THE HIGH COURT OF SINDH, KARACHI

[COMPANY BENCH]

J.C.M. No. 05 of 2021

[Shamim Feroz & another versus Feroz Feeds Limited and another]

Petitioners	:	Shamim Feroz and another through Mr. Abdul Moiz Jaferri, Advocate.
Respondents 1, 3, 6 & 7	:	Nemo.
Respondents 2, 4 & 5	:	Almas Feroz and two others through M/s. Shahan Karimi and Muhammad Siraj Alam, Advocates.
Dates of hearing	:	17-03-2025, 16-04-2025, 07-05-2025, 20-05-2025 & re-hearing on 17-01-2026.
Date of Announcement	:	20-01-2026

JUDGMENT

Adnan Iqbal Chaudhry J. - The petition is under section 304 of the Companies Act, 2017 **[the Act]** for winding-up Feroze Feeds Ltd. **[FFL]**, a public unlisted company with authorized capital of Rs. 13,000,000/- divided into 1,300,000 shares of Rs.10 each, and paid-up capital of Rs. 5,884,000/- divided into 588,400 shares of Rs.10 each. The Petitioners are shareholders of the company.

2. Shares of FFL are held between families of four brothers, namely Petitioner No.1 (Shamim Feroz), Respondent No.2 (Almas Feroz), Javid Feroz and late Khalid Feroz. Petitioner No.2 and Respondent 3-5 are sons of the four brothers. Petitioners hold 25% shares. The remaining 75% shares are held by Respondents 2-5, 7 and others. Respondent No.2 is the CEO, whereas the Petitioners and Respondents 3-5 and 7 are directors of the company.

3. When established, the principal line of business of FFL was manufacturing animal feed. Such operation closed in the 1990s' whereafter the company started exporting towels and importing industrial chemicals. Per the Petitioners, this business also ceased, and the company is dormant for some years now. The main asset of

FFL is Plot No. 30-31, measuring 04-00 acres, Sector-16, Korangi Industrial Area, Karachi, which includes the feed plant and the towel manufacturing unit of FFL.

Pleadings:

4. On 26.10.2015, the four brothers entered an MoU to divide joint businesses, including those of FFL. Per the Petitioners, while other joint businesses were so divided, a division of the assets of FFL remained pending; that dispute arose between the Petitioners and Respondents 2-5 from the year 2015 onwards when the latter started to oppress the Petitioners. It is alleged that Petitioners were not given share in the sale proceeds of moveable assets of the company; that a loan of Rs. 260 million owed to the company was adjusted surreptitiously; that AGMs were not held, and statutory returns were not filed with the SECP; that accounts were suppressed from the Petitioners; that on 26.03.2018, the Petitioners were even stopped from entering the business premises, and on one occasion they were also assaulted by Respondent No.4. On the intervention of a third-party, the brothers then entered an agreement dated 02.07.2018, whereby they agreed to a private division of FFL's Plot No. 30-31 into four plots, one for each brother to carry on separate business.

5. It was contended by the Petitioners that Respondents 2-5 stalled the division of assets of FFL as they went about to conceal assets of the company in the books; that the Petitioners complained of mismanagement and oppression to the SECP, so also for not holding AGMs, not filing annual returns, and denying the Petitioners access to the books of the company; that by letter dated 20.03.2020, the SECP declined to interfere, stating that remedy against oppression and mismanagement was before the Court, hence the petition. It was further alleged that Respondents 2-5 were using the company's assets for personal gain, and that they had let the company's premises to 'Sylvana Pakistan' without any consideration to the company. In these facts, it was pleaded that FFL is liable to be wound-up on

grounds enumerated in clauses (b), (c), (d) and (g)(iii)(iv)(v) of section 301 of the Act.

6. Though a reply was not filed for FFL, the Respondents 2, 4 and 5 (CEO and two directors) filed a counter-affidavit to contest the petition. Apart from a legal objection to the maintainability of the petition (discussed *infra*) said Respondents pleaded:

(i) that audited financial statements and annual returns of FFL were filed with the SECP from time to time and copies of the financials were provided to the Petitioners; that AGMs were also held regularly except during the covid pandemic;

(ii) that FFL was not dormant, rather the management was working on a scheme to reorganize the company and revive business, however, the Petitioners were not cooperating in that regard;

(iii) that pursuant to MoU dated 26.10.2015, the towel business of FFL was taken over by Javid Feroz, and the other brothers were compensated; therefore, the Petitioners cannot claim any profit from that business; that 'Sylvana Pakistan' was the business of Javid Feroz and Respondent No.4, operating at FFL's plot with authorization of the Board of FFL, including the Petitioners; that pursuant to agreement dated 02.07.2018, the Petitioners too carried on separate business at FFL's plot in the name and style of 'Sylvana Garments';

(iv) that the allegation of oppression and mismanagement was false, and that 75% shareholders were against winding-up;

(v) that the Petitioners have time and again disconnected power supply to sub-plots in possession of the Respondents 2, 4 and 5.

