

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J.C.M No.14 of 1981.

DATE ORDER WITH SIGNATURE OF JUDGE

Claimant: Mst. Shaheena Sikander
Through Mr. Muhammad Ali Lakhani, Advocate

Claimant: Haji Pordil Khan Awan, Through
Mr. S.M Iqbal, Advocate.

Claimants: Muhammad Amin, Ali Bash Khan & Dilawar Khan
Through Mr. Abdul Wahab Baloch, Advocate.

Auction Purchaser: Zakauddin, Through Mr. Mushtaq A Memon,
Advocate.

Official Liquidator: Dr. Ch. Waseem Iqbal, Official Assignee of this Court.

1. For hearing of O/A Reference No.04/2006.
2. For hearing of CMA No.06/2012.
(U/s 94 r/w Order 21 Rule 854, 86 CPC)
3. For hearing of CMA No.143/07.
(For setting aside Court Order dated 03.05.1987).
4. For hearing of CMA No.456/07.
(Under Order 40 Rule 1 C.P.C)
5. For hearing of CMA No.768/2007
(U/O 1 Rule 10 CPC)
6. For hearing of CMA No.792/07
(U/S 151 CPC)
7. For hearing of CMA No.840/09.
(Review/Modifying Order dated 05.09.2007)
8. For hearing of CMA No.291/2011.
(U/S 151 CPC)
9. For hearing of CMA No.309/2017.
(Application for Assignment of Priority under Circular dated 16.10.2012)

Date of Hearing: 20.12.2017, 21.12.2017, 27.03.2018,
25.04.2018, 16.05.2018, 22.05.2018,
11.09.2018, 11.10.2018 & 20.12.2018.

Date of Order: 21.03.2019

ORDER

Muhammad Junaid Ghaffar J. All listed applications as well as References have been filed by the Applicants and the learned Official Liquidator. The applications are on behalf of certain Applicants, who claim ownership of their properties in the Project known as “Dastagir Centre”; whereas, there are certain applications filed on behalf of the Auction Purchaser, who seeks possession of, as well as removal of encroachment from various properties in the said Project. Learned Official Liquidator’s Reference(s) are in respect of and pursuant to certain orders of this Court, whereby, he was directed to

record evidence of the claimants and furnish his report. There are certain claimants whose application are not listed, but pursuant to orders of this Court, their claims have been examined by the Official Liquidator and evidence has been recorded. All of these are being dealt with and decided together through this common order.

2. The precise facts, as available on record are that Respondent namely Dastagir Investment & Management Ltd. was carrying on business of construction on Plot No.75 and 75/1 situated in N.I Lines Garden Road, Saddar, Karachi and mortgaged the same with the Petitioner Bank for seeking loan. The Company had started some construction and in between was stopped; whereas, a recovery Suit was filed by the Petitioner Bank, which was decreed. Thereafter this winding up Petition was filed on 18.3.1981 and on 18.01.1987 a winding up order was passed and the Official Assignee of this Court was appointed as Official Liquidator. Thereafter the Official Liquidator invited offers for the sale of the property through publication dated 12.04.1988 and pursuant to such publication, one Zakauddin (Auction Purchaser) gave his offer for a total price of Rs.12,000,000/-, out of which he offered to pay Rs.4,000,000/- in advance on which possession was to be delivered to him, and thereafter the balance amount was to be paid in installments. Record reflects that after making advance payment and taking over the possession, auction purchaser defaulted in making payments; but subsequently through various orders of the Court, time was extended and payments were ultimately made. During proceedings of the auction and handing over of the possession there were 69 claimants (for a total of 102 properties), who after passing of the winding up order, approached this Court with a plea that they had already purchased various shops, godowns etc. from the Company in question prior to the winding up order, and therefore, their claims and property must be excluded from the property being sold to the auction purchaser. This Court vide Order dated 18.04.1990, accepted the claims of the 69 Claimants and directed the Official Liquidator to execute registered Sub Lease Deeds in favour of all these Claimants and it was further held that these shops and offices will not remain part of the property, which has been auctioned or sold by the Official Liquidator. Such order was impugned in High Court Appeal by the Auction Purchaser, but was unsuccessful, and even failed to get any relief from the Hon'ble Supreme Court and such order attained finality. However, despite this, subsequently further claimants came before this Court and took a somewhat similar plea, and filed various applications seeking the same relief. All these Applications and References are pending since long and have not been decided for one reason or the other; however, finally they have been heard by this Bench and are accordingly being decided.

3. Mr. Muhammad Ali Lakhani has led the arguments on behalf of the claimants which have also been adopted by all other learned Counsel. He appears on behalf of the

Applicant *Mrs. Shaheena Sikandar* who has also filed certain other applications, besides her individual claims in respect of several properties and has contended that the objectors are in fact required to be called or categorized as creditors of the Company in question and in support he has relied upon a decision of Chancery Division reported as **In re Harvest lane Motor Bodies Ltd. (1969 (1 Chancery) 457)**. He has further contended that the applicant seeks clearance of (7) seven properties (as mentioned below) from the ambit of these proceedings and it is the claim of the applicant that these properties are in no manner vested in or with the auction purchaser. The details of the properties being claimed are as under:-

- i. Restaurant (Mezzanine Floor) - Leased;
- ii. Car Parking No.3,4 and 5 – Leased;
- iii. Car Parking No.13 – Leased;
- iv. Car Parking No.17, 18, 19, 20 and 20A – Leased;
- v. Office No.15 and 16 (Car Parking Floor) – Claim approved;
- vi. Shop No.13 – Claim pending;
- vii. Shops No.22 and 23 – Claim pending

According to him in terms of Sections 7 & 9 of the repealed Companies Ordinance 1984, this Court is exercising original Civil Jurisdiction, and therefore, jurisdiction of this Court is not limited by the disqualifications, which are ordinarily assumed in matters falling under the Ordinance 1984. To support his contention he has relied upon the cases reported as **Messrs Industrial Development Bank of Pakistan (1993 CLC 1540)**, **Brother Steel Mills Ltd. v. Mian Ilyas Miraj and 14 others (PLD 1996 SC 543)**, **M. Sunrise Textiles Limited and others v. Mashreq Bank PSC and others PLD 1996 Lahore 1**, **Rauf Baksh Kadri and others v. M/s. National Technology Development Corporation Ltd. and others (2005 CLD 747)**, **Lahore Race Club through Secretary and others v. Raja Khushbakht-ur-Rehman (2008 CLD 1117)** and **Main Javed Amir and others (2016 SCMR 213)**. He has further contended that as per Rule 3 of the Companies (Court) Rules 1997, this Court is possessed with inherent powers to pass all such orders as may be deemed necessary and even if it is assumed that there is no express authority conferred upon this Court by way of the Ordinance 1984; inherent powers can always be exercised in favour of the claimants/applicants. He has further argued that without prejudice to the foregoing claims, Rules 141 & 142 of the Companies (Court) Rules 1997 relate to the acceptance and rejection of the claims and appeals and in view of such position the claimants case is that she qualifies as a creditor under the scheme of Ordinance 1984 read with Rule thereunder. To support this contention, he has relied upon **Muhammad Iqbal and others v. Khair Din through L.Rs. and others (2014 SCMR 33)**. As to the objection regarding the claims being time barred, so raised by the Official Liquidator, learned Counsel has relied upon **Agha Bashir Ahmad v. Nippon Bobins (Pvt.) Ltd. (1997 CLC 1205)**, and has

contended that if a remedy is not otherwise barred, the Law of Limitation would not in such an event apply, whereas, even otherwise rights protected by law are not diminished through liquidation and in support he has relied upon *Smt. Nirmala R. Bafna/Kershi Shivax Campatta and others v. Khandesh Spinning and Weaving Mills Co. Ltd. and others* (1994 SCMR 439). As to the claim on merits in respect of Property at Serial No.1 i.e. **Restaurant (Mezzanine Floor)**, he has submitted that this property stands excluded from the Sale Certificate issued in favour of the Auction Purchaser, whereas, the Conveyance Deed has already been executed; hence, the claim of the Auction Purchaser as well as Official Liquidator is not justified. As to the property at Serial No.2 i.e. **(Car parking No.3,4 and 5)**, he has argued that the said property is currently delivered in favour of the Applicant / husband by way of registered title; whereas, even otherwise it was excluded from the auction proceedings. As to the property No.3 i.e. **(Car parking 13)** again he submits that it is excluded in favour of the applicant through her husband. As to Property at Serial No.4 i.e. **(Car Parking No.17,18,19, 20 and 20A)**, he has contended that this was excluded by way of an order passed by the Hon'ble Supreme Court and stands in favour of the Applicant's brother-in-law. In response to property at Serial No.5 i.e. **(Offices No.15 & 16 (Car Parking Floor))**, he has contended that the applicant is original Allottee of the property and filed her claim on getting notice of the winding up and was duly interviewed by the then Official Liquidator, and he, after satisfying himself submitted a Reference before this Court through Affidavit under Rule 863 of the Sindh Chief Court Rules and vide Order dated 27.03.1990, this Court was pleased to accept the Affidavit and approved all claims accepted by the Official Liquidator. He has further referred to Order dated 17.05.1992 to argue that the applicant's claim in respect of this property has already been accepted. As to the Property at Serial No.6 i.e. **(Shop No.13)**, he has argued that it was originally allotted to Ghulam Nabi and Imran Ali acting through an authorized representative, thereafter they divested their interests in and towards the property in favour of the applicant. According to him, the claim of the applicant was denied by way of Reference No.04/2006 by the Official Liquidator on the terms that the original Allottees had passed away. However, in proceedings conducted for the purposes of Reference No.01/2011, the original allottees have appeared before the Official Liquidator and made a Statement in favour of the applicant, whereas, all original documents have been exhibited in the evidence through Reference of the Official Liquidator. Insofar as Property No.7 i.e. **(Shops No.22 and 23)** is concerned, he has argued that original allottee was Mst. Parveen Sadiq, who conveyed the property to the applicant against payment and consideration; whereas, through Reference No.04/2006, it has been contended by the Official Liquidator that claimants have forged documents and have been unable to demonstrate a conveyance in her favour from the original Allottee; however, through Reference No.1/2011, a different stance was taken by the Official Liquidator and it has been proved by the applicant that the property was properly

