.2017, which was subsequently, delivered to the counsels on 6th July, 2017. Copy of the letter dated 06.07.2017 has been attached herewith as Annexure H.

17. That, additionally, the Petitioner Company being aggrieved of the Impugned Order, filed a commercial appeal No. 152292/2018, titled Crescent Iute Products Ltd. Vs. Executive Director etc., before this honorable Court. In this regard, it is pointed out that the same, in view of bar contained in section 33 of SECP Act, was withdrawn with "permission to file a Constitutional petition", which was granted by the single bench of this honorable Court. A copy of order dated 29.03.2018, is attached herewith as Annexure I.

18. That, importantly, per section 33 of SECP Act, no appeal is provided against the Impugned Order granting sanction to Respondent No. 5 to present winding up petition before the High Court. Furthermore, section 34 of SECP Act clearly stipulates that appeal before the High Court can only be filled against the decision/order passed by the appellate bench. In this regard, joint reading of both the above said provisions, it becomes manifestly clear that no appeal is provided

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(12)

against the order of Respondent No. 3 granting sanction to Respondent No. 5 to present winding up petition before the High Court.

19. That in light of the above, the Impugned Order as well as the Impugned Law, is unconstitutional, discriminatory, in violation of the due process of law, ultra vires of the provisions of the Constitution, as well as relevant laws and rules and regulations made thereunder, thus unsustainable in law, and therefore being challenged, inter alia, on the following:

GROUND

A. That the Impugned Actions of Respondents, particularly the Impugned Order is arbitrary, illegal, against the principles of natural justice, discriminatory, in violation of the due process of law as well as the letter and spirit of the Constitution.

B. That, specifically, the issuance of Impugned Order, Order dated 15.05.2017 along with the Impugned Law, have no basis in law, are in gross violation of the spirit, mandate and provisions of the SECP Act, Ordinance, and the rules and regulations made thereunder, and are liable to be declared illegal.

A. That the Impugned Law along with issuance of Impugned Order is in violation of established tenets of equity, and the constitutional mandate of "equality" and "justice", as commanded by Article 2-A of the Constitution, and are therefore liable to be declared unconstitutional.

C. That the Impugned Actions of the Respondents have been carried out in violation of the process prescribed under the relevant law, and thus amounts to a violation of due process of law as enshrined in Article 4, 5, 8, 10-A, and 25 of the Constitution.

D. That Respondent No. 2, while passing the Order dated 17.03.2017, has failed to appreciate that operating, running, closing, or suspending the affairs of business is the basic right of shareholder (members) of the Company and not the regulatory body i.e. SECP.

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E. That the Respondents have not given any consideration or findings concerning the interpretation of the phrase "*or suspends its business for a whole year*". Moreover, the Respondents have failed to interpret and apply the legal meaning of the word 'suspend'. In the absence of the particular meaning the word has to be construed liberally in favour of the Petitioner Company. Reliance is being placed upon Muhammad Ayub Vs. Abdul Khaliq, reported as 1990 MLD 1293 SC(AJ & K) and Abdul Rehman etc. Vs. UBL Pakistan, reported as PLD 1997 Kar. 62.

F. That the Respondents have failed to appreciate the fact that each clause has to be assessed individually to assess the "suspension of business" if for any reason it has to be construed as closure of business.

G. That the Respondents have failed to correctly interpret section 305 of the Ordinance, which for ease of reference is reproduced below:

"Circumstances in which company may be wound up by Court":-

A company may be wound up by the Court:-

- (a) *If the company has, by special resolution, resolved that the company be wound up by the Court;*
- (b) *If default is made in delivering the statutory report to the registrar or in holding the statutory meeting or any two-consecutive annual general meetings;*
- (c) *If the company does not commence its business within a year from its incorporation, or suspends its business for a whole year;" [Emphasis Added.]*

A bare perusal of the aforementioned provision reveals that the use of the words "*may be wound up*", confers discretionary power to wind up the company, which has to be exercised keeping in view the settled principles of our jurisprudence.