7. It is stated by the SECP that though FFL did not file statutory returns within the prescribed time, most of the defaulted returns were filed subsequently *albeit* some returns were under objection.

Submissions:

8. The SECP and Respondents 2, 4 and 5 produced financial statements, annual returns, including Form-A, submitted by FFL to the SECP from 2016 to 2021, so also notices by FFL for holding AGMs. In view of these documents, Mr. Moiz Jaferii, learned counsel for Petitioners confined submissions at the hearing to the following grounds of winding-up under section 301 of the Act:

> "(g) if the company is—
> (iii) conducting its business in a manner oppressive to the minority members or persons concerned with the formation or promotion of the company; or
> (iv) run and managed by persons who fail to maintain proper and true accounts, or commit fraud, misfeasance or malfeasance in relation to the company; or
> (v) managed by persons who refuse to act according to the requirements of the memorandum or articles or the provisions of this Act or failed to carry out the directions or decisions of the Commission or the registrar given in the exercise of powers under this Act;"

In addition, Mr. Jaferii urged winding-up on the just and equitable ground in clause (i) of section 301 of the Act *viz.* "if the Court is of opinion that it is just and equitable that the company should be wound up".

9. Learned counsel for Petitioners submitted that it was evident from auditors' reports that FFL was dormant and that it holds assets in surplus of debts, therefore, as shareholders, the Petitioners have a right to seek its winding-up; that the agreement dated 02.07.2018 was intended only as an interim arrangement till accounts of FFL could be finalized to arrive at the actual entitlement of each brother; however, Respondents 2-5 seek to perpetuate their hold over the assets of FFL to continue separate businesses; that to avoid accountability, the Respondents 2-5 have ousted the Petitioners from the affairs of the

company; that FFL's financial statements suppress the amount due from related parties as those are businesses controlled by Respondents 2-5; that AGMs were held only on paper; that annual returns were filed with delay; all of which give grounds for winding-up the company under clause (g)(iii)(iv) and (v) of section 301 of the Act. He submitted that nevertheless, it was just and equitable to wind-up the company under clause (i) section 301 of the Act.

10. Mr. Shahan Karimi, learned counsel for Respondents 2, 4 and 5 submitted at the outset that the petition was not maintainable as conditions in section 304(1) of the Act for a winding-up petition by contributories, were not satisfied. Without prejudice to that, he submitted:

(i) that winding-up was a remedy of last resort; that alternate remedies were available to Petitioners in sections 256 and 286 of the Act, none of which were availed;

(ii) that averments that the company did not file financial statements and statutory returns with the SECP or that it did not hold AGMs, were contradicted by the SECP;

(iii) that the just and equitable ground for winding-up cannot be urged as it is not pleaded;

(iv) that under the MoU dated 26.10.2015, Petitioner No.1 had agreed that he would not claim any profit from the towel business of FFL which is being carried on by Respondents 2, 4 and 5; that by the agreement dated 02.07.2018, Petitioner No.1 had also agreed that each brother could carry on separate business within FFL's plot; that Petitioners themselves had carried on separate business as 'Sylvana Garments' which eventually closed-down; that the motive behind the petition was to see that Respondents 2-5 also do not succeed in their separate business; that though a scheme of reorganization under section 279 of the Act was envisaged to demerge FFL

into four separate units, one for each brother, it was the Petitioners who refused to go forward with the same; therefore, the allegation of oppression is an afterthought and frivolous;

(v) that majority shareholders are still trying to revive the feed mill of FFL; that the company has substantial assets which can be used to carry on other business as well; and that a temporary closure of business is no ground for winding-up if the company can be revived.

11. In rebuttal, Mr. Jaferii submitted that there was nothing before the Court to show that FFL was being, or could be revived; that the case-law that winding-up is remedy of the last resort, is in circumstances where the company is carrying on some business, which is not the case here; that similarly, the alternate remedy in section 286 of the Act also caters to circumstances where the company is a going concern, which is not the case here; and that the just and equitable ground for winding-up can be invoked by the Court even if not expressly pleaded.

