

**ORDER SHEET**  
IN THE HIGH COURT OF SINDH, AT KARACHI

**HCA No.182 of 1997**

*( Kamaluddin Qureshi through Legal Heirs v. Messrs Ali International Company )*

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Date	Order with Signature(s) of Judge(s)
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For Hearing of Main Case

**03.03.2026**

Mr. Muhammad Nishat Warsi, Advocate for Appellants No.1 to 5  
Mr. Anwar Hussain, Advocate for Appellant No.6  
Mr. Muhammad Riaz, Advocate for Respondent  
Mr. Mushtaq Ahmed Laghari, Official Assignee

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It is necessary to set forth a brief background of the present Appeal, which is preferred against the Order dated 12.11.1996 (“**Impugned Order**”), declining the request/Application of the Appellant [*Kamaluddin Qureshi, the predecessor-in-interest of the present Appellants*] to remove/delete Plot No.ST 12/4, Sector 37-K, Korangi, Karachi measuring 2483 square yards – the “**Subject Property**” from the liquidation proceeding. After the passing of the winding up Order on 2.12.1990, the said Application, being CMA No.1617 of 1993 (“**Subject Application**”), was presented on 27.9.1993 and was dismissed by the above Impugned Order.

In the intervening period, Kamaluddin Qureshi passed away and he was succeeded by the Appellants, who are represented by Mr. Anwar Hussain and Mr. Muhammad Nishat Warsi, Advocates.

Initially, a large number of appeals in different cases of winding up from different High Courts of Pakistan were preferred before the Hon’ble Supreme Court, including Civil Appeal No.1045 of 1999, which was filed by late Kamaluddin Qureshi (predecessor of the Appellants) against the Judgment dated 5.10.1998 of this Court, [dismissing the instant Appeal in limine, in view of Section 10(1) of the then Companies Ordinance, 1984 (**CO**)]. The three (3) member Bench of the Apex Court was of the view that orders similar to the Impugned Order are challengeable before the appellate forum of High Courts, and therefore, the appeals were remanded to respective High Courts, including the present High Court Appeal. This decision is reported as ***Kamaluddin Qureshi v. Ali International Company (PLD 2009 SC 367)*** – “***Qureshi case***”.

While this Appeal remained pending, in the intervening period, another development took place, when a five (5) member Bench of the Hon’ble Supreme Court in ***Shoaib Ullah Cheema and Others v. Additional***

**Registrar of Companies, SECP and Others (2019 SCMR 306) – “Cheema case”**, took the view, that any Decision/Order post winding up order, is challengeable before the Supreme Court, in terms of Section 10(1) of CO, as ruled in the case of **Ibrahim Shamsi v. Bashir Ahmed Memon (2005 SCMR 1450) – “Shamsi case”**; and consequently, held that the afore-referred **Qureshi** case is not a good law and overturned it.

On the last date of hearing, we had sought a report from Karachi Development Authority (“KDA”) through the Official Assignee about the current status of the Subject Property. The KDA’s letter dated 16.2.2026 is submitted and is part of the Official Assignee’s Report – wherein it is stated that lastly, the Subject Property was sold out to Syed Muhammad Ali, the erstwhile Director of the Respondent Company (namely, M/s. Ali International Company), but mutation in his favour could not take place due to non-payment of Transfer Fee and dues; this being the latest factual position.

The gist of the arguments of both the learned Advocates for the Appellants is that **Cheema** case (*Supra*) is not binding on this Bench, because **Qureshi** case, in favour of the present Appellant, has based its ratio decidendi by following the case of **Brother Steel Mills v. Mian Ilyas Miraj (PLD 1996 SC 543) – “Brother Steel Mills”** case, handed down by a five (5) member Bench. *Secondly*, the Appellant’s predecessor-in-interest purchased the Subject Property from Syed Muhammad Ali through a Sale Agreement, even before the liquidation proceeding was filed. *Thirdly*, the Subject Application for deletion of the Subject Property was prior in time and *lastly*, the present Appellants were not heard before the Hon’ble Supreme Court while handing down the Decision in **Cheema** case.