conveyed in favour of the Applicant. In view of hereinabove submissions, he has prayed to give directions to the Official Liquidator to execute a registered title conferring documents in respect of property at Serial No.5 (Offices No.15 & 16 (Car Parking Floor) and further accept the claims in respect of the properties at Serial No.3 and Serial No.7 and so also register and execute title conferring documents.

4. Mr. S.M. Iqbal, learned Counsel appearing on behalf of the claimant Haji Pordil Khan Awan in CMA No. 2552/2002, in addition to adopting the arguments of Mr. Ali Lakhani submits that Reference No.01/2011 was taken on record; whereas, the Sale Deed of the property in question was executed on 17.04.2002 in respect of one Show Room and two shops on the basis of judgment and decree of this High Court. He further submits that the applicant is also entitled to the same benefit as was granted to the earlier 69 claimants. He has referred to Letter of Allotment at Page-689 and Receipts of Cantonment as well as telecommunication department. He has also referred to Rule 46 of the Companies (Court) Rules 1997 including Rules 84, 91, 93, 102, 139, 141, 142 & 258 and has contended that all legal requirements are fulfilled. Per learned Counsel the claims were filed and were pending, and therefore, no case of any delay can be attributed. In view of these submissions he has prayed for acceptance of the claim.

5. Mr. Abdul Wahab Baloch, appearing on behalf of claimants Muhammad Amin, Ali Bash Khan and Dilawar Khan has adopted the arguments of all other Counsel and has further submitted that proper evidence was led by these applicants in respect of Shop Nos.71, 74, 76, 89 & 90; and therefore, these claimants are entitled to the relief being claimed. According to him the properties were purchased much before the winding up order from the original Allottees or through attorney(s) and proper documents are available on record in the evidence; therefore, their claims are justified and be accepted.

6. Mr. Mushtaq A. Memon, learned Counsel appearing on behalf of the Auction Purchaser has contended that in the first round of settlement, claims of 69 claimants were accepted and the auction purchaser, after being unsuccessful in Appeals, accepted these claims and their properties were excluded; whereas, all these present claimants have unlawfully taken over possession of the properties, after trespassing and now they have come up with these claims, which are time barred and belated in nature. According to him Sale Certificate was already issued on 13.05.2005 and this was done after settlement of all such claims; whereas, the applicants before this Court have failed to fulfill the requirements of Rule 137 of the Companies (Court) Rules 1997 r/w Section 403 and 408 of the Companies Ordinance, 1984. According to him the first notice was published by the learned Official Liquidator on 12.04.1988 and after settlement of all claims, this Court has become *functus officio* and cannot entertain any further claim after passing of so many years. Per learned Counsel when Reference No.04/2006 was filed, all claims

were settled and subsequently this Court without any lawful authority and perhaps mistakenly and for lack of assistance, entertained various applications of the claimants and even directed the Official Liquidator to record evidence in support of their claims; however, this was beyond the mandate of this Court. He has further argued that when the property was taken over by the Official Liquidator an inspection was carried out and an inventory was prepared and these claimants were never found in possession of these properties; therefore, how could they claim these properties now. According to him they are encroachers and must be removed by this Court from the premises. As to the handing over of the possession by the Official Liquidator he submits that such possession was only on documents and not a constructive possession free from encroachment; and therefore, the auction purchaser's case is that all these claimants should be removed and thrown out; whereas, the possession be handed over to the Auction Purchaser. He has also referred to Order dated 25.02.2014, whereby, various claims were dismissed and discarded by this Court; whereas, according to him the winding up proceedings are summary in nature and notwithstanding this, ample opportunities have already been provided by this Court; hence no case is made out. According to him enough indulgence has been shown by this Court; whereas, the Official Liquidator has already performed his assignment; therefore, all claims are liable to be dismissed. Per learned Counsel the Auction Purchaser had filed various application in the year 1992, which were dismissed vide order dated 22.3.1994, against which High Court Appeal No.73/1994 was preferred and vide order dated 9.4.2011, the matter has been remanded; however, office has never Re-listed these application, out of which Auction Purchaser is pressing CMA 551/1992, partly to the extent of prayer clauses 4,5 & 7, and in view of these submissions the same may also be considered and allowed as prayed. In support he has relied upon *National Development Finance Corporation v. Fazal Sugar Mills Ltd.* **(1993 CLC 642)**, *Messrs Kaikobad Pestanjee Kakalia through Partners v. Messrs Almas (Pvt.) Limited* **(1997 MLD 149)**, *Investment Corporation of Pakistan (I.C.P) v. Messrs Noor Silk Mills Limited* **(1998 CLC 543)**.

7. The learned Official Liquidator has contended that the claims of the applicant(s) as well as the Auction Purchaser are baseless and are liable to be discarded and dismissed. According to him possession of the auctioned property was handed over through Order dated 22.10.1989 and 27.03.1990, free from any encroachment and was duly acknowledged; therefore, now it is not the responsibility of the Official Liquidator to get the premises vacated; whereas, the auction purchaser may seek appropriate remedy in accordance law. According to him previously in the earlier rounds all claims were verified and supported by the Official Liquidator after a threadbare exercise and detailed investigation, which was accepted by the Court and the Auction Purchaser unsuccessfully challenged them in appeal up to the level of the Hon'ble Supreme Court; and therefore, if

these present claimants, were in possession as claimed, then they ought to have been before this Court along with those 69 claimants which is not the case; hence, all these present claimants have no case and are in fact trespassers and encroachers. In support he has relied upon Reference dated 22.08.1989 and Order dated 18.04.1990. Insofar as the evidence led by the claimants is concerned, learned Official Liquidator has argued that none of them has been able to produce any credible or substantial evidence and all documents appear to be forged and concocted; therefore, they are not admissible. Insofar as the claimant Pordil Khan Awan is concerned, he has argued that same is based on some ex-parte judgment decree, which was obtained after passing of the winding up order and appointment of Official Liquidator, without impleading him in terms of Section 316 of the Companies Ordinance, 1984; hence no reliance could be placed on such a decree on the basis of which, Conveyance Deed was also obtained. According to him the conveyance deed was executed by a Director of the Company after the winding up order; hence the same has no effect in law. In response to other claimants, he has argued that no proper procedure was followed by them and no original allottee has come before the Court; whereas, the title documents, if any, are also manipulated and forged and do not correspond to the Company's record obtained by him pursuant to his appointment as Official Liquidator. According to him, the claims to the effect that the Company in question has sold these properties after obtaining money, is not correct, as the petitioner had filed a Banking Suit on 15.12.1977 and a restraining order was passed on such date to the effect that no transaction is to be carried out by the Company; hence any agreement with the said Company is of no legal effect. According to him it was the responsibility of the Auction Purchaser to maintain his possession after it was handed over, and therefore, now it is not the responsibility of the Official Liquidator or even this Court to come to his rescue in getting the premises vacated, for which he may take recourse to remedy in accordance with law. Learned Official Liquidator has also referred to the first inspection report and inventory prepared on 8.3.1987, and according to him nothing beyond such report can be considered at this stage of the proceedings, and therefore, the claims of the applicants as well as Auction Purchaser are liable to be dismissed, and his pending References be allowed as prayed.

8. I have heard all the learned Counsel as well as the Official Liquidator and perused the record. Though the facts have been briefly discussed hereinabove; but for the sake of repetition it may be noted that instant Petition was filed for winding up by the Petitioner Bank against the Company in liquidation as the Petitioner's case was that in Suit No.786/1977, a Decree was passed, whereas, the Company in liquidation was unable to pay its debts; hence an order for winding up of the Company be passed. On 18.01.1987, this Petition was allowed and on 03.11.1987 an order for sale of its assets was also passed. Record further reflects that on 25.09.1988, various Intervenors came before the

Court and claimed ownership or possession of various shops and offices in the Project of the Company in liquidation and on their application(s) an enquiry was ordered. Thereafter on various dates several other Intervenor also came up before the Court and again in their cases enquiry was also ordered. During this time, the Auction Purchaser namely Zakauddin came before the Court with an offer of Rs.12.0 Million on 20.08.1989, (which was an improved offer as reflected from the record) and was accepted vide order dated 21.8.1989. Subsequently, after deposit of 1st instalment, and obtaining possession; however, he failed to deposit the 2nd installment and an order was passed on 08.01.1990 giving him five days' time to deposit the same. This was challenged in Appeal and vide order dated 06.03.1990, a learned Division Bench of this Court remanded the matter with certain directions. Thereafter a learned Company Judge in this matter passed a detailed order on **27.03.1990**, whereby, all pending References and Applications were disposed of and claims of the Applicants/Intervenors verified by the Official Liquidator were approved under Rule 863 of the Original Side Rules of this Court. The said order dated **27.03.1990** is relevant and reads as under:-

"By this order I proposed to dispose of all the References made by the Official Assignee in respect of the property known as 'Dastgir Centre'. I also propose to dispose of CMAs No. 2636/89 and 145/90 by the same order.