Objection to maintainability - Conditions for a winding-up petition by a contributory:

12. The Petitioners, holding fully paid-up shares in FFL, are 'contributories' within the meaning of section 296 of the Act. As explained by that provision: "The term 'contributory' means a person liable to contribute towards the assets of the company on the event of its being wound up."

13. For a winding-up petition by a contributory, the first proviso to section 304 of the Act imposes conditions as follows:

> "Provided that—
> (a) a contributory shall not be entitled to present a petition for winding up a company unless-
> (i) either the number of members is reduced, in the case of a private company, below two, or, in the case of public company, below three; **and**
> (ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or

> have been held by him, and registered in is name, for at least one hundred and eighty days during the eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former holder;"

In the similar proviso to section 309 of erstwhile Companies Ordinance, 1984, the conjunction used between clauses (a)(i) and (a)(ii) was **'or'**, signifying that a contributory was eligible to present a winding-up petition if either condition was satisfied. Mr. Shahan Karimi, learned counsel for the contesting Respondents, submitted that changing the conjunction from **'or'** to **'and'** signified that the bar had been raised for a contributory; and that, after the Act, a contributory could not bring a winding-up petition unless both conditions in clauses (a)(i) and (a)(ii) are satisfied. He submitted that in the facts of this case, the first condition was not satisfied as members of FFL, which was a public company, were not reduced below three. Learned counsel cited *Arshad Tanveer, Chairman SITE Association of Industry v. Sindh Industrial Trading Estates Ltd.* (1997 CLC 456) to submit that even under the Companies Ordinance, a winding-up petition by a contributory was not maintainable if the first condition in clause (a)(i) was not satisfied.

14. It is correct that in the case of *Arshad Tanveer* (*supra*), a winding-up petition by a contributory was dismissed as clause (a)(i) of section 309 of the Companies Ordinance was not satisfied *i.e.* members of the company were not reduced below the stipulated number, and thereafter, the Court did not rely on clause (a)(ii). However, in that case, the company was limited by guarantee, not by shares, thereby not attracting clause (a)(ii). It was for this reason that the Court relied only on clause (a)(i) in dismissing the petition. This much is noted in para 7 of that judgment. Therefore, the case of *Arshad Tanveer* was not for the proposition that a winding-up petition by a contributory had to meet both conditions in clauses (a)(i) and (a)(ii) of section 309 of the Companies Ordinance.

15. Though the conjunction between clauses (a)(i) and (a)(ii) of section 304 of the Act is 'and' instead of 'or', clause (a)(i) still begins with the word **'either'**, as it did in the Ordinance. The word 'either' clearly denotes a selection out of two alternatives, and can only be coupled with the conjunction 'or'. It cannot coexist with 'and'. Had the intent been to do away with clauses (a)(i) and (a)(ii) as alternatives and make them a dual condition to a winding-up petition by a contributory, then the legislature would also have omitted the word 'either' while enacting clause (a)(i). Therefore, the conjunction 'and' between clauses (a)(i) and (a)(ii) of section 304 of the Act, can only mean 'or' and must be read so.

16. There is another reason for the foregoing. As indicated by Mr. Shahan Karimi *albeit* to advance the contrary argument, clause (a)(i) of section 304 of the Act is a safeguard to section 15[1] of the Act, which exposes a member to liability for the whole debt of the company contracted during the period the number of members was reduced below the minimum. If that is the purpose of clause (a)(i), it would hardly be such safeguard if it is read as a dual condition with clause (a)(ii) instead of an alternative. I am, therefore, of the opinion that if any one of the clauses (a)(i) or (a)(ii) of section 304 of the Act is satisfied, a winding-up petition by a contributory is maintainable. It is not disputed that clause (a)(ii) is satisfied here. Therefore, the petition is not barred by section 304(a) of the Act.

The averment of oppression:

17. By an MoU dated 26.10.2015, the four brothers, who were majority shareholders of FFL, had agreed to divide joint businesses and properties, including that of FFL as under:

> *"2. FFL-Poultry Land at Ibrahim Haidri to be divided later once it has been restored by relevant authority.*
>
> *3. FFL-Feed Mill machinery including 4 Silos will continue to be owned by FFL and to be divided later.*

[1] Previously section 47 of the Companies Ordinance, 1984.

