ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

JCM No. 01 of 2023

Date: Order with signature of Judge

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1. For orders on CMA No. 3253/2022
2. For hearing of CMA No. 3254/2022
3. For hearing of main petition

05.10.2026

Mr. Muhammad Arif, Advocate for the Petitioners.

Mr. Ahmed Ali Hussain, Advocate for Respondent No. 2.

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O R D E R

SAMAN RAFAT IMTIAZ, J. By this order, I intend to dispose of the instant petition under Section 305 read with Section 301(a)(f)(i) of the Companies Act, 2017 filed for winding up of Respondent No. 2 [M/s Dewan Farooque Petrochemicals Limited], and appointment of a provisional manager and liquidator.

2. It is narrated in the memo of petition that Respondent No. 2 was incorporated under the Companies Ordinance, 1984 on 08.01.1996 with capital of Rs. 6000,000,000/- divided into 600,000,000/- ordinary shares of Rs. 10/- each. Seven persons, including Petitioners No. 1 & 2 [Dewan Muhammad Ayub Khalid and Dewan Ghulam Mustafa Khalid] were named as directors holding 100,000 shares each. The company purchased 155.8 acres of industrial land at Mouza Kathore, Winder, District Lasbella, Balochistan, as per Form VII dated 06.06.1996. It is alleged that the Managing Director, Dewan Muhammad Yousuf Farooqui, submitted Form “A” only up to 2001, after which the company did no business and filed no returns. He tried to sell the land and other assets on a forged board resolution, without informing the Petitioners and other directors. In collusion with Ishtiaq Ahmed and Haroon Iqbal and some officials of Respondent No.1 [Securities & Exchange Commission of Pakistan], he also got a company with the same name registered on 18.05.2021 with capital of Rs. 100,000/- to usurp the assets of Respondent No.2. It is alleged that the company's assets have been converted and its cash and securities misappropriated, it holds no statutory or annual general meetings, and it is just and equitable to wind it up.

3. Respondent No.1 filed comments dated 23.10.2023 stating that, as per Form “A” made up to 30.06.2001, nine persons held 10,000 shares each in the Respondent No. 2 company, which was struck off on 29.01.2003 with

no returns on record. It confirmed that M/s Dewan Farooque Petrochemical Limited was registered on 18.05.2021 with the three persons as subscribers and directors.

4. Respondent No. 2 filed a counter affidavit objecting that the Petitioners have no *locus standi* because Respondent No. 2 is a separate legal entity incorporated under the Companies Act 2017, in which Petitioners hold no shares; that they concealed that the original company was struck off on 29.01.2003; and that they did not seek its restoration under Section 425 of the Companies Act 2017.

5. Initially, the learned counsel for the Petitioners submitted that another company by the same name as Respondent No. 2 with only letter ‘s’ missing from ‘Petrochemical’ has been incorporated to usurp the properties of Respondent No. 2. Despite repeated queries the learned counsel for the Petitioners was unable to explain why Respondent No. 2 should be wound up on account of another company having been incorporated by the same name. He referred to a sale agreement purportedly entered into for the sale of the Respondent No. 2’s property but firstly such sale agreement finds no mention in the memo of petition and even otherwise the counsel remained unable to explain why such attempts of the other company should result in winding up of the Respondent No. 2.

6. On the other hand, the learned counsel for Respondent No. 2 has explained that M/s Dewan Farooque Petrochemicals Limited incorporated in 1996 was struck off by the SECP vide Gazette Notification dated 29.08.2002. Thereafter, in 2021, after running a search of availability of name, which is available on record, the instant Respondent No. 2 was incorporated on 18.05.2021. The certificate of incorporation is also on the record. He further explained that the sale agreement mentioned by the learned counsel for the Petitioners was a fictitious sale agreement on the basis of which a suit for specific performance was instituted against Respondent No. 2 by the purported buyer, which however was dismissed. He therefore submits that Respondent No. 2 has at no point claimed any right or interest in the assets or properties of the erstwhile company, and in this regard, he submits that a complaint was made by the Petitioners to the SECP, in response to which the SECP wrote letter dated 07.11.2023, stating that the defunct company was struck off on the basis of an application dated 29.04.2002, supported with a board resolution dated 26.04.2002 and a declaration with an auditor's certificate certifying that the company has no assets/liabilities and that it is not carrying on any business or any operations. The learned counsel for Respondent No. 2 has highlighted that vide this letter, the SECP has advised the Petitioners that if

they so wish, they may apply for restoration of the dissolved company under Section 425 of the Companies Act, 2017, which he submits has not been done. However, he argues that there is no basis for them to seek winding up of Respondent No. 2.

7. On further inquiry from the learned counsel for the Petitioners, he submits that the Petitioners were the shareholders of the erstwhile company as reflected from the list of shareholders in the Memorandum and Articles of Association appended with the memo of petition.

8. Heard the learned counsel for the Petitioners and Respondent No. 2 and perused the entire record with their assistance.

9. The statement of the Respondent No. 1 has made it clear that the M/s Dewan Farooque Petrochemicals Limited was incorporated in 1996 and was struck off in the year 2002 and which has not been revived till date. Therefore, there is no question of winding up such company.

10. On the other hand, the M/s Dewan Farooque Petrochemical Limited was duly incorporated in the year 2021. It is therefore not the same company that was struck off by the SECP. Insofar as the allegations of usurpation of the assets of the defunct company are concerned, perusal of the memo of petition does not reveal any mention of any sale agreement. The learned counsel for the Petitioners submits that at the time of filing the instant petition, they did not know of the sale agreement. Be that as it may, since the suit for specific performance filed on the basis of such sale agreement has already been dismissed, such sale agreement does not appear to be any cause for winding up of M/s Dewan Farooque Petrochemical Limited.

11. No other allegation has been made to substantiate that the company is liable to be wound up under Section 301(f) or (i) of the Companies Act, 2017, whereby a company may be wound up if it is unable to pay its debts or where, in the Court's opinion, it is just and equitable that the company should be wound up. The Petitioners have failed to show that Respondent No. 2 is unable to pay its debts or that it is just or equitable for it to be wound up.

12. In view of the foregoing, the instant JCM is dismissed.

J U D G E

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