H. That, pertinently, the rules of statutory interpretation demonstrate that the use of the word "*may*", in a statute, connotes to liberal interpretation, however, the word "*shall*" implies a mandatory command of law. In this context, by using the word "*may*" in section 305 of the Ordinance, the legislature has conferred a discretionary power upon the courts, which is exercised where all hope of revival of a company

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is lost, and that every effort to save a company is made before winding up the same.

- I. That it is pertinent to mention that Section 309 of the Ordinance does not empower Respondents to authorize the filing of winding up proceeding under Section 305(c) of the Ordinance. Moreover, Article 18 of the Constitution empowers the Petitioner Company to take decisions regarding its business, and the word "may" used in the Section 305 of the Ordinance, re-enforces that right of operating the business as guaranteed by the Constitution is left to the members/shareholders to decide.
- J. That, also, the Respondent No. 2 while issuing the Impugned Order has not reproduced the entire submissions of the legal counsel of the Petitioner Company, thereby failing to abide by the principles of natural justice as well as due process, guaranteed under Article 10-A of the Constitution.
- K. That, winding up of a company is a discretionary power of the Court. In this regard, it is pointed out that the general rule/ policy of the court is to allow revival of the company even if the same, at the moment, is unable to meet its obligations. Reliance is placed on 1997 MLD 1966.
- L. That, when Petitioner Company is fulfilling all the legal/statutory requirements, and neither the creditors/investors nor the other stakeholders of the Petitioner Company have come forward to seek winding up of the company, in such case, no reason exists for the Respondents to seek winding up of the Petitioner Company, specifically when all the stakeholders are satisfied with the restructuring/revival of the Petitioner Company.
- M. That, pertinently, general rule is that the Court's will not make an order unless the same is satisfied that there has been an intention on the part of the company to abandon its business or carry it on. Reliance is placed on (1986) 55 LTR 314. The Petitioner Company has no such intention, and as such, the illegal Impugned Actions are liable to be declared illegal.

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N. That, it is settled principle of law that an order of winding up of company is not passed when the petitioning shareholder is opposed by majority of the shareholders and there is a genuine intention to proceed with the business. In this respect, it is vital to note that not a single shareholder/investor/creditor has come forward to oppose the restructuring of Petitioner Company. In addition, it can be said that Petitioner Company has ceased to carry on business only because it has given up part of its business. Therefore, the Impugned Actions are liable to be declared illegal. Reliance in this regard is placed upon Halsbury's laws of England, Fourth Edition, Volume 7, Para 998.

O. That, in case reported as 2008 CLD 465, it was held that where management of the company is paying of liabilities, seeking credit lines from banks and raising constructions, the same are acts in furtherance of business, and business will be deemed to be suspended, when there is no business activity at all or when there is complete cessation of business for a certain period.

P. That right of appeal is a substantive right. To this end, it is submitted that depriving the Petitioner Company from challenging the validity of Impugned Order, on the premise that the Impugned law restricts the Petitioner Company from exercising the same, amounts to violation of fundamental right to "due process" as ordained under Article 10-A of the Constitution.

Q. That the Impugned Actions of Respondents, specifically the issuance of Impugned Order, also violate the Petitioner's right to Freedom of Business, as enshrined under Article 18 of the Constitution. It is essential to state that the Impugned Actions of the Respondents are adversely affecting Petitioner Company's right to progress further in business due to the discriminatory, illegal, unreasonable and unfair Impugned Order. Consequently, the illegal Impugned Actions of the Respondents infringe the Petitioner's right to freedom of "business", as guaranteed under Article 18 of the Constitution.

R. That the Impugned Actions of Respondents, specifically the issuance of Impugned Order, are discriminatory, prejudicial to the rights of Petitioner, in blatant violation of Article 25 of the Constitution. The targeting and singling out of Petitioner Company as is evident from the discriminatory treatment meted out to

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the Petitioner company where as several reported decisions/orders passed by the Respondent No. 4, amounts to an express violation of Article 25 of the Constitution. It is pertinent to mention here that mandate of law is that all persons shall be treated alike under similar circumstances, unless reasonable classifications can be made/supported. The Impugned Order is, therefore, a blatant violation of Article 25 of the Constitution. As such, the Impugned Actions of the Respondents single out and target the Petitioner Company; and therefore, are liable to be declared unconstitutional on this score alone.