4. FFL KESC & SSGC connection to be used by Towel Business/Sylvana Garments.

5. FFL to be converted into AOP for which Legal Advisor be finalized.

8. All businesses divided at agreed values as per Divisible Assets Valuation summarized below

- *a. Sylvana Garments, Mian Shamim Feroz (Petitioner No.1) …… Rs. 2,267,903*
- *b. FFL-Towel, Mian Javid Feroz ……. Rs. 50,205,485*
- *c. UIE/KF/ACS/Atlas Oil & Sitara Agro, Mian Khalid Feroz …… Rs. 160,897,826*
- *d. AFCL/AFC/FEROZ FEEDS & FFL-CHEM to Almas Feroz … Rs. 170,474,977*

10. Bank Balance in FFL-TOWEL Rs. 97,075,549 to be equally distributed among 4 directors

16. FFL-TOWEL business be separated as per procedure hereunder:

(i) Machinery be sold to Mian Javid Feroz new company [JF CO] at nominal value say Rs. 500,000-00. (ii) Stocks be sold to JF CO at nominal value.

Towel Business Income to be solely of Mian Javid Feroz effective cutoff date agreed.

17. FFL Pool Fund to be maintained for financing expenses like property tax, salary & maintenance expenses poultry plot, utilities, any unforeseen expenses etc. ……"

Therefore, the brothers agreed that in exchange of shares in other joint businesses and properties, FFL's towel business and related machinery would be taken over by Mian Javid Feroz; and FFL's chemical business would be taken over by Almas Feroz (Respondent No.2). Apparently, the parties acted on such arrangement. Nevertheless, FFL continued to hold material assets including Plot No. 30-31 and the feed mill machinery.

18. In 2018, to resolve disputes *interse*, the brothers executed the agreement dated 02.07.2018, whereby they agreed that FFL's Plot No. 30-31 would be divided into four sub-plots to enable each brother to carry on separate business. Under that agreement, a value was assigned to each sub-plot, taking into account the structure, plant and machinery existing thereat. It was agreed that the party with the sub-plot of higher value will compensate the party with the sub-plot of lesser value. The sub-plot with FFL's towel manufacturing machinery was allocated to Javid Feroz; the sub-plot next to it was allocated to

Almas Feroz (Respondent No.2); the sub-plot where FFL's feed mill was situated was allocated to Khalid Feroz (late); and the sub-plot where the electricity sub-station was situated was allocated to Shamin Feroz (Petitioner No.1).

19. The MoU dated 26.10.2015 and agreement dated 02.07.2018 manifest that any separate/personal business being carried on by the Respondents 2-5 within a portion of FFL's Plot No. 30-31, such as Sylvana Pakistan and Amin Feroz & Co. (Pvt) Ltd.[2], is pursuant to said agreements. There is also on record a resolution dated 01.10.2015 signed by directors of FFL, including the Petitioners, authorizing Sylvana Pakistan to carry on business at said plot. The Petitioners do not deny that they too had carried on separate business on a portion of the same plot under the name and style of 'Sylvana Garments'. It is not pleaded by the Petitioners that compensation agreed under the agreement dated 02.07.2018 was not paid to them. Given these facts, it cannot be argued by the Petitioners that separate business by majority shareholders using FFL's assets is a fraud on the company or that it amounts to oppression of the Petitioners.

20. It was then alleged by the Petitioners that they have been ousted from the affairs of the company by majority directors. The Respondents 2, 4 and 5 deny that averment and have produced notices of AGMs and Board meetings of FFL sent to the Petitioners over the years. The minutes of the AGM held for the years 2020 and 2021, and minutes of Board meetings held on 9th March, 18th March and 30th November of 2021 reflect the presence of either or both Petitioners. Be that as it may, none of the minutes on the record reflect anything apart from the ordinary. The Petitioners do not show any decision taken by majority shareholders or directors that could be construed as oppressive of the Petitioners.

[2] Noted in the Nazir's inspection report.

21. Though 'oppressive' conduct has not been defined in the Act, superior Courts have over the years illustrated actions which amount to oppression:

- "The earliest interpretation is found in the words of Lord Cooper in the case of *Elder v. Elder and Whatson Ltd.* (1952) SC 49, as 'the conduct complained of should at lowest involve a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every share holder who entrusts his money to the company is entitled to rely'. In *Scottish Cooperative Whole Sale Society Ltd. v. Meyer* (1958) 3 All ER 66, Lord Keith interpreted the expression as 'lack of probity and fair dealing in the affairs of a company to the prejudice of some portion of its members or to public interest'. In same case Viscount Simonds, taking the dictionary meaning of 'oppression', said that it meant exercise of authority in a manner that is 'burdensome, harsh and wrongful'."[3]