The facts of the case are that M/s Dastgir Investment & Management Limited was carrying on business of construction and was owner of Plots No. 75 & 75/1 situated in N. I. Lines, Garden Road, Saddar, Karachi. In 1975, the said Company deposited documents of title of the two plots with intent to create an equitable mortgage in favour of the Petitioner for security towards repayment of loan taken by it from the petitioner. It is pertinent to point out that some construction on the said plots had been started by the Company on the ground floor and some shops and offices had been constructed thereby. Thereafter, construction was stopped by the said Company, when the present proceedings were initiated against it.

On 18.1.1987, this Court passed an order directing winding up of the said Company and the Official Assignee was appointed the Official Liquidator. Thereafter, under the orders of this Court, the Official Liquidator invited offers for the sale of the property known as 'Dastgir Centre' vide public notice published in newspaper "Dawn" and "Jang" dated 12.4.1988. According to this notice, the offers were to be accompanied by pay order for 25% of the total bid money in favour of the Official Liquidator. The offers were further subject to confirmation by this Court.

In pursuance of this notice, one Zakauddin gave his first offer through letter dated 28.6.89, a copy whereof has been filed an annexure B/5 with his objections. However, subsequently this offer was revised by him vide another letter dated 28.9.89 (annexure B/4 to the objections). According to this offer, the said Zakauddin agreed to purchase the property for a total price of Rs. 12,000,000/-. Out of this amount Rs. 4,000,000/- were payable by him in advance, on which the possession of the property was to be delivered to him and thereafter the balance of amount of Rs. 8,000,000/- was payable in two installments, the first being payable within sixty days from the date of the delivery of the possession to him. One of the conditions, according to the said offer, was that the Official Liquidator would remove all such illegal encroachments, such as hotel on the ramp and goods on the car parking floor and inside the said building, namely Dastgir Centre at the time of delivering possession to the said Zakauddin. This was further confirmed by the order of this Court dated 21.8.89.

It may be pointed out that the said party failed to deposit the second installment of Rs. 4,000,000/- within sixty days after taking delivery of possession of the said property, which has given rise to the present controversy. According to it, the Official Liquidator was under obligation to hand over possession of the said property free from encroachment but it has failed to perform its

part of the promise, as all the encroachments have not been removed from the property. It is also pertinent to point out here that a Reference in this respect was made by Official Assignee before this Court and by an order dated 8.1.90 the said party was directed to deposit the second installment of Rs. 4,000,000/- within five days from the passing of such order and it was further ordered that in case of noncompliance the offer made by the party would stand rejected and the amount already deposited by him would also stand forfeited. However, a High Court Appeal was filed by the said party, which was disposed of vide judgment of a Division Bench dated 6.3.90 and the case was remanded with directions to permit the party to file objections, if any, first. Thereafter, Zakauddin has filed objections, which are now being disposed of along with the Reference made by the Official Assignee.

Turning to the controversy once again Mr. Ali Ahmed Tariq, learned Counsel for Zakauddin has raised the following main questions:-

- i) That the amount of Rs. 4,000,000/- earlier deposited by the party cannot be ordered to be forfeited, as no such condition was embodied in the party's offer (annexure B/4).
- ii) **The Official Assignee was under obligation both under the terms of the offer and the order of this Court dated 21.8.89 to remove encroachment but he has failed to perform his part of the promise in entirety, as some of the encroachments still exist on the property.**
- iii) **That the possession has not been delivered to the said party unencumbered.**

As far as first contention is concerned, I agree with Mr. Ali Ahmed Tariq that after the terms originally embodied in the public notice had been modified subsequently, the amount of Rs. 4,000,000/- paid by the party in advance cannot be forfeited, as no such condition exist either in the fresh offer or the same can be spelt out from the order of this Court dated 21.8.89. However, the other contentions raised by Mr. Ali Ahmed Tariq are not tenable. **The Official Assignee has produced before me an original receipt dated 22.10.89 signed by the said Zakauddin himself, a Photostat copy of which was also filed by him with his Reference dated 21.1.90 as annexure "C", which shows that possession of the property in question had been received by him free from the said encroachments. According to the offer (annexure B/4) and the order of this Court dated 21.8.89, the Official Liquidator was required to remove unauthorized encroachments of a hotel on car ramp and other goods on the car parking area inside Dastgir Centre. The Reference made by the Official Assignee dated 21.1.1990 shows that all such encroachments were got removed by him and thereafter the possession of the property was delivered by him to the party. I have no reason to doubt such statement of the Official Assignee, which is further confirmed by the receipt dated 21.10.1989 issued by the party himself. It is, therefore, difficult for me to accept the contention that the encroachments on the property have not been removed so far.** The next contention of Mr. Ali Ahmed Tariq is, that, according to the public notice (annexure B/7), the property was offered by the Official Liquidator free from encumbrances. Mr. Liaquat Merchant has pointed out that the property was offered on "as is and where is basis". The learned Counsel has further contended that no doubt, when the property is finally transferred to the auction purchaser, the same would be given to him free from all encumbrances but there is nothing to indicate that this was one of the conditions precedent and could be invoked by the auction purchaser before making the second installment of Rs. 4,000,000/- to the Official Liquidator. In this respect the parties are governed purely by the terms of the fresh offer (annexure B/4) and both the parties were obliged to abide by the terms of the offer. **Since the possession was delivered to the auction purchaser free from encroachments, as earlier pointed out,** he was under obligation to pay the second installment of Rs. 4,000,000/- within sixty days of such delivery which admittedly he has failed to do. The auction purchaser has, therefore, no justification whatsoever to withheld (sic) the second installment of RS. 4,000,000/- when the possession of the property has already been taken by him.

Consequently, 15 days' time is allowed to the auction purchaser to deposit the second installment of Rs. 4,000,000/- with the Official Liquidator and thereafter to further abide by the terms of the offer (annexure B/4), failing which the offer / sale shall be deemed to stand rejected and in that case the auction purchaser shall hand over vacant possession of the property to the Official Liquidator in the same original condition, in which he had taken, within seven days from the date of the commission of default by him. On receiving the possession of the property, the amount

of Rs. 4,000,000/- received by the Official Liquidator from the auction purchaser shall be returned to him after deduction of all the necessary expenses incurred by the Official Liquidator so far or which may be incurred hereafter.

The Official Liquidator has also filed affidavit under rule 863 of the Sindh Chief Court Rules (OS). NO objections have been filed against this affidavit. In the result, the claims as verified by the Official Liquidator of various parties are approved." **(Emphasis supplied)**

9. The Auction Purchaser was partly aggrieved by this order as well as other orders and filed HCA 58/1990, wherein he reached a compromise with the Official Liquidator, wherein, in Para 4, the Official Liquidator agreed to sign the possession memo dated 22.10.1989 issued by the Auction Purchaser, and in Para-5 it was agreed and accepted that the Official Liquidator has removed the illegal encroachment such as hotel on car ramp, goods on the car parking floor inside the centre prior to handing over of possession to the appellant, in terms of the order dated 21.8.1989. On 16.4.1990, the said compromise was made rule of the Court and the Appeal was disposed of in the said terms. Again on 18.04.1990, the pending claims of 69 Claimants were decided through order dated 18.4.1990 which reads as under:-

"1. Mr. Saleem Karam Ali requests for an adjournment as he could not pay the costs due to over sight. Adjourned to a date in office.

2. Mr. Bashir Memon O/A, does not press the Reference as it has been settled. Reference dated 14.4.1990 as it is settled, therefore, disposed off as not pressed.

3 to 5.

Order on Reference of Official Assignee /
Official Liquidator dated 22.8.1989.