S. That the Impugned Actions of the Respondents also offend Articles 37 and 38 of the Constitution, and therefore violates the express Principles of Policy, enshrined in the Constitution. In fact, the State is under a positive obligation to take all steps necessary to fulfill the spirit encapsulated in the Principles of Policy, specifically when the same are substantiated by express Fundamental Rights. As such, in unequivocal terms, these Principles of Policy, which manifest the aspirational spirit of our fundamental rights, require the State to ensure the "well-being" of all citizens, without discrimination, in accordance with law. Therefore, the Impugned Actions of the Respondents violate the spirit of Articles 37 and 38 of the Constitution, and the same should thus be declared unconstitutional.

T. That the consolidated Interim Financial Statements, for the nine months ended on 31st March, 2018 (hereinafter "Financial Statement", copy of which is attached herewith as Annexure J), exhibits that the Petitioner Company procured an interest free loan amounting to Rs. 7 Million, which is a step towards revival of the Petitioner Company. As such, the Impugned Actions are liable to be set aside. A copy of Memorandum and Articles of Association of the Petitioner Company, is attached herewith as Annexure K.

U. That Order dated 17.05.2017, passed by Respondent No. 4, is neither speaking/detailed nor well-reasoned. In this respect, per section 24-A of General Clauses Act, 1897, every administrative, quasi-judicial or judicial authority is required to record its findings on all relevant facts and the law, and then decide the matter through a well-reasoned and speaking order. To this end, it is significant to note that Order dated 17.05.2017 being without reasons/details, is liable to be declared illegal on this score alone.

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V. That any action as drastic as taking away a fundamental right (by the executive), i.e. grant of sanction to present winding up petition against the Petitioner Company, could not be allowed without adhering to the principles of law, natural justice, and due process. As such, the Impugned Actions of the Respondents are liable to be declared illegal and unconstitutional.

W. That the Islamic principle of Adl, Qist and Ehsan warrants that an aggrieved person should be entitled to challenge the correctness of the decision which results in deprivation of livelihood. To this end, the Impugned Law, to the extent that the same bars the Petitioner Company from filing an appeal against the Impugned Order is in violation of the Islamic principles of Adl, Qist and Ehsan. Reliance is placed upon PLD 1988 SC 202; PLD 1989 SC 6; PLD 2010 FSC 229, 2009 MLD 1162.

X. That Article 227 of the Constitution not only requires that all existing laws should be brought in conformity with the Injunctions of Islam but also prohibits enactment of any law which is against the injunctions of Islam. In this respect, it is submitted that Impugned Law is in violation of Article 227 of the Constitution.

Y. That the Petitioner has approached this honorable Court with bona fide intention. Furthermore, no other adequate and efficacious remedy is available to the Petitioners, except the invoking of the constitutional jurisdiction of this Honorable Court, hence the instant Petition.

Z. That the Petitioner reserves the right/seeks permission of this honorable Court to raise further ground(s) during the arguments before this honorable Court.

P R A Y E R

In view of the aforementioned facts and circumstances, it is most respectfully prayed:

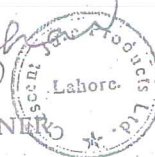
- a) That the Impugned law and the issuance of Impugned Order by the Respondents, be declared unconstitutional, for being in violation of Article 2A, 4, 5, 8, 9, 10-A, 14, 18, 25, 37 and 38 of the Constitution;
- b) That Respondent No's 1 and 2 may kindly be directed to amend the Impugned Law, to bring it in conformity with Article 10-A of the Constitution, by providing a right to appeal against the order granting sanction to the companies' registrar to present winding up petition before the High Court;

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- c) That issuance of Impugned Order of the Respondents be declared unlawful, void, being in violation of the provisions of the:
- i. Constitution;
 - ii. SECP Act;
 - iii. Ordinance; and
 - iv. Established principles of our jurisprudence;
- d) That, during the pendency of instant Appeal, the Respondents be restrained from taking any further action pursuant to the illegal Impugned Orders, as the same will otherwise amount to a violation of the provisions of the Constitution and the relevant provisions of the applicable law;
- e) Any other relief that this honorable Court deems fit in the circumstances of the case may also be awarded.