- "Oppression would be made out:
  (a) Where the conduct is harsh, burdensome and wrong.
  (b) Where the conduct is mala fide and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-a-vis the others.
  (c) The action is against probity and good conduct.
  (d) The oppressive act complained of may be fully permissible under law but may yet be oppressive and, therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression."[4]

- "There must lie a justifiable lack of confidence in the conduct and management of the company's affairs, at the foundation of applications for winding up." More importantly, "the lack of confidence must spring not from dissatisfaction at being out-voted on the business affairs or on what is called the domestic policy of the company". But, "wherever the lack of confidence

[3] *Inam Ullah Khan v. AKSA Solutions Development Services (Pvt.) Ltd.* (2019 CLD 355).
[4] Supreme Court of India in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* (1981) 3 SCC 333.

is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter."[5]

22. Here, it is the Petitioners' own case that the company is not carrying on any commercial business, and thus, not a case where majority shareholders gain any significant advantage by ousting the minority from affairs of the company. In fact, the majority shareholders have continued to elect the Petitioners as directors of the company. In these facts, the allegation of oppression by ouster from the affairs of the company, also has no force.

Averments of manipulation in accounts and delay in statutory returns

23. It was submitted by the Petitioners' counsel that Respondents 2-5 have been manipulating the accounts of FFL for their personal gain. Their pleading was that the weaving machinery of FFL that appeared in the balance sheet of 2019, does not find mention in the balance sheet of 2020. But then, that omission may have to do with the fact that under clause 16 of the MoU dated 26.10.2025, FFL's towel machinery was to be sold to Javed Feroz. That aspect was not addressed by learned counsel for Petitioners.

It was further alleged that a loan of Rs. 260 million extended by FFL to the directors in 2014, was concealed in subsequent financial statements. The figure of Rs. 260 million, in fact, referred to "*dues from related parties*". The financial statements do not 'conceal' these dues, rather the balance due from each related party has decreased over the years. Since 2019, that balance stands at Rs. 94 million. The Petitioners want the Court to presume that such decrease is without repayments or adjustments. However, without demonstrating from the accounts that there are no corresponding receipts, no such presumption can be drawn, especially when auditors' reports opine that books of account have been kept by the company as required by the Companies Act and financial statements were in agreement with the books of

[5] Supreme Court of India in *Tata Consultancy Services Ltd. v. Cyrus Investments (Pvt.) Ltd.,* (AIRONLINE 2021 SC 179) citing the Privy Council in *Loch v. John Blackwood.*

account. In other words, the allegation of manipulating accounts is unsubstantiated.

24. As regards the fact that statutory returns filed by FFL with the SECP were with delay, that by itself is not a sufficient ground for winding-up the company.

25. In view of the foregoing, the Petitioners do not make out a case for winding-up FFL at least under clauses (g)(iii), (iv) and (v) of section 301 of the Act.

Winding-up under the just and equitable clause:

26. The principal submission by Mr. Moiz Jaferii, learned counsel for Petitioners, was that the shareholders agreement dated 02.07.2018 for using FFL's plot for separate businesses, was only an interim arrangement, not intended to run indefinitely; that since FFL was not carrying on any business for the longest time and possessed assets surplus to debts, it was just and equitable to wind-up the company under clause (i) of section 301 of the Act so that the shareholders can salvage their investment. Learned counsel made it a point to clarify that Petitioners do not urge this ground to seek specific performance of the MoU dated 26.10.2015. According to them, that MoU stands frustrated by efflux of time. Responding to that, Mr. Shahan Karimi, learned counsel for Respondents 2, 4 and 5 had submitted that firstly, the just and equitable ground was never pleaded by the Petitioners; secondly, the majority shareholders had already acted upon the MoU dated 26.10.2015 to their detriment by foregoing shares in other joint businesses and by compensating the Petitioners; and thirdly, the majority shareholders were working on a plan to revive the feed mill/business of FFL, and therefore it would **not** be just and equitable to wind-up the company.

27. It is to be noted that while clause (c) of section 305 of the Companies Ordinance, 1984 had provided that suspension of a company's business for a whole year was a ground for winding-up,

but clause (m) of section 301 of the Act provides that ground only in relation to a listed company. The Act had also introduced section 424, whereby a company, other than a listed company, can apply for the status of an 'inactive company' if it is not carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years. Therefore, even if FFL is not carrying on any business, that by itself is not a ground under the Act for winding-up the company.