This Reference consists of the report of the Official Assignee on claims made by 69 claimants vide

1) CMA No. 595/1988,2)	CMA No. 1337/1988,
3) CMA No. 1338/1988,	4) CMA No. 1478/1988,
5) CMA No. 663/1988	6) CMA No. 152/1989,
7) CMA No. 705/1989,	8) CMA No. 1257/1989 and
9) CMA No. 701/1989. The Official Liquidator has given the details of the shops / offices booked by various claimants and the dates on which the same were booked and the earnest money was paid and also the amount of earnest money, the amounts of various installments paid in respect of each shop and office from time to time and the full or final payment, as well as total payment the date of possession order, the date of letter of allotment and the remarks showing as to from whom the same were purchased. From this statement it is quite clear that the shops and offices claimed by all these 69 persons were booked before 18.3.1981, which is the date of presentation of J. Misc. No. 14/981, which is a petition under Section 162/163 of the (Old) Companies Act, 1913. It is also clear that full and final payment in respect of these shops and offices have been made, possession handed over and allotment letter issued before the said date. all these claimants, except at Sr. No. 19 Hassan Ali Mohammad Seth, No. 23 Noor Faqir Mohammad, No. 38, Sardar Hussain No. 46, Syed Ahad Noor and others No. 64, Mst. Shaheena Shaikh and Shaikh Mohammad Naseer had purchased these shops / offices from the Company. Out of remaining persons claimant No. 19 Hassan Ali Mohammad Seth had purchased it from Mohammad Yaqoob No. 23, Noor Faqir Mohammad had purchased it from Malik Mohammad Shafique No. 38, Sardar Hussain had received it by transfer from his father Mohammad Saleh No. 46, Syed Ahad Noor had purchased it from Meraj Sabir, No. 64 Mst. Shaheena and Shaikh Mohammad Naseer had purchased from Hafiz Ahmed and these sellers or transferors Ahad	

booked these shops and had taken them from the Company. There is no dispute on the fact that the business of M/s. Dastagir Investment and Management was the construction of shops etc. and sale thereof under the supervision of Karachi Development Authority (K.D.A.) and Karachi Building Control Authority (K.B.C.A.). These shops / offices were booked and sold in the ordinary course of the business of the Company before it had gone into liquidation. Mr. Ali Ahmed Tarique, who is appearing for the official purchaser, who has purchased this building from the Official Liquidator on 21.8.1989, has taken following objections to the claim preferred by the claimants mentioned above:-

- i) That none of these allottees is in possession of any Sale Deed as is pointed out by Official Liquidator in the last line of Para 5 of his report.
- ii) That the Bank of America had filed Suit No. 786/1977 for recovery of loan against M/s. Dastagir Investment and Management Ltd, in which on 15.12.1977 an order was passed restraining the Company from selling the property.
- iii) That the amount paid by the respective claimants should be treated as a debt due to them from the Company and they should be arrayed in the list of the creditors rather than transferring the shops / offices booked by them.

So far as the first objection of Mr. Ali Ahmed Tarique is concerned, it may be pointed out that no doubt these claimants do not hold any Sale Deed or any Registered Sub-Lease Deed as is to be granted in the ordinary course, but from the facts narrated above, it would appear that all of them are bonafide purchasers of these shops / offices and have booked the same and have paid the full price which was fixed by the Company with the approval of K.D.A. and K.B.C.A. and were granted the allotment orders and were delivered the possession by the Company before filing of the petition. Hence the objection that they were not holding the Sale Deed or Registered Sub-Lease Deed, would not in any way come in their way.

Regarding the next objection of Mr. Ali Ahmed Tarique it may be pointed out that the sale of these shops / offices by the Company after 15.12.1977 would be at the most breach of an injunction which could have been taken note of by the Court concerned on an application of Bank of America, but was not a valid sale or transfer. Apart from this by an order dated 25.9.1982 and thereafter by order dated 24.10.1982 the claimants' applications were referred to the Official Liquidator for enquiry and report. On these applications and on certain other applications which were subsequently referred to the Official Liquidator by the Court, the Official Liquidator has submitted a Reference dated 22.8.1989 mentioned above, supporting the above claims. Hence the claims raised by the various claimants can be disposed of by the Company Judge and if he is satisfied that these claims are bonafide, then the same can be accepted by him. As I have already pointed out the construction of shops and offices was the business of the Company and these shops / offices were being sold by the Company during the ordinary course of its business to the various claimants. Therefore, these transfers are protected under Clause (b) of Section 406 of the Companies Ordinance, 1984.

So far as the third objection of Mr. Ali Ahmed Tarique is concerned, I am satisfied that these shops / offices were not the assets of the Company, nor its property, nor it was transferred / sold by the Company fraudulently to the detriment of its creditors, but these shops / offices were being sold by the Company in the ordinary course of its business. As such the question of treating the claimant as creditors of the Company and arraying them on the list of creditors does not arise. It will also not be out of place to mention that a compromise was entered into by the auction purchaser and the Official Liquidator in H.C.A. No. 58/1990 wherein it was agreed by the auction purchaser that the said compromise will be without prejudice to the pending claims of the occupants of the said property and subject to the final decision of the Company Judge in these claims and applications.

Hence I accept the claims of all these 69 claimants and direct the Official Liquidator to execute Registered Sub-Lease Deeds in favour of each of them and / or such other proper documents as are necessary under the law, but the costs and charges of documentation shall be borne by the respective claimants. The claimants shall also bear the taxes and other dues of the Authorities concerned in respect of their shops / offices. It is clarified that these shops and offices will not remain part of the property which has been auctioned / sold by the Official Liquidator to the auction purchasers, after the O.L. executes final transfer documents in their favour.

Reference of Official Liquidator dated 8.1.1990 is taken on record and is treated as a part of Reference dated 22.8.1989.

6. C.M.A. No. 2429/1989 is not pressed by Mr. Mubarik Hussain Siddiqui in view of the above order and is, therefore, disposed of as redundant.”

10. The Auction Purchaser being once again aggrieved filed High Court Appeal No.63 of 1990, which was dismissed by a learned Division Bench of this Court vide judgment / order dated 18.9.1990, against which Civil Petition for Leave to Appeal (CPLA No.K-515/1990), was filed before the Hon’ble Supreme Court which was also dismissed vide order dated 19.1.1992. It is also a matter of record that the Auction Purchaser had failed to deposit the balance amount of the auction price time and again despite several chances. It further reflects that he was also involved in booking of the shops and offices. Record further reflects that after handing over of the possession, an order was passed on 22.3.1994 and the Court observed that the balance installment is to be paid within two weeks; whereas, the Appeal before the Hon’ble Supreme Court stands dismissed and the Auction Purchaser has also let out properties and was also earning rent before making the final payment. Insofar as the auction purchaser is concerned, time and again he has filed several applications and one of such applications bearing CMA No.551/1992 was dismissed vide order dated 22.03.1994 along with various other applications filed by him. The order dated 22.03.1994 was impugned through HCA No.73/1994, whereas, on 30.5.1994 an interim order was passed for maintaining status-quo and vide order dated 09.08.1994, the appeal was admitted for regular hearing with an extension of the status-quo order. Subsequently the Appeal was disposed of on 09.04.2011 by remanding the matter to this Court and it is only CMA No.551/1992, which has been pressed by the learned Counsel for the auction purchaser, and that too only partially, as during pendency of these proceedings, the entire complexion has changed. Out of various prayers in the application, the Counsel has pressed upon Prayer Clauses-4, 5 and alternatively Clause-7 of the said application, which reads as under:-

4. That all encroachers/ occupants other than 69 recognized claimants, (shown in the attached drawing in red color with complete details) including S. No. 49, Shop No. 60 Page 8(x) may kindly be ordered to be removed and more particularly from the public Amenities as per approved plan (Car Parking, Public Passages, common Lavatories, Public Stair Case etc.) details given on Page No. 7 and as per letter dated 26th September, 1989.
5. A new Memo of Possession may kindly be issued along with demarcation on the attached drawing in view of the changed circumstances caused by exclusion of 92 premises. This drawing after verify may be treated as part and parcel of Sub-Lease of each (69) Claimant, including Deed of Conveyance of entire Dastagir Centre in favour of Auction Purchaser to reduce the future confusions, litigations and disputes, with clearly mention that how many square yards land is to be given to the Auction Purchaser.
7. That if the above solutions are not possible then kindly give the directions to convey the property (Entire 4,743.20 square yards except Shop No. 52)

as per terms of advertisement, offer and acceptance dated 20.08.1989 and 21.08.1989 which has not been modified at any stage.

OR

Directions may kindly be given to arrange a new sale agreement for an amicable settlement.

The above is without prejudice to his legal rights (review petition in Supreme Court) as permissible under the law.

Prayer accordingly.”