Yazid
Yazid
 PETITIONER



Through

Saad Rasool

SAAD RASOOL

(LL.M Harvard)

Advocate High Court

CC No. PLH - 42788

S. S. Ghuman

SHAN SAEED GHUMAN

(LL. B Honors Portsmouth England)

Advocate High Court

SAAD RASOOL LAW ASSOCIATES

House No. 222, Garden Block,

Garden Town,

Lahore

CERTIFIED:

Per instruction this is the first Writ Petition filed by the Petitioner on the subject. *Saad Rasool*
 ADVOCATE

14/23

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13A.

CERTIFIED:

There is no other alternative and efficacious remedy available to the Petitioner.

Saad Rasool
ADVOCATE

15/23



To: Mr. Abid Hussain
Executive Director
Corporate Supervision Department
Company Law Division.
Securities & Exchange Commission Of Pakistan
7th Floor, NIC Building, 63 Jinnah Avenue,
Islamabad.

Subject: **In the matter of Crescent Jute Products Limited.(CJPL)**
Order in respect of Show Cause Notice No. CSD/ARN/282/2016-
2194-95 Dated January 09, 2017.

Dear Sir:

Please refer to the above subject, and the subsequent appeal filed before the Appellate Tribunal BY CJPL which was dismissed being "not maintainable in terms of section 33 of the SECP ACT."

The order of the Appellate Bench was challenged by the CJPL through a writ petition No. 225428-18/2018. The Honorable Judge of the Lahore High Court has admitted the writ petition and has also ordered to maintain the "Status Quo" (the order is attached for your record.)

You are requested to follow the court order in letter and spirit and direct the Registrar, Company Registration office, Lahore not to act on the sanction given under the subject order.

Regards,


Syed Ahmad Ashraf (Advocate)

Cell # 0336-4851701

Saad Rasool Law Associates

222 Garden Block, Garden Town

Lahore.

Dated: 19-07-2018

Lahore Office
222-Garden Block, Garden Town, Lahor.
Tel: +92-42-35442640-41, Fax: +92-42-35442642

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www.srlaw.com.pk

16/23

For Private (21)

IN THE LAHORE HIGH COURT, LAHORE
Examiner
Supply Section
General High Court, Lahore

C.M.NO. 01-18 W.P.NO. 225428-18
Present MR.JUSTICE Jawad Hassan 8/7/18

Petition under Section 151 CPC

PARTY NAME, PRAY AND ORDER ATTACHED

18/7/18

17/23

Form No.HCJD/C-121

ORDER SHEET**IN THE LAHORE HIGH COURT, LAHORE**
JUDICIAL DEPARTMENT

Case No. WP No.225428/2018

Crescent Jute Products VS Federation of Pakistan etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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16.07.2018 Mr. Saad Rasool and Shan Saeed, Advocate for the Petitioner.
Ms. Saadia Malik, Assistant Attorney General.

Counsel for the Petitioner has challenged the orders dated 17.03.2017 and 17.05.2017 passed by Respondent No.3. He states that against that orders the Petitioner has filed appeal before the Appellate Bench of the SECP and the Appellate Bench has dismissed the appeal under Section 33 of the SECP Act, 1997 ("the Act"). Against that he filed an appeal under Section 34 of the Act, before the Company Judge of this Court (Commercial Appeal No.152292/2018), but the Court directed the Petitioner to withdraw the appeal and file writ petition. Hence this petition.

