ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI
Suit No. B-63 of 2012

Date	Order with signature of Judge

1.For hearing of CMA No. 11582/2012
2.For hearing of CMA No.14655/2015
3.For hearing of CMA No.14656/2015
4.For hearing of CMA No.15066/2015
5.For hearing of CMA No.15067/2015
6.For hearing of CMA No.15605/2015
7.For hearing of CMA No.15606/2015
8.For hearing of CMA No.16325/2015
9.For hearing of CMA No.16324/2015
10.For hearing of CMA No.16891/2015
11.For hearing of Official Assignee Reference No.13/2022
12.For hearing of Official Assignee Reference No.14/2025
13.For order as to non-prosecution of CMA No.19128/2021

30.04.2025

Mr. Khawaja Shamsul Islam, Advocate for the Plaintiff.
M/s. Muhammad Ali Akbar & Hameed Bukhsh, Advocate for the defendant No.1
Ms. Heer Memon, Advocate for the UBL Bank.
Mr. Hashmatullah Aleem, Advocate for the Bank Al Falah.
Mr. Baqar Raza, Advocate for the Intervener.

1-10&13. Adjourned.

11-12. Through the instant order Official Assignee's Reference No. 13/2022 and 14/2022 shall be adjudicated and necessary orders shall be passed thereon.

Brief facts pertaining to the said reference are noted hereinafter. Vide order dated 07.04.2015 the learned Official Assignee was directed to sell the pledged goods. Subsequently, an offer was received and the same was accepted which is reflected in the order dated 28.08.2015. The total consideration for the said sale was agreed, amount of which is reflected in Official Assignee Reference No.13/2022. Thereafter, the matter came up for further orders. It is also reflected in the said reference that vide letter dated 03.10.2022, the scheme

of arrangement in petition bearing JCM No.9/2020 under Section 279 and 283 of the Companies Act, 2017 ("**Act, 2017**") was placed before the Official Assignee. The said scheme was allowed by this Court in the above-mentioned petition vide order dated 24.11.2021. It was requested that the amount as reflected in the Reference No. 13/2022 be released in accordance with the scheme of arrangement.

Learned counsels M/s. Muhammad Ali Akbar, Hameed Bukhsh, Heer Memon, Hashmatullah and Baqar Raza, advocates have jointly argued that the scheme of arrangement was approved by this Court in the above-mentioned petition and the said scheme was not impugned by the Plaintiff bank. They have further stated that considering the said scheme was not impugned before any competent forum, therefore, it is not open to creditors who are alien to the scheme of arrangement, to dispute the same at this stage and forum. Learned counsel has relied upon the following judgments: -

- ***Paramount Spinning Mills Limited and others***[1]
- ***Messrs Pakland Cement Limited*** [2]

Conversely, learned counsel on behalf of the Plaintiff bank has stated that the banking suit has been preferred under Section 9 of the Financial Institutions (Recover of finances) Ordinance, 2001 ("**FIO, 2001**") and leave to defend application is pending adjudication. He has further stated that if the sale consideration as reflected in the above-mentioned reference of the Official Assignee is released to the "Agent", pursuant to the scheme of arrangement, the suit which is pending adjudication will be frustrated. He further argued that the Plaintiff bank has not participated in the above scheme and therefore, entire sale consideration which is lying with the learned Official Assignee may be released

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[1] 2020 CLD 1443
[2] 2002 CLD 1392

to the Plaintiff bank. He has further argued that there are orders in the instant banking suit and the same cannot override the orders of an order of another learned Single Judge of this Court. Learned counsel has thereafter invited my attention to salient features of the scheme of arrangement which reflects that the Plaintiff bank in the instant suit is also a creditor. He has specifically referred to schedule "F" of the scheme of arrangement which refers to the pendency of the instant suit. He further referred to schedule "C" and in this regard states that the liability of the Plaintiff bank in the instant suit is clearly laid down and recognized in the said scheme. He has, thereafter, relied upon Section 3 & 4 of the FIO, 2001 and stated that the same will override other laws as the same is special law which determines all the disputes between the financial institution and the customer. He has averred that he will be running from "pillar to post" for satisfaction of his potential decree in the instant suit if the amount lying with the Official Assignee is released to the "Agent" and the Plaintiff Bank will be left with a "paper decree" without any possibility of its realization. He has further contended that the said scheme of arrangement is contrary to the provisions of Section 279, 280, 283 and 285 of the Act, 2017. He has lastly referred to order dated 01.07.2015 in which it was ordered that the sale proceeds may not be released to the Plaintiff bank without permission of this Court but shall be considered at the time of release/distribution of the sale proceeds.