11. From perusal of the aforesaid prayer clauses, it appears that the auction purchaser has made a prayer to pass orders for removing all encroachers and occupants on the property in question (other than 69 recognized claimants) including encroachers upon public amenities as per the approved plan, with a further prayer that a new memo of possession be issued along with demarcation on the basis of drawings furnished by the auction purchaser, and alternatively if all such prayers cannot be accepted, then directions be issued to convey the entire property measuring 4743.20 sq. yds. except Shop No.52 as per terms of the advertisement and offer dated 20.08.1989 and 21.08.1989, which has not been modified at any stage. Insofar as the alleged encroachment is concerned, it needs to be appreciated that after acceptance of the offer and payment of the sale consideration (though belatedly) the matter ought to have come to an end; but for one reason or the other, the auction purchaser along with claimants, from time to time, have been filing various applications. It is a matter of an admitted position that upon partial payment of the sale consideration, possession was handed over. Such fact is recorded in the order dated 27.03.1990 and in the acknowledgment of possession, dated 22.10.1989, *the auction purchaser has confirmed taking over possession of the property in question free from any encroachment*. It has further come on record that encroachments, if any, were all removed by the learned Official Liquidator and such fact is also recorded in the said order. It is also a matter of record that vide Letter dated 14.11.1989, Counsel for the auction purchaser was informed by the learned Official Liquidator to the effect that all encroachments have been removed as per Order dated 21.08.1989 and the purchaser has taken over the possession; whereas, the possession memo dated 22.10.1989 available as Annexure “C” to Reference dated 22.01.1990 at Page-963 of Part-II (File No.4) reflects that the auction purchaser has issued this possession memo to the Official Liquidator and has stated that *“he has received physical possession of the property in question excluding Shop No.52, which has already been leased by this Court and other shops/show rooms situated in the ground floor and on car parking floor alleged to be the owners/occupants without prejudice to his right of legal action against them from the Official Liquidator on the said date”*. The possession memo clearly reflects that there wasn’t any question or objection regarding any encroachment and the auction purchaser has acknowledged possession of the entire auction property except Shop No.52, which is not in dispute and

the other exception being the claimants and owners against whom the auction purchaser was supposed to carry on with the legal proceedings. It appears, (in fact an admitted position) that the claims of such occupants i.e. 69 claimants have already been approved up to the level of Hon'ble Supreme Court, and therefore, subsequently the auction purchaser cannot say that he was not given proper possession. This is a matter of record and by mere assertion and that too verbally, such an objection ought not to have been accepted by the Court with further adjudication on a past and closed matter. In the possession memo, the auction purchaser has not referred to any encroachment of whatsoever nature, and further even if his case is that the present occupants and claimants were not there at the relevant time, it is for him to seek his legal remedy, as may be available in law; but not in these proceedings, wherein, he has himself acknowledged possession of the entire property except as above. It is also a matter of record that after taking over the possession of the property, the auction purchaser was even making bookings in respect of various shops and apartments and was also raising construction; hence even otherwise, now he cannot say that some encroachers have come in the property and this Court is to remove such encroachment. It further appears that on 07.01.1990, the Official Liquidator placed his Reference before the Court available at Page-851 of Part-II (File No.4) which was filed in response to CMA No.2636/1989, filed by the auction purchaser, wherein, he has clearly stated that the Official Liquidator has cleared the car parking by removing huge quantity of articles; whereas, the car ramp was also removed and he further submitted that in compliance of the orders of this Court, the encroachments have been removed and cleared, and possession has been handed over to the auction purchaser. Lastly, it is also a matter of record that the auction purchaser has been issued Sale Certificate by the Official Liquidator by excluding these properties, and even at that point of time while accepting the Sale Certificate, no such objection was raised; therefore, even on this ground also, the auction purchaser has no claim at least before this Court, and is at liberty to seek appropriate remedy in accordance with law, if someone has encroached upon his purchased property as contended and alleged. In these circumstances as well as admitted facts, the claim of the auction purchaser that encroachments are to be removed by this Court in these proceedings is misconceived and cannot be entertained; hence declined.

In view of hereinabove discussion, there is no merit in CMA 551/1992 filed by the Auction Purchaser; hence, the same is dismissed.

12. It also needs to be appreciated that these Company proceedings are to be governed in terms of the Companies Ordinance, 1984. Section 311 provides that a winding up of a Company by the Court shall be deemed to commence at the time of presentation of the Petition for winding up and this means that it is immaterial as to when the winding up order is passed; however, once such an order has been passed, the commencement date of the winding up is deemed to commence from the date on which

such petition is presented. Therefore, in this particular matter, notwithstanding the fact that the winding up order was passed on 18.1.1987, the commencement would be the date on which this Petition was presented i.e. 18.3.1981. Section 316 provides that when winding up order has been made, no Suit or other legal proceedings shall be proceeded with or commenced. In terms of Section 331 when a winding up order has been made by the Court, the Liquidator shall within 30 days summon a separate meeting of the creditors and contributors of the Company for the purpose of determining whether or not an application is to be made to the Court for appointment of a Committee of inspection to act with the Liquidator and who are to be the members of the Committee, if appointed; with a Proviso that where the winding up order has been made on the ground that the Company is unable to pay its debts, it shall not be necessary for the Liquidator to summon a meeting of the contributories. Section 346 provides that the Court may fix a time or times within which creditors are to prove their debts or claims, or to be excluded from the benefit of any distribution made before those debts are proved. Section 403 provides that Debts of all description are to be proved i.e. all debts payable and all claims against company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, and lastly and so also more importantly when there are claimants as well as creditors, who claims that the Company in liquidation owes some money or has made promise to them and to that extent they are entitled for such claim or exclusion of their properties, *their claims are to be entertained and examined only on the basis of documents of the Company, which are available with the Liquidator*. Section 423 provides that where any company has been wound up, all books and papers of the company and of the liquidators, shall, as between the contributories of the company, be prima facie evidence of the truth of all matters purporting to be therein recorded. Similarly under the Company (Court) Rules 1997 in Rule 125, it has been provided to fix a date for proving debt and is to be read with Section 405 of the Companies Ordinance, 1984 in respect of exclusion of the properties from the benefit of any distribution to be made by the Official Liquidator. In terms of Rule 126, a notice has to be issued to the Creditors; and Public Notice by this Court before a winding up order in Newspapers is a notice to all such creditors and claimants. Again in terms of Rule 127 every creditor has to prove its debts and similarly under Rules 128 & 129, the mode of proof and its verification as well as contents of proof is to be provided. Rule 146 provides that the list of creditors shall not be varied and the list as certified by the Official Liquidator and filed in the Court, shall be the list of the creditors of the company, and shall not be added or varied except under the orders of the Court. It is needless to state that insofar as instant matter is concerned, the list of creditors as well as all claimants were finalized in 1990, and therefore, through present proceedings there appears to be no justification to vary such a list. Rule 233 relates to vesting of disclaimed properties.

So in all fairness, one thing which is importantly required to be kept in mind is that the claims of all applicants, even if they are considered as creditors of the Company, (which per-se is not), they are to be dealt within the limitation of the Companies Ordinance, 1984, read with the Companies (Court) Rules, 1997, and this Court is not to be influenced or swayed by the fact that because the claimants are before the Court since long, whereas, they are poor occupants and or owners; hence, the strict applicability of law is to be ignored. It needs to be appreciated that the case of the claimant's falls within the contemplation of s.407, and in terms thereof, the time period is 12 months from the winding up; however, such time can be extended by the Court. Now this Court, by its conduct and upon application of the original claimants, extended the same from time to time, and finally passed an order by accepting their claims. Resultantly, the claims filed subsequently, though entertained for examination, does not mean that such time period has been extended, and if so, then what is the justification. If this goes on, then no winding up proceedings would come to an end. All these are material facts which needs to be appreciated while deciding the present issue in hand.

13. Coming to the contention of Mr. Muhammad Ali Lakhani as well as other learned Counsel to the effect that this Court while exercising jurisdiction under the Companies Ordinance, 1984 is a Court exercising original jurisdiction, and therefore, is also vested with all such enabling powers as are available in other laws including Civil Procedure Code, is not entirely; but partly correct. It is correct to the extent that this Court under the Company's jurisdiction is a Court of original jurisdiction; however, at the same time the jurisdiction is confined as is vested through the Companies Ordinance, 1984. For this, the Court is though competent to pass orders of all nature; but for that the power is to be derived from the Companies Ordinance, 1984 itself and not otherwise. It is also not disputed that if needed, this Court can direct recording of evidence of the claimants through Official Liquidator and then pass necessary orders. The Hon'ble Supreme Court in the case reported as *Mian Javed Malik v United Foam Industries (Pvt.) Ltd.*, (2016 SCMR 213) has also settled this issue. However, at the same time for the present purposes now it is immaterial to give any conclusive finding on the contention so raised as apparently through various orders, the claims have already been entertained and Official Liquidator has been directed to examine them and make enquiry. Thereafter reports were filed by the Official Liquidator, who has rejected all such claims, but the claimants objected and Court had issued further directions and now even evidence has been recorded and claimants have filed their respective Affidavits in Evidence on which they have been cross examined by the Auction Purchaser. Since such a long and tedious exercise has already been carried out pursuant to the orders of this Court (rightly or wrongly), therefore, at this stage of the proceedings, I would not like to record any conclusive finding on this aspect of the matter as it will not serve any useful purpose and

will entail another round of litigation between the parties which needs to be avoided as these proceedings have already protracted for decades. This Court feels that it would be better if both legal and factual aspect of the claimant's cases are decided comprehensively, putting an end to these proceedings.