2. Counsel states that the orders passed by the Respondents No.2 and 3 are in violation of Section 305 read with Section 309 of the Companies Ordinance, 1984 (the "Ordinance"). He states that the Respondent No.3 issued show-cause notice against the Petitioner in terms of Sub-Section 305(c) of the Ordinance regarding suspension of his business for whole year. This show cause notice was

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STRENGTH
Exhibitor
Copy Supply Section
Lahore High Court, Lahore

18/23

issued on his own motion by the SECP because it violates the fundamental principles of commercial and company law because the Petitioner is a Public Limited Company functioning since 1964 and listed at the Pakistan Stock Exchange. He states that they manufacturing jute products including jute bags, but the Respondents have suspended the business and winding up the Petitioner's company. He states that doctrine of winding up in the Company Law has put strict criteria to wind up the Company, if there is sheer violation of the Ordinance. He states that there was no complaint against the Petitioner and he is willing to start his business and recently injected certain amounts which can be verified from their Company in terms of Financial Statement dated 31.03.2018. He relies on JOINT REGISTRAR OF COMPANIES VS Sh. Fazal Rehman & SONS LTD. (2008 CLD 465) wherein it has been held that "*Mere running of company into losses would not justify a winding up order.*" It has been further held that "*Court would lean in favour of a company to be a going concern. Winding up order would be justifiable only when there was no hope that company would recommence its business.*"

He further relies on ALLIANCE MOTORS (PVT) LTD case (1997 MLD 1966) and (PLD 1999 SC 1).

3. Contentions raised need consideration. Issue notice to the Respondents for 10.09.2018.

ATTESTED
Copy Supply Section
Sd/-
Clerk High Court, Lahore

19/23

No.225428/2018

CM No.1/2018

(24)

4. Notice for the aforesaid date. Meanwhile status quo to be maintained.

(Jawad Hassan)
Judge

ZAHOOR

TRUE COPY
In Case No. 225428/18
Examiner: SIS (Writ Branch)
Lahore High Court, Lahore.

Continued Copy Supply Section
18/7/18

Petition No. 5381
Case No. 12/12/18
Date of Presentation of Application
Copy Fee 7
Urgent Fee
Registration and Process Fee
Court Fee in 14
Total
Name of Petitioner
Date of Receipt of File
Date of Completion of Copy
Date of Delivery of Copy

18/7/18

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(1)

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IN THE LAHORE HIGH COURT, LAHORE

225428

Writ Petition No. _____/2018

Crescent Jute Products Limited, through Chief Executive Officer, Mr. Humayun Mazhar,
having its registered office at 1st Floor, 65-XX, Khayaban-e-Iqbal Road, Phase III, DHA,
Lahore.

.... Petitioner

Versus

1. Federation of Pakistan through Secretary Ministry of Law, Justice and
Parliamentary Affairs, third Floor, R & S Block, Pak Secretariat, Islamabad.
2. Ministry of Law, Justice and Parliamentary Affairs through Secretary, third
Floor, R & S Block, Pak Secretariat, Islamabad.
3. Executive Director, Corporate Supervision Department (Company Law Division),
Securities and Exchange Commission of Pakistan (SECP), Islamabad.
4. Appellate Bench, Securities and Exchange Commission of Pakistan (SECP),
Islamabad.
5. Registrar, Company Registration Office, Lahore.

.... Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth:

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3. That the balance of convenience and administration of justice favor consideration, and requires an answer to the averments/grounds of the Writ Petition against the illegal Impugned Actions of the Respondents.
4. That the Respondents are public functionaries, who derive their authority from and under the law, and the onus of ensuring enforcement of fundamental rights is higher in their case than it is for others. The Respondents, who are obligated to act squarely within the parameters of law, have acted in sheer violation of settled principles of the natural justice, against the letter and spirit of the law as well as the Constitution.
5. That the interest of justice demands that, during the pendency of the main Writ Petition, the operation of the Impugned Orders be suspended, otherwise the Petitioner Company will not be able to revive its business.
6. That in case the interim relief mentioned above in Para No. 6 of this application is not granted, the same shall be prejudicial to the interests of the Petitioner, and the Petitioner will suffer irreparable loss.

PRAYER

It is, therefore, most respectfully prayed that the instant Application may kindly be accepted and, during the pendency of the main Writ Petition, the operation of the Impugned Orders may kindly be suspended.

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Any other relief deemed fit by the honourable Court in the circumstances of the case may also be granted.

Saad Rasool
APPLICANT
Produce Ltd.
Lahore.

Through:

Saad Rasool
SAAD RASOOL
(LL.M Harvard)
Advocate High Court
CC No. PLH - 42788

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