I have heard all learned counsels and perused the record. I have specifically examined the references which are being adjudicated vide the instant order. It is clear that the scheme of arrangement was sanctioned by this Court in petition bearing JCM No. 9/2020 and the same was sanctioned vide order dated 24.11.2021. At this juncture, I have examined the scheme of arrangement which defines UBL as the Agent in clause 1.1. The scheme coined under the Act, 2017 is peculiar and envisions that once a scheme of arrangement has been approved

and sanctioned by the competent Court it is not open to any other creditor and/or alien to the proceedings to raise objections on the same. My discretion in respect of the reference filed by the Official Assignee is restricted only to adjudicate as to whether the amount which is lying with the Official Assignee can be released to the Agent mentioned in the scheme of arrangement. It is not open for me to examine the validity and legality of the said scheme. The arguments advanced by the learned counsel for the Plaintiff bank in this reference merit no consideration. A similar issue came up in the case of **Paramount Spinning Mills Ltd** (supra). The contention of the learned counsel in the cited judgment (only reproduced to exhibit the similarity in the argument) and findings of the Court are reproduced below: -

> *"4…….He has also referred to the provisions of F.I.O. and has contended that this being a special law, must override any other provisions of Companies Act and in terms of the F.I.O., no such Scheme can be approved, whereas, it is only the Banking Court(s) having jurisdiction, who can decide the cases in accordance with F.I.O. Insofar as the judgment of the learned Division Bench in the case of Gulshan Weaving Mills Limited (Supra) as relied upon by the learned Counsel for the Petitioner No.1 is concerned, he has argued that on facts the same is not squarely applicable, whereas, even the said judgment supports the case of the objectors. He has prayed for dismissal of the Petition."*
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> *20. In view of hereinabove facts and circumstances of this case I am of the view that the objections of Bank of Punjab cannot be sustained as the law is already settled in our jurisdiction through the case of Gulshan Weaving Mills Limited (Supra), which is a Division Bench judgment of this very Court, whereas, even in the English and Indian Jurisdiction the same principle applies that if once a Scheme of arrangement or a compromise is agreed upon by a class of creditors and a resolution to that effect is passed by them, then the said Scheme is binding on all including the non-consenting creditors. Since all requisite formalities as prescribed in law have been completed and complied with by the petitioners in accordance with the Companies Act, 2017 read with the Companies (Court) Rules, 1997, and I am satisfied that the petitioners have made out a case, therefore, the petition is allowed as prayed. The Petitioners to act further pursuant to the grant of this petition in accordance with the approved Scheme in question."*

It is apparent from the reading of the above quoted judgment that learned Single Judge of this Court after examining various judgments from multiple jurisdictions, has held that once a scheme of arrangement is agreed

upon by a class of creditors, the said scheme is binding on all non-consenting creditors. The learned Single Judge in this regard placed reliance on the case of ***Gulshan Weaving Mills Limited v. Al Baraka Bank Limited*** [3] where the learned Division Bench was pleased to overrule identical objections and the scheme was allowed by the learned Division Bench of this Court. The arguments of the learned counsel for the Plaintiff bank are similar to the arguments raised by the learned counsel in the judgment of **Pakland Cement Limited** (supra). The said arguments are reflected in paragraph number 5 and are reproduced below: -

> *"5(b)under section 27 of the Financial institutions (Recovery of Finances) Ordinance. 2001 (hereafter referred to as "the 2001 Ordinance"), any proceedings. judgment or decree passed by the Banking Court cannot be revised, reviewed or recalled by any other Court- except in appeal under section 22 of the 2001 Ordinance. Through the present petition the petitioner seeks modification and alteration of the orders/judgments/decrees/ proceedings finalized by the Banking Court. As such any assumption of jurisdiction under section 284 of the 1984 Ordinance would violate the finality clause contained in the 2001 Ordinance. Further reliance is placed upon section 7(4) of the 2001 Ordinance which provides that no Court other than the Banking Court shall have jurisdiction in relation to the matters falling within the scope of the Banking Court including execution of decrees. It is contended that as the matter concerns execution of the decrees, the Company Judge has no jurisdiction. Reliance is also placed upon section 4 of the 2001, Ordinance which gives the said Ordinance an overriding effect on all or any other law inconsistent therewith. In particular reference is invited to the following judgments, wherein it has been contended that a special law overrides general law and since in the present case the 2001 Ordinance is a special law it overrides the 1984 Ordinance which is a general law.*

After recording the contention of the learned counsel, the learned single judge held as under: -

> *8. The second objection of Mr. Mandviwala that any assumption of jurisdiction in the present case would violate sections 27, 7(4) and 4 of 2001 Ordinance also seems out of order. Through the present scheme of Arrangement recoveries of outstanding debts is being facilitated with the collateral attempt to keep the petitioner alive. There is nothing in the Banking Laws or the Civil Procedure Code which mandates that no attempt should be made to keep a Company alive. In the present scheme of Arrangement there is also no attempt to reduce the decretal amounts or the amounts owed by the petitioner to Banks/DFIs and Financial Institutions.*

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[3] 2018 CLD 737

As such the present proceedings can by no means be construed as being in conflict with the decrees/orders or judgments passed by the Banking Court or any appeals thereto. As such sections 27, 7(4) and 4 of the 2001 Ordinance neither stand violated nor there is any conflict thereof with section 284 of the 1984 Ordinance. This is not the first time when the Legislature in its own wisdom has provided for banking laws to co-exist with the provisions in the companies jurisdiction for rehabilitation and restructuring. Under the Companies Act, 1913 sections 153 and 153-A had provided for facilitation of arrangements and compromise in a manner similar to section 284 of the 1984 Ordinance. While the Companies Act, 1913 occupied the field sections 3, 6(4) and 11 of the Banking Companies (Recovery of Loans) Ordinance, 1979 co-existed which provided for overriding of the Banking Laws, ouster of jurisdiction of other Courts in matters to which the Special Court (i.e. Banking Court) had jurisdiction and finality attached to the orders/judgments/decrees of the Special Court i.e. Banking Court, respectively, in a manner similar to the arrangement envisaged under the 2001 Ordinance. Upon the advent of the 1984 Ordinance, the Banking Tribunals Ordinance, 1984 was also brought in the field which also provided for overriding effect of the banking laws (section 3), ouster of jurisdiction of other Courts (section 5(3)) and finality attached to orders of the Banking Tribunal including execution proceedings (sections 10 and 11). However, the law-makers in their own wisdom enacted section 284 of the 1984 Ordinance and the two schemes co-existed. Even under the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 section 3 contained the overriding clause, section 7(4) provided the ouster clause and section 27 provided the finality clause. The law-makers legislated the Banking Law regime without any amendment in the scheme of section 284 of the 1984 Ordinance. Even in India, under the Indian Companies Act, 1956 sections 391, 392, 393 and 394 provide for enforcing a scheme of arrangement for the purposes of reconstruction and rehabilitation of companies. In the Province of East Pakistan v. Siraj-ul-Haq Patwari PLD 1966 SC 854 the Honourable Supreme Court has been pleased to observe that laws should be interpreted in a manner so as to be saved rather than destroyed. Unless and until there is a clear cut conflict which is irreconcilable, the Courts should lean in favour of a harmonious interpretation so as to avoid any conflict and keep the laws operating in their occupied fields in order to avoid any provision becoming redundant or surplus (see PLD 1963 SC 663). The interpretation offered by the learned counsel for the objectors would leave section 284 of the 1984 Ordinance and the entire scheme for any restructuring and rehabilitation redundant. There is no conflict between the banking laws and the scheme of section 284 of the 1984 Ordinance. The two co-exist as they have co-existed before. As such the objection regarding jurisdiction is hereby repelled.

I have already observed above that whilst hearing the abovementioned reference I cannot delve into the scheme of arrangement as the same was sanctioned by this Court in its company jurisdiction under the Act, 2017. In regards to the objection of the learned counsel for the Plaintiff bank in respect of the instant suit pending adjudication, it is noted that that leave to defend

application is yet to be heard and decided. The Plaintiff bank, subject to instant suit being decreed in their favor, can file for execution under Section 19 of the FIO, 2001 and, therefore, I disagree with respect to the learned counsel for the Plaintiff bank that the decree and the entire exercise will be in vain. Further, it was open for the Plaintiff Bank to impugn the said scheme under Section 6 (14) of the Act, 2017. The same is reproduced below: -

> *6. Procedure of the Court and appeal.-----*
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> *(14) Any person aggrieved by any judgment or final order of the Court passed in its original jurisdiction under this Act may, within sixty days, file a petition for leave to appeal in the Supreme Court of Pakistan:*
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> *Provided that no appeal or petition shall lie against any interlocutory order of the Court.*

The omission of Plaintiff bank to impugn the said scheme of arrangement in this regard is fatal and therefore, leave me with no option but to direct the Official Assignee to release the amount lying with him to the "Agent" after deduction and adjustment of the amount mentioned in Reference No.14/2025. Order accordingly.

JUDGE

Aadil Arab