14. In view of what has been discussed so far, to my understanding after passing of aforesaid Orders and being upheld in Appeals, the matter as to the claim of the claimants / intervenors ought to have ended. Nonetheless, the claimants once again came before the Court and on 10.12.1998, another claim was filed; whereas, time and again various applications of the claimants were also dismissed and Reference in this regard may be made to Order dated 27.02.2002 when one claim was dismissed in respect of Shop No.66 on the ground that mere possession is not enough. On 13.10.2005, once again the Court, as an indulgence, asked all claimants to approach the Official Liquidator in respect of their pending claims. Thereafter, on 02.02.2007 another order was passed on CMA No.90/2007 and Reference No.04/2006 of the Official Liquidator was disposed of by directing him to record evidence of the claimants. It further appears that the auction purchaser who had filed various applications including CMA Nos.10, 11, 447 of 2007 on 12.04.2007 withdrew such applications as the Auction Purchaser intended to file an application under Section 12(2) CPC against order dated 18.04.1990. It is also import to note that somewhere in 2007, an order was passed by this Court and the Official Liquidator was *restrained from entertaining any further claims as the matter was pending and lingering on as time and again the claimants were coming before the Court by pleading that they had purchased or were in possession of the shops and offices much before passing of winding up orders in this Petition*. On an overall perusal of these proceedings and orders passed by this Court, it is not understandable as to why, and under what provision of law, the claimant's requests were kept on being entertained by the Court as and when they were filed. No law has been cited on behalf of the Claimant's Counsel in this regard. These proceedings pertain to the year 1981 and are still pending in one way or the other; whereas, once the Official Liquidator was appointed, auction proceedings had started, publication was made by calling objections and 69 claimants came before the Court, whose claims were accepted and entertained; the matter ought to have ended and stand closed. But unfortunately this did not happened; again for no justifiable reasons. It is not that these proceedings are to continue till such time the claimants keep on coming before the Court. There has to apply, some limitation, or restrain, as to the claimants case. Nonetheless their applications were entertained and even evidence was recorded, which is now before this Court for adjudication. In this background, now I would deal with the claims / applications individually, which are pending before this Court, one by one.

CMA No.06/2012 listed at Serial No.2

15. This is an application by one of the Claimants namely Mst. Shaheena Sikander filed under Section 94 and 151 CPC read with Order 21 Rules 85 & 86 CPC and Section 355 of the Company Ordinance, 1984. Through this application, the claimant has only raised certain legal objections; that whether the auction purchaser has any locus-standi after having defaulted in payment of the balance amount; that whether the auction purchaser due to such conduct has abandoned his alleged rights; that whether this Court has jurisdiction in law to extend and enlarge the time for payment and whether in the circumstances, an order for resale and or re-auction ought to be passed and in view of these legal objections. It is claimed that she is a bonafide purchaser and allottee; however, in this application, which was filed in 2012, there is no specific claim in respect of any property in the Project of the Company under liquidation and only legal questions have been raised. I am afraid mere legal questions so raised, in this manner, on behalf of an applicant without any consequential claim or prayer in the application are not supposed to be decided by the Court. First one has to establish its claim in respect of the legal question being raised. The applicant was never a bidder or participated in the Auction proceedings; nor came before the Court within a reasonable time. It is a matter of fact that the offer of the Auction Purchaser was accepted vide order dated 21.8.1989, certain Appeals were filed before this Court as well as the Hon'ble Supreme Court, and none ever objected to the acceptance of the offer of the Auction Purchaser and enlargement of time in payment of balance sale consideration. Moreover, this application has been filed in 2012, without explaining any reason of such delay in filing the same. I do not see any reason to give any finding on this application which has not even disclosed the particulars of the claim of the applicant and it is only in respect of the conduct and bonafides of the Auction Purchaser as alleged; hence this application is misconceived and is hereby dismissed with cost of Rs.25,000/- to be deposited in the account of Sindh High Court Clinic.

CMA No.143/2007 listed at Serial No.3.

16. This is an application filed by Auction Purchaser requesting setting aside of Order dated 03.05.1987 passed by this Court on CMA No.388/1987, filed by one Khawaja Abdul Jalil on the ground that the Order has been obtained by misrepresentation and by filing fake and bogus documents in the shape of Possession Order dated 25.03.1980 and allotment order dated 10.03.1979. Firstly, this application has been filed on 10.02.2007 in respect of an order passed on 03.05.1987 and nothing has been argued or placed before the Court as to how this application can be entertained after 20 years of passing of the Order dated 03.05.1987. Moreover, on perusal of the said order, even otherwise, I am of

the view that no ground or case is made out to recall the said order, as it has been passed after due consideration of the facts prevailing at the relevant time and placed before the Court. Not only this, subsequently, various orders of the Court were impugned in Appeals, but this order was never challenged. This is an attempt on behalf of the Auction Purchaser to abuse the process of the Court and has caused considerable delay in finally adjudicating these proceedings, but for these kind of applications. Accordingly, this application being misconceived is also dismissed by imposing cost of Rs.25,000/- to be deposited in the account of Sindh High Court Bar Library.

CMA No.456/2007 listed at Serial No.4.

17. This is an application by the Auction Purchaser under Order 40 Rule 1 CPC requesting appointment of Receiver to collect rent and utilization charges from the alleged encroachers, land grabbers and claimants. At the very outset, I am of the view that such an application cannot be filed by the Auction Purchaser in terms of order 40 Rule 1 CPC in these proceedings. Firstly he has no locus-standi; whereas, after the auction proceedings and his payment of first installment, possession was handed over by the Official Liquidator to him on 22.10.1989, and therefore, if any other claimant is there, the auction purchaser, as an owner of the property in question, has to seek appropriate remedy in accordance with law and not in these proceedings. In view of such position, this application is also dismissed.

CMA No.768/2007 listed at Serial No.5.

18. This is an application filed by one Intervenor/Applicant Muhammad Younus Shad under Order 1 Rule 10 CPC with a prayer that he may be jointed as a party in these proceedings. At the very outset, it may be noted that this application has been filed in the year 2007 and is already belated in nature. Secondly, from the contents of the application, it reflects that the applicant/intervenor claims ownership of Shop No.52 in this Project of the Company as according to him he purchased the same from one Khawaja Abdul Jalil. Record reflects that Khawaja Abdul Jalil himself came before the Court through an application for exclusion of this shop from the purview of the auction proceedings being conducted by the Official Liquidator, and vide order dated 03.05.1987, such request of Khawaja Abdul Jalil was entertained and this shop was excluded from the properties of the Company in liquidation. Therefore, the applicant has no case insofar as these proceedings are concerned and if he has purchased any shop from Khawaja Abdul Jalil, then the remedy for him lies against Khawaja Abdul Jalil but not in these proceedings. The said shop was already excluded from the purview of Auction proceedings and has

got nothing to do with this Court anymore. Accordingly, this application being misconceived is hereby dismissed.

CMA No.792/2007 listed at Serial No.6.

19. This is an application filed on behalf of an applicant **Mst. Shaheena Sikandar** in respect of property bearing **Car Parking Office Nos.15 & 16** and it is the claim of the applicant that vide order dated 27.03.1990, such claim stands accepted and learned Official Liquidator be directed to execute conveyance deed and / or sublease in her favour. It appears that there are various other properties also being claimed by the same applicant and all these claims of applicant are dealt with along with this application. Insofar as this property bearing **Car Parking Office Nos.15 & 16** is concerned, the applicant's claim is that she is the original allottee and as soon as it came into her knowledge that some proceeding are going on, she approached this Court as well as Official Liquidator and in support she has relied upon Orders dated 27.03.1990 and 17.05.1992 to the extent that her claim in this context stands accepted. However, from perusal of the record this contention appears to be incorrect. In order dated 27.3.1990, there is no such approval of the claim, and the part of the order whereby, the Affidavit of the then Official Liquidator filed under Rule 863 of the Sindh Chief Court Rules (Original Side), has been approved or taken on record, does not relate specifically to the claim of the property in question. Through the said Affidavit the claims of the Banks as well as Income Tax Department and one other person were considered and only were allowed partly in favor of those parties; but nowhere there is any discussion of any of the claimants and or occupiers of the property in question; hence, reliance on this part of the order of approving the Affidavit of the Official Liquidator in terms of Rule 863 ibid is misconceived. Insofar as reliance on order dated 17.5.1992 is concerned, though there is some admission in the said order in respect of the present applicant; but at the same time, it is the concession of the Official Liquidator, and not of acceptance by the Court. Secondly, this applicant has various claims, and has been filing claims since start of these proceedings, and it is not clear that as to what claim is being referred to and being accepted by the Official Liquidator in the said order, as it is a matter of record that on numerous occasions, the Official Liquidator has objected to the Applicants claims. In fact there are serious allegations of committing of forgery in the Court's orders. Therefore, merely for the fact that in the said order some reference has been made to the statement as to acceptance of the claims by the Official Liquidator, in absence of supporting material, the same cannot be accepted by this Court. Accordingly the claim as above stands rejected.

(Property-Restaurant Mezzanine Floor :)

20. This property is also claimed by the present applicant and it is her case that the claim in respect of this property stands admitted as it is included in 69 claims already accepted; whereas, a conveyance deed has also been executed. Record reflects that Sales Certificate was issued by the Official Liquidator on 13.05.2005 and in the said Sales Certificate issued to the auction purchaser, two categories were listed as Category-A and Category-B, which were excluded from the auctioned properties and the claims of such claimants were accepted. This was perhaps based on 1st Inventory and subsequent events as well as order dated 18.4.1990, whereby, claims of 69 persons were accepted by the Court. This property also appears to have been listed at Serial No.4 of Category-B being Restaurant on Mezzanine Floor measuring 3696 sq. ft. covered plus open area. It further appears that a Conveyance deed has also been executed on 30.05.1992 by the Official Liquidator in favor of Master Ali Imran S/o Sikandar Ali through his real mother i.e. the applicant Mrs. Shaheena Sikandar. Though the Official Liquidator has raised serious doubts on the authenticity and genuineness of various claims of this Applicant, on the ground of forgery, manipulated documents as well delay on her part in lodging claims; however, at the same time it is not understandable as to why and how an objection has been raised in respect of this property by the Official Liquidator, as well as auction purchaser, as apparently the conveyance deed stands executed in respect of this property, which is a registered document, and therefore, to the extent of this property, the objection of the Official Liquidator as well as the Auction Purchaser is not sustainable. The property already stands excluded (rightly or wrongly) whereas, it stands conveyed in favour of the then minor son of the applicant; therefore, objections are overruled. If the case of the Applicant is that this Court may issue directions of further transfer or conveyance in some other names, then such request cannot be acceded to, as for that the Applicant has to take recourse to the procedure as may be provided in law. Accordingly, it is held that the dispute in respect of this property already stands settled, is a past and closed matter, and cannot be re-opened in these proceedings. The claim as above is disposed of accordingly.

Car Parking No.17, 18, 19, 20 and 20-A.

21. Again these properties are being claimed by the applicant on the ground that in the Sales Certificate issued by the auction purchaser in Category "A" at Serial No.15, these properties are excluded; however, there is an exception to it, in that, the said properties are being shown in the name of Shaikh Muhammad Bashir and Muhammad Saleem and not in the name of the present applicant. Record further reflects that the Official Liquidator has already executed a registered Conveyance Deed in respect of this property in favour of Muhammad Saleem S/o Badar-ud-din and Shaikh Muhammad

Bashir S/o Shaikh Muhammad Nazir, whose names already appear in the sales certificate, therefore, it is not understandable as to how the present applicant is claiming these properties in her name. If she has any relation or any business transaction with the said persons, she could have availed proper remedy as provided in law against these persons, as insofar as the Official Liquidator is concerned, these properties have been excluded from the sales certificate of the auction purchaser and proper conveyance deed stands executed; therefore, no case is made out on behalf of the applicant in respect of these properties merely for the fact that she has some relation with the actual owner or has purchased the same from them. This Court is not, in any manner, required to entertain any subsequent sales and purchases after having executed a conveyance deed through the Official Liquidator; therefore, claim in this respect of this property is hereby rejected.

Car Parking No.3, 4 and 5 & Car Parking No.13 (2 Properties)

22. It is claimed that both these properties have been excluded in favor the claimant in the Sale Certificate in category "A" at Serial No.64 (mistakenly stated as S.No.54 in the written arguments) at Page 1425 (Part-I), therefore, the objection of the Auction Purchaser as well Official Liquidator is not valid and maintainable. One perusal of the record including the Sale Certificate, this contention appears to correct; hence, to that extent it is justified. However, it needs to be appreciated that the said exclusion is recorded in the name of Mst. Shahina Sheikh Mohammad Naseer. Therefore, the claim if any can be made by such person, who has to come before the Court. Record does not depicts that whether the Official Liquidator has executed the lease or conveyance deed in favor of such claimant. If not then the said claimant can approach the Court for passing of appropriate orders, and if it has been done, as claimed, then the matter ends. However, if the present applicant's case is that the said property has been purchased from the said claimants or she has any relations with her, and this Court must pass orders for transfer of the same, then this Court cannot entertain such stance. For that the applicant may seek remedy against the seller in accordance with law. Accordingly the claim as above is dismissed.

Shop No.13 and Shop Nos.22 & 23 (2 Properties):

23. Both these properties are being claimed by the applicant on the ground that they were purchased from the original allottees, who had then conveyed the same to her, after payment of appropriate sale consideration. At the very outset, it may be observed that in proceedings of like nature, and specially at this stage of the proceedings when not less than 29 claimants / properties have not turned up to claim their properties and get their leases executed through Official Liquidator even after acceptance of their claims, such a request cannot and must not be accepted by the Court. This would open up a flood gate of

claims of such nature, whereas, in Company proceedings, the Court is not supposed to accept and transfer properties in this manner. The applicant's case, if any, is against the seller for which she may seek remedy in accordance with law. Here in this matter, after passing of so much time, pursuant to acceptance of claims of those who were found genuine on the basis of material placed before the Court, a claim from a purchaser or a subsequent alleged transferee cannot be entertained, even if such original claimant has appeared before the Court or the Official Liquidator. It is only the original claimant who can come and ask for a lease or conveyance deed, as the circumstances of this case cast serious doubts on the alleged sale and purchase of properties entered into by the parties without permission of the Official Liquidator and the Court as well. Accordingly the claim as above is dismissed.

CMA No.840/2009 listed at Serial No.7.

24. This is an application by a claimant namely Mst. Shaheena Sikandar, whereby, she seeks review and modification of Order dated 05.09.2007. It is the case of the applicant, as contended by her Counsel that through Order dated 05.09.2007, Reference No.06/2007 filed by the Official Liquidator was accepted and allowed as prayed on an urgent application of the auction purchaser without any notice to the applicant or anyone else; hence the said order needs to be modified. It is further claim of the applicant that in the said Reference, the Official Liquidator has even taken over the properties of the applicant as well as others in respect of which the claims have already been accepted by this Court vide Order dated 18.04.1990 and the said order has attained finality. In these circumstances, the modification of the order is prayed for. It would be advantageous to refer to order dated 5.9.2007, which reads as under:-

"1. Granted.

2. Official Assignee has submitted this Reference in pursuance to the letter of the advocate of the auction purchaser dated 13th June 2007, wherein, it has been pointed out that 29 shops out of 69 shops of whom claimants approached the Hon'ble Supreme Court, are not even attending or meeting with the Official Assignee and these 29 shops are lying vacant and unattended. Such situation has allowed encroachers to get some of the shops. It is apprehended that other shops will also be occupied. It has also been pointed out that other shops which are not part of 69 shops bearing No.11,14, 85-A and 85-B and open area passage on the ground floor towards staircase etc are lying vacant. Official Assignee, after the notice, has visited the place and found that the situation, pointed out by the auction purchaser, is correct, therefore, he has requested that he may be permitted to take over possession of all shops lying vacant, so that the shops should be saved from the encroachers and it will be also in the interest of would be claimants. Mr. Mushtaq Memon submits, if shops/passage are taken in possession of Official Assignee then it will not only be saved from encroachers but it will ease the situation and facilitate the other shop keepers who are legally in possession of the shop. **The Reference of Official Assignee is accepted and he is allowed to take over the possession of the shops mentioned in Paragraphs Nos. 3 and**

7 of his Reference. The concerned police official is directed to assist the Official Assignee. Adjourned.”

Perusal of the order as above as well as the record, it appears that contention of the applicant to the effect that such order was passed and obtained on an urgent application of the auction purchaser without notice to any one is correct and justified. It further reflects from perusal of Reference No.06/2007 that in fact through such Reference the then Official Liquidator had made an attempt to interpret the order of the Court dated 18.04.1990 and the entire Reference is based on, rather is a reproduction of the contention of the auction purchaser. It further appears that through this Reference, even the shops and other properties which have already been excluded from the purview of the auctioned property through the said order (i.e.18.4.1990) which has been approved up to the level of Hon'ble Supreme Court, the then Official Liquidator, made an attempt to get at least 29 properties excluded from the purview of such order, and in turn was seeking permission to hand over the same to the auction purchaser. Such conduct on the part of the then Official Assignee acting as Official Liquidator is neither appropriate, nor justified from the record; whereas, it amounts to modifying and / or annulling the Order dated 18.04.1990, which has already attained finality. The auction purchaser has lost in appeals and there appears to be no ground in law, or even on facts, to give these properties to the auction purchaser, only on the ground that the allottees/owners failed to get their leases executed from the Official Liquidator. Once the Court had approved their claims, (rightly or wrongly), and such order was approved up to the level of the Hon'ble Supreme Court, how come those claimed properties be given to the auction purchaser. The Companies Ordinance, 1984 provides a mechanism for unclaimed property of the Company in liquidation, and in no manner it can be said or presumed, that if they are not claimed, they are the properties of the auction purchaser. More so, in a case like this, wherein, the claim of 69 claimants have already been accepted and approved. In view of such position, I am of the view that Order dated 05.09.2007 was obtained without proper assistance to the Court; hence this needs to be modified and / or recalled at least to the extent that the properties, which were included in the claims of 69 claimants and have been approved by this Court on 18.04.1990 against which High Court Appeal and further Appeal before the Hon'ble Supreme Court have failed, will remain excluded, and would never be a part of the property of the auction purchaser. To this extent this application is allowed.

CMA No.291/2011 listed at Serial No.8.

25. No one has turned up to argue this application, which is otherwise only to the extent of seeking directions to the Official Liquidator; whereas, the claims of all

claimants have been examined and a report has already been furnished; therefore, this application has served its purpose, which is accordingly dismissed as infructuous.

CMA No.309/2017 listed at Serial No.9

26. This is an application for placing this matter on priority in view of Circular dated 16.10.2012 issued by the Hon'ble Chief Justice of this Court; however, in view of passing of this order, this application has become infructuous and is accordingly dismissed as such.

27. Now first coming to the case of the claimant namely Haji Pordil Khan Awan represented by Mr. S.M Iqbal, Advocate. He has brought his claim through **CMA No.2552/2002** (which is not listed but has been taken up at the request of learned Counsel as all pending claims are being dealt with and decided) and has led his evidence before the Official Liquidator. His case is in respect of two properties i.e. Show Room No.1, which is also known as Shop No.1 and two other shops bearing No.24 & 25. In his affidavit-in-evidence he has stated that the first owner of Show Room No.1 was S.M Sabir, who filed Suit No.133/1987 in this Court against the Company and a Judgment and Decree was passed on 15.06.1987, and thereafter claim was filed before the Official Liquidator. It is the case of this claimant that on the basis of the Judgment and Decree a Conveyance Deed was executed by the Company on 26.01.1988 in favour of S.M Sabir, who thereafter made a declaration and confirmation of oral gift on 11.08.1988 in favour of Syed Muhammad Owais in respect of Show Room No.1 measuring 507.50 sq. ft., whereas, the said donee Syed Muhammad Owais executed an irrevocable General Power of Attorney in favour of Syed Muhammad Haji Mobeen on 16.08.1989, which was duly registered, who thereafter executed an Indenture of Sale Deed on 19.09.1992 on the basis of such power of attorney in favour of Mr. Saadullah S/o Syed Mobeen Khan, which was also duly registered and the said Saadullah then executed a Sale Deed on 17.04.2002 in favour of the present claimant Mr. Pordil Khan Awan alongwith his brother Haji Nazar Hussain; hence this claim. Firstly, it needs to be appreciated that the order of winding up was passed by this Court on 18.01.1987; whereas, Suit No.133/1987 was filed on 10.02.1987 by S.M Sabir against the Company i.e. after passing of the winding up order. In terms of Section 316 of the Companies Ordinance, 1984, it is provided that when a winding up order has been made, no Suit or other legal proceedings shall be proceeded with or commenced against the Company except by leave of the Court, and subject to such terms as the Court may impose. Subsection (2) provides that the Court which is winding up the Company shall, notwithstanding anything contained in any law for the time being in force, has jurisdiction to entertain, or dispose of, any Suit or proceeding by or against the Company and Subsection (3) provides that any Suit or proceeding by or against the Company which

is pending in any Court other than that in which the winding up of the Company is proceeding may, notwithstanding anything contained in any other law for the time being in force, be transferred to and disposed of by the Court. The law is very clear to the extent that all Suits upon passing of a winding up order, ought to be stayed, and if there are any proceedings pending, then they cannot be proceeded further without leave of the Court, which is proceeding with the winding up under the Companies Ordinance, 1984. It has not been brought on record; nor even argued or pleaded, that any such leave of this Court was ever obtained under Section 316 (ibid). Secondly, it is also a matter of record that after passing of the winding up order, it could only be the Official Liquidator, who could proceed on behalf of the Company and the Official Liquidator ought to have been joined as a party in the Suit, which was never done. This entire exercise appear to be not only against the law; but apparently is collusive in nature with the then management of the Company. This Suit proceeded Ex-parte as it was against the Company management without notice to the Official Liquidator, and a judgment and decree was obtained and more surprisingly on 26.01.1988 a deed of conveyance was executed, that is after passing of the winding up order, by the Company in question through its director Mr. Najam-uz-Zaman S/o M.Q Zaman. Now how could a Director of the Company execute a conveyance deed when such Company is under liquidation and an order of winding up has already been passed? The entire case of the claimants is dependent on the ground that a judgment and decree was in favour of the original allottee, on the basis of which the ultimate conveyance deed was executed, and therefore, the claim is genuine. However, it is to be noted that the entire superstructure of the claimants is built upon a document, which is void *per se* as the same has been obtained not only in violation of Section 316 of the Ordinance; but so also is dependent on a conveyance deed executed by a Director of the Company, which no more existed at the relevant time, except with the authority of the Official Liquidator. Insofar as Section 316 of the Companies Ordinance, 1984 is concerned by now it is settled law that any steps taken or proceeded with in violation of this provision are illegal and cannot be acted upon. Reliance in this regard may be placed on the cases of *GAC Pakistan (Pvt.) Ltd. v. EFU General Insurance Ltd.* **2013 CLD 1568**, *Habib Bank Ltd. through Attorney(s) v. SCHON Textile Ltd. through Director* **2010 CLD 1819**, *Asim Iftikhar, Partner Anjum Asim Shahid Rehan, Chartered Accountant v. Ali Azeem Ikram, HOD SECP* **2005 CLD 503**, *National Bank of Pakistan v. Banking Tribunal of Pakistan* **PLD 1994 Karachi 358** and *State Life Insurance Corporation of Pakistan v. Ibrahim Management Ltd.* **1990 CLC 206**. Moreover, it has also come on record in the evidence and as contended by the Official Liquidator, that initially this S.M Sabir, who claims ownership of these properties, filed some receipts of the Company in Suit No.786/1977 filed by the Bank for getting himself joined as an intervenor, bearing Nos.88, 34, 486, 477 and 602; whereas, when he filed his own Suit bearing No.133/1987, he filed different receipts bearing Nos.681, 684, 682, 683 & 680 and obtained an ex-parte

order. It has further come on record that the property according to the claimants case, was purchased on 17.02.2002; however, as per letter of Allied Bank of Pakistan dated 20.02.1989, the said property was claimed to have been mortgaged by the owner S.M. Sabir and title documents were in the possession of the bank. Therefore, it is not understandable as to how, and under what circumstances, this claimant managed to purchase the said property. The claimant's case, if any, could be against the seller of the property, who on the basis of void and forged documents, had sold the same to him; but not before this Court against the Official Liquidator or the Company in question; hence his claim is liable to be rejected and so ordered accordingly.

28. Mr. Abdul Wahab Baloch has appeared for various claimants, who have filed their applications including CMA No.839/2007. One of the claimants, being represented by him is Muhammad Amin, who has claimed Shop Nos.71 & 76. Other claimant is Ali Bash, who claims Shop Nos.74 and 90 and third claimant is Dilawar, who claims shop No.89. Learned Counsel was, at the very outset, confronted in respect of approaching this Court in the year 2002 as apparently this was done much belatedly; but learned Counsel could not satisfy as to why the claimants have come before the Court in the year 2002; whereas, these proceedings are pending from 1981 and property has been auctioned in 1989. Even otherwise all these claimants being represented by him, (except Dilawar Khan), have purchased their properties through attorney(s) or sub-attorneys or other instruments; but admittedly have not claimed the same as original Allottees. It is also a matter of fact that these claimants are not part of 69 approved claimants nor there is any mention of these claimants in the first inventory prepared by the Official Liquidator. Nor the property being claimed by Dilawar Khan is included in the original 69 claims approved by the Court. Hence, his case also cannot be considered by the Court only for the fact that he claims to be an original allottee, which is not supported from the record of the Company available with the Official Liquidator. Notwithstanding this, the evidence led by them is not at all convincing or confidence inspiring as there are various defects as well as objections of the learned Official Liquidator inasmuch as in some cases the receipts are forged or are not matching with the receipts of the Company; and therefore, it is not possible for this Court in these proceedings to appreciate such defects and weak evidence at this stage of the proceedings. The record produced before the Official Liquidator has to be reconciled and matched with the record obtained from the Company at the time of passing of the winding up order, which is admittedly not the case. In view of such position all claims as contended by Mr. Abdul Wahab Baloch are hereby rejected.

29. In view of hereinabove discussion the listed References as well as pending applications and claims of the Applicants are decided in the following terms.

- (i) Official Liquidators Reference 04/2006 is taken on record with exceptions, if any, as recorded in this order.
- (ii) Application listed at Serial No.1 bearing CMA Nos.06/2012 (by Mrs. Shaheena Sikander) is dismissed with cost of Rs.25,000/- to be deposited in the account of Sindh High Court Clinic. Her application at Serial No.6 bearing CMA No.792/2007 (for Car Parking Office No.15 & 16) is also dismissed, whereas, another application for review filed by her at Serial No.7 bearing CMA No.840/2009 is allowed. Her claims in respect of properties bearing (a) Car Parking No.17,18,19,20 & 20-A; (b) Car Parking No.3,4 and 5; (c) Car Parking No.13; (d) Shop Nos.13 and (e) Shop Nos. 22 and 23 are dismissed. However, her claim in respect of (f) Restaurant at Mezzanine Floor is allowed.
- (iii) The Claims of Applicant(s) Pordil Khan (CMA No.2552/2002 not listed), Muhammad Amin, Ali Bash Khan and Dilawar Khan are also dismissed.
- (iv) Application at Serial No.2 bearing CMA No.143/2007 (by Auction Purchaser) is dismissed with cost of Rs.25,000/- to be deposited in the account of Sindh High Court Bar Library. Similarly Application bearing CMA No.551/1992 is also dismissed, whereas, his other claims in respect encroachments and removal and so also for handing over of the unleased properties of the original 69 claimants is also dismissed.
- (v) Applications at Serial No.4 bearing CMA No.456/2007, at Serial No.5 bearing CMA No.768/2007, at Serial No.8 bearing CMA No.291/2011, and at Serial No.9 bearing CMA No.309/2017 are all dismissed.

Dated: 21.03.2019

Judge