The Appeal is opposed by the learned Official Assignee, who has placed reliance on above **Cheema** case, and relevant documents are also appended with his Reference.

Arguments heard and record perused.

The winding up Order was passed on 2.12.1990, whereas the Subject Application [*ibid*] for deletion of the Subject Property was filed on 27.9.1993 (Page-29 of the Appeal File), and the Impugned Order is of 12.11.1996. The contention of the Appellants’ Counsel is incorrect and contrary to record, because the Subject Application was preferred admittedly after passing of the winding up order, so is the Impugned Order, which means that the present

Case falls within the **Category ii** [*highlighted to add emphasis*] of Paragraph 5 of the **Cheema** case, which laid down as under\_

“5. The superior courts of Pakistan while interpreting the scope of section 10(1) of the Ordinance in the aforementioned case law have laid down the following principles:-

- i. An appeal against an order of winding up only lies before the Supreme Court under section 10(1) of the Ordinance while all other orders in a winding up proceedings are appealable before the Division Bench of a High Court under section 10(2) of the Ordinance [Cases (1); (11), (13) and (15)];
- ii. **An appeal against an order of winding up and any order or decision passed subsequent to the winding up order of a company shall lie before the Supreme Court in terms of section 10(1) of the Ordinance [Cases (2), (9), (10), (14), (16), (17), (18), (19), (20) and (21)];**
- iii. Orders passed under section 10(2) of the Ordinance in exercise of the original civil jurisdiction of a High Court are appealable before a Division Bench of the High Court [Case (3)]; and
- iv. Section 10(1) of the Ordinance does not debar a company from making an application before the Company Judge for setting aside an ex parte winding up order passed against it [Case (12)].

It is pertinent to note that in some cases, appeals were filed before the Supreme Court under section 10(1) of the Ordinance against post-winding up orders. Similarly, appeals were also filed before the Division Bench of the High Court under section 10(2) of the Ordinance against orders passed subsequent to the winding up order. But in these cases, the Supreme Court or the Division Bench of the High Court did not address the issue of maintainability of the appeals [Cases (4), (5), (6), (7), (8) and (11)].”

We have considered the **Brother Steel Mills** case (*Supra*). In the said Judgment, the factual issue emanated from Sections 265 and 290 of the CO, *inter alia*, relating to the investigation and oppressive management vis-a`-vis different companies of Ittefaq Group; whereas, in the present Appeal we are looking at the controversy that undisputedly has arisen in post winding up proceeding, governed in terms of Section 297 and 305 of the CO. After an exhaustive discussion, the Supreme Court (in **Brother Steel Mills** case) observed that since no winding up order was passed by the learned Lahore High Court, therefore, Section 10(1) [*supra*] would not be attracted, and instead, Section 10(2) was applicable, under which an appeal lies before the High Court.

Although in **Brother Steel Mills** case, the learned Bench comprised of same number of Judges [five members, as in **Cheema** case], but, it has not laid down any rule, about which the above Judgment in **Cheema** case has

taken a contrary view; thus, it cannot be termed as per incuriam (as contended by the Appellants' Counsel). Secondly, in **Cheema** case, the Judgment of **Qureshi** case has been overturned which is of three (3) member Bench, and not **Brother Steel Mills**; thus, the arguments of the Appellants' Legal Team are misconceived in nature and misleading too.

As far as the right of hearing of the Appellants is concerned, obviously the Judgment in **Cheema** case was given between the parties to the dispute, with which, admittedly the present Appellants had no nexus. The entire Case Law developed on this issue of Section 10 of **(CO)** was examined and summarized in Paragraph 5 (*ibid*), with the result stated in Paragraph 15, namely, that the Judgment handed down in **Shamsi** case, is held to be a good law.

The upshot of the above discussion is that this Appeal cannot be heard or decided by this Court in view of the **Cheema** case and is accordingly **dismissed** along with the pending Applications. The Appellants may seek their remedy, if any, under the law.

**JUDGE**

**JUDGE**

FAIZAN/\*