28. It is then settled that suspension of business by a company is not *ipso facto* loss of substratum. For example, where a company owns property of substantial value and there is possibility of engaging in other business, then the fact that the company's business was at a standstill, did not mean that it had lost its substratum.[6] The substratum of a company is said to disappear when objects of the company have substantially failed, or it is impossible to carry on business except at a loss, or the existing liabilities are far in excess of existing and possible assets.[7] Furthermore, a case pitched on loss of substratum requires specific pleadings as to assets and liabilities for the Court to arrive at a conclusion that the company has lost its base.[8]

29. It is correct that the just and equitable clause (section 301(i) of the Act) gives the Court broad discretionary powers for ordering winding-up. This was articulated by the House of Lords in *Ebrahimi v. Westbourne Galleries Ltd.*[9] in holding that the just and equitable clause is not to be construed *ejusdem generis* with preceding clauses, *i.e.* it is not confined to situations dealt by preceding provisions for winding-up. Same view was taken by this Court in *Nagina Films Ltd. v. Usman Hussain* (1987 CLC 2263) and *Shahmatullah Qureshi v. Hi-Tech Construction (Pvt.) Ltd.* (2004 CLD 640). Hence, whenever winding-up is sought on grounds of deadlock, loss of substratum or quasi-

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[6] *K.S. Mothilal v. K.S. Kasimaris Ceramique P. Ltd.* (2003) 113 Com Cases 562 (Mad.)
[7] *Ali Woollen Mils Ltd. v. Industrial Development Bank of Pakistan* (PLD 1990 SC 763); *Syma Mahnaz Vayani v. Molasses Export Company (Pvt.) Ltd.* (2013 CLD 1229).
[8] A Ramaiya, Guide to the Companies Act, 18th Edition, Volume 3, pg. 4586.
[9] (1973) A.C. 360.

partnership, that can be examined by the Court under the just and equitable clause. That being said, it is not pleaded by the Petitioners here that substratum of FFL is lost. Admittedly, assets of the company are far more than its liabilities. This is also not a case of deadlock, nor has it been pleaded that FFL is to be viewed as a quasi-partnership.

30. On the other hand, it is pleaded by Respondents 2, 4 and 5 that a scheme for reorganizing FFL (under section 279 of the Act) to revive the feed mill/business is under consideration by majority shareholders. In that regard, said Respondents produced emails exchanged in 2021 with legal counsel engaged to draft a scheme for the demerger of FFL into four companies. It is not disputed that the feed mill of FFL still exists. The plea that revival of business is under consideration is also supported by the auditor's reports for the year ended 30.06.2020 and 30.06.2021, the former dated before the petition, which reads:

> *"In year 2017, due to some internal matters of the members (who are also part of core management) of the Company, the Company was not fully operational and becomes as a dormant Company from 2017 till now. Considering this situation, amicably, the Board of Directors (the Board) of the Company are intending to design and execute a scheme of reconstruction under the Companies Act, 2017 (previously Companies Ordinance, 1984) whereby the net assets of the Company will be divided among the existing members of the Company in the ratio agreed unanimously by them. The proposed scheme of reconstruction will result in purchase of shareholding by surviving members from the outgoing members against transfer of agreed share of net assets of the Company to them. The surviving members will continue the business of the Company after the reconstruction get completed while the outgoing members will transfer their share of net assets in the new company / business as per their discretion. The management of the Company expected that some scheme of reconstruction will commence as soon as the financial statements of the Company till the year end June 30, 2020 gets finalized. Regarding future viability of the Company, the management and the Board intends to make feed division fully functional and few of the Board members are also presently striving to get hold on to it and getting prospective customers and machinery on board*
>
> *Keeping foregoing in view and since the Company will survive and continue the existing business in full subsequent to execution of abovementioned scheme, the statements have been prepared under the going concern basis."*

31. Therefore, based on documents on record, a revival of FFL cannot be ruled out just yet. As observed by the Supreme Court in

Khalid Siraj Textile Mills Ltd. v. Additional Registrar of Companies, SECP (2022 CLD 1557), even where a company has ceased to do business, the Court should not act in haste to wind it up if there is a chance of revival.

32. In view of the foregoing, there is no case for winding-up FFL under the just and equitable clause.

33. Since the Petitioners fail to make out a case for winding-up under any of the grounds enumerated in section 301 of the Companies Act, 2017, the petition is dismissed.

JUDGE

Karachi:
Signed on: 17-01-2026

Announced by: