

**ORDER SHEET
HIGH COURT OF SINDH AT KARACHI**

J.C.M. No.33 of 2007

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:

Mr. Justice Muhammad Ali Mazhar

The Securities & Exchange
Commission of Pakistan.....Petitioner

Versus

Beema Pakistan Company Limited.....Respondent

Dates of hearing: 24.09.2018, 29.10.2018 & 18.02.2019.

Mr. Ijaz Ahmed, Advocate for the petitioner.

Kazi Sheharyar Iqbal, Advocate for the respondent.

Mirza Shahnawaz, CEO of the Respondent.

Muhammad Ali Mazhar, J: This petition has been brought under Section 305 of the Companies Ordinance 1984 read with Section 143 of the Insurance Ordinance, 2000 to entreat winding up of the respondent and appointment of Provisional Manager to take the reins and control of respondent's affairs.

2. The transient facts of the case are as under:

The petitioner regulates corporate entities under the Companies laws and also regulates insurance business under the provisions of the Insurance Ordinance, 2000. The respondent (Beema Pakistan Company Limited) is a public limited company. An investigation was conducted in terms of Section 231 of the Companies Ordinance 1984, Section 59 of the Insurance Ordinance, 2000 and Section 30 of the Securities and Exchange Commission of Pakistan Act, 1997 which revealed that the management control of the respondent was fraudulently acquired by the existing management under questionable circumstances. According to the petitioner, the violations unearth during investigation constituted grounds for winding up of respondent in terms of Section 305 of the Companies Ordinance hence in compliance of proviso (c)

of Section 309 of the Companies Ordinance, a show cause notice was issued to the respondent on 1.6.2007 to give an opportunity of hearing before filing of a petition for winding up. The respondent submitted its response with more or less same contents as mentioned in the letter dated 28.6.2007. Despite giving ample opportunity of hearing the respondent was unable to submit any satisfactory response to the show cause notice therefore, the petitioner passed an order under section 309 of the Companies Ordinance on November 5, 2007 and filed this petition.

3. The respondent filed the written statement in the following terms:

The investigation was conducted by the petitioners with malicious intention. The auditors gave two reports which were contrary which resulted their removal by the Board. The allegations are concocted and defamatory. The complainant wrongly alleged that a property was purchased in Landhi Industrial Area. The property was considered but due to discrepancies in the documents the deal was neither materialized nor it was shown on the books of accounts. All actions of the respondents were reported to the petitioner and were duly audited and passed by the members/shareholders of the Company. The matter of preference shares is neither new nor a denial of the Companies Ordinance, 1984. The property was purchased by Mr. Mirza Shahnawaz Agha at Rs.42.5 million and renovated for over Rs.35 million and this property was transferred to the Company for Rs.77.5 million against shares. The Foreign Underwriting without permission to underwrite in the domestic market is not a legal requirement. The underwriting so acclaimed had nothing to do with Beema Pakistan Company Limited as it was Mr. Mirza Shahnawaz Agha's personal endeavor. M/s. Muniff Ziauddin & Company was removed due to their incompetent management of Company's audit wherein they provided two reports each in denial of the other. The present auditors M/s. Khalid Majid Rahman Sarfaraz Rahim Iqbal Rafiq & Co. were appointed at the request of the Management of the Company by SECP itself. Their audited report once passed by the Company's shareholders was withdrawn because they were threatened by the SECP to do the same. The Commission is fully responsible in the subversion of this transaction in transition and has caused a loss of Rs.200 million plus to the Company.

4. The learned counsel for the petitioner argued the accounts of the respondent as at June 30, 2006 were reviewed by Munif Ziauddin & Co. Chartered Accountants with adverse observation. On account of such observations, an investigation was ordered under Section 231 of the

Companies Ordinance, 1984, Section 59 of the Insurance Ordinance, 2000 and Section 30 of the Securities & Exchange Commission of Pakistan Act, 1997. A detailed enquiry report was submitted which identified a large number of serious breaches of several legal provisions. Consequently, a show cause notice was issued on 1.6.2007 in terms of Section 309(c). Despite ample opportunity, the respondent failed to submit any satisfactory response to the show cause notice. Eventually, on 5.11.2007, the petitioner passed an order under Section 309 of the Companies Ordinance, 1984.

5. The learned counsel further avowed that the respondent has been carrying on unlawful and fraudulent activities; it has been conducting its business in a manner that is oppressive to its members, policy holders and its minority shareholders and the investing public; the respondent is run and managed by persons who have failed to maintain proper books of accounts and committed fraud, misfeasance and malfeasance; it is managed by persons who refused to act according to the requirements of the memorandum and articles and the provisions of the Companies Ordinance and Insurance Ordinance and the rules framed under the aforesaid statutes; it has been acting in violation of the provisions of Insurance Ordinance and also failed to comply with the directions issued by the petitioner from time to time; the respondent failed to comply with the mandatory provisions of the Insurance Ordinance, 2000, hence not entitled to undertake insurance business for the last several years; the respondent was allowed a conditional registration vide letter dated January 11, 2005 however, the respondent failed to comply with conditions, therefore, the conditional registration stood withdrawn; the respondent is commercially insolvent and has lost its substratum since it has no licence to operate as an insurer hence it is liable to be wound-up under Section

305(f)(i), (iii), (iv), (v) and (h) of the Companies Ordinance, 1984 (*now Section 301 (g) (i), (iii), (iv), (v) and 301(i) of the Companies Act, 2017*) read with Section 143 of the Insurance Ordinance, 2000. In support of his contention, the learned counsel relied on the case of **Controller of Insurance vs. Pakistan International Insurance Company (Pvt.) Limited (PLD 1993 Karachi 720)** in which the court held as under:

“12. An Insurer plays a very important role in the development of the trade and commerce and also in other financial fields in the country and an un-reliable or financially unsound or bogus Insurer can play havoc in such fields and can also destroy or cause irreparable loss to the people, financially big or small, who rely upon such Insurers. As in the case of Banks, only genuine and financially sound Insurer be allowed to carry on insurance business in the country.

13. The said allegations contained in the letter dated 1-11-1988 of the department have not been denied by the respondent. On the contrary, a clear impression is given that the allegations/charges leveled against the respondent are correct but the respondent wanted to be excused promising to act properly and within the bounds of law in future. Association of the respondent with the Investment Companies has not been denied. One such Investment Company was described as a "sister concern" of the respondent. On question from the learned counsel for the respondent, in the presence of the Chairman of the respondent, who was also the head of the said Investment Company, it was admitted that claims running into millions of rupees made by the depositors with the said Investment Company have not been repaid. Apparently, the respondent had given guarantees on behalf of the said Investment Company also for repayment of the amounts of the investors but, despite this, depositors' claims have not been settled.

14. In view of the above, admitted factual position, I am of the view that such an Insurance Company should not be allowed to carry on any kind of insurance business in Pakistan and the continuance of the respondent as a company is clearly prejudicial to the interests of the policy-holders. The actions and defaults mentioned hereinabove bring the case of the respondent within the mischief of clause (iv) of section 53(2)(b) of the Insurance Act, 1938.

15. As a result, this petition is allowed, Pakistan International Insurance Company (Pvt.) Limited is ordered to be wound up. Controller of Insurance, Government of Pakistan, is appointed as the Official Liquidator”.

6. Quite the reverse, the learned counsel for the respondent

argued that the respondent company was acquired in June 1999 from an outgoing Board. The acquisition was done under the Insurance Act and the name of the company was "Heritage Insurance Company Limited". At the time of acquisition of the respondent by its Chairman, Mirza Shahnawaz Agha, the respondent company was suspended for underwriting owing to the lack of solvency and was deemed to be a sick unit because it had a liability of approximately 30 million and license to operate was also suspended. A presentation was filed to the Controller of Insurance, Ministry of Commerce, government of Pakistan for activating the sick unit. Based on an undertaking, the registration was restored temporarily. The name was changed as Beema Pakistan Company Limited. The regulators cancelled the respondent's registration under the Insurance Ordinance, 2000 through a non-speaking order. The respondent filed two separate constitutional petitions which were unconditionally withdrawn on a firm commitment to restore the respondent's license. The preference shares with the right to management were allotted to the respondent's Chairman, through an AGM. No complaints from any shareholders ever received or recorded against the respondent's management.

7. It was further contended that there was no question of purchasing the property with the permission of SECP as it was only an agreement for purchase which did not turn into sale deed. The takeover by fraud was also denied by the learned counsel. According to him, transaction for purchasing property was not completed hence this petition for winding up is without any lawful authority. The learned counsel referred to 2008 CLD 214. He further argued that no sanction under section 309 of Companies Ordinance has been obtained and opportunity was granted to the respondent. He further referred to 2008 CLD 286. It was further averred that winding up on the ground of losses, is no ground which has clearly

elaborated in 2008 CLD 465 and 2005 CLD 636. The allegations raised in the petition require evidence hence winding up petition is not maintainable. Ref: 2005 CLD 747, 2005 CLD 1291 and 2004 CLD 640. It was further contended that utmost endeavor should be made for survival of corporate sectors rather than dismantling. Ref: 2002 CLD 1794 and PLD 2002 SC 1111. The petitioner has not been given any opportunity nor the case has been properly investigated hence the petition is to be dismissed in the light of law laid down in 2009 CLD 1106. He further referred to 2013 CLD 1229 and 2013 CLD 1733. It was also contended that during the proceeding in court, the company should not be considered as a dead person that aspect has been discussed in 2011 CLD 1095.

8. Heard the arguments. In tandem with the memorandum of association of respondent company, the objective for which it was established were to carry on all kinds of insurance businesses including life assurance and all kinds of guarantee indemnity business in particular and without prejudice the foregoing, to carry out, fire, marine, accident, employer's liability, workmen's compensation, disease, sickness, burglary and robbery, theft, fidelity and transit insurance. The auditors of the respondent in their report for a period ended on 30.06.2006 expressed an adverse opinion on financial statement, inter alia, a huge number of shares were issued against agricultural land which was acquired on the basis of power of attorney but the title of the land was not transferred in the name of the company. During financial year 2006, shares of Rs.77.5 million were issued against the residential property on the basis of valuation agreed between the company and the chief executive but survey report regarding physical verification and valuation of property was not obtained at the time of issuance of shares. During financial year 2006, shares of face value of Rs.41.158 million were issued to the Chairman/Chief Executive against cash but no bank statement

was made available to verify the receipt of share deposit money. The auditors further observed that the amount due to or due from other insurance/reinsurance companies remained unconfirmed; inadequate provision for doubtful debts [receivable from subsidiaries M/s. Shabestan Foods (Private) Limited and Phoolwala (Private) Limited]; capitalization of expenses (Pakistan Fire Protection Academy and Live Rostrum); insufficient provision for impairment of investments of subsidiaries; non-payment of Zakat deducted at source into Central Zakat Fund and non-payment of Tax deducted at source out of payments on accounts of dividends in Government Treasury. Seeing as the reflection set down by the auditors was much significant and expressive, therefore, the Securities and Exchange Commission of Pakistan conducted detailed investigation into the affairs of the respondent under Section 231 of the Companies Ordinance, 1984 (now Section 221 under the Companies Act 2017) read with Section 59 of the Insurance Ordinance, 2000 and Section 30 of Securities and Exchange Commission of Pakistan Act, 1997.

9. An assiduous preview and vetting of Section 59 of the Insurance Ordinance, 2000, deciphers that if the Commission/SECP believes upon reasonable grounds that an insurer is or is likely to become unable to meet its liabilities or that there has been or is likely to be a contravention of the provisions of the Ordinance or the rules made thereunder by the insurer, the Commission may investigate the affairs of an insurer. The tenets of sub-section (3) imparts that when an investigation is made under this section, the Commission may, after giving an opportunity to the insurer to make a representation in writing or be heard in person, by order in writing require the insurer to take such action in respect of any matter arising out of the investigation as it may consider on reasonable grounds to be necessary to secure compliance

with the provisions of this Ordinance. Concomitantly, Section 231 of the Companies Ordinance, 1984, translated that the books of account and books and papers of every company shall be opened to inspection by the Registrar or by any officer authorized by the Commission. Every director, officer or other employee of the company under the repealed Ordinance, 1984 was obligated and duty-bound to produce to the person making inspection under Sub-Section (1) all such books of account and books and papers of the company in his custody or under his control and to furnish him with any such statement, information or explanation relating to the affairs of the company as the said person may require of him within such time and at such place as he may specify.

10. In keeping with the provisions encompassed and integrated under Section 32 of the SECP Act, 1997, the Commission may by notice in writing require any person acquainted with facts and circumstances of the case to appear before an Investigating Officer authorized by it and such person shall be bound to answer all questions relating to such case put to him by Investigating Officer as the case may be and to state the truth. Some penal provisions are also assimilated under sub-section (5) which explicates the consequences of failure to appear before the Investigating Officer, refuses to answer any question and knowingly furnishes a statement or information which is false or misleading and willfully refuses to obey or disregard any lawful order of the Commission.

11. The record put on view that at the beginning of investigation, the investigating team visited the respondent office and held a meeting with C.F.O and Chairman of the Company. The Commission issued an investigation order under Section 30 of the SECP Act, 1997 after affording profuse opportunity to the respondent company, the

investigating team comprising Assistant Director, Joint Director and Director of Monitoring and Investigation Wing of SECP reached to the following conclusion:-

“CONCLUSION

Per our investigation, Mr. Agha has continuously issued shares of BPCL in his name and in the names of identified individuals, against various properties which either do not exist or were never in Mr. Agha's or BPCL's name (Only in one instance urban property was transferred in the name of BPCL in 2006). All these additional shares were issued in total disregard of Section 86(1) of the Ordinance, and Rule 8 of the 1996 Rules. The issued shares were sold in the stock market with the help of identified parties and the proceeds were either transferred directly to Mr. Agha's bank account or large amounts of cash were drawn by him or were utilized by the said parties on the instructions of Mr. Agha for either personal use, or for payment of the Company's expenditure, as there was no substantial business being conducted by the Company during 1999 to 2006.

The Company engaged in reinsurance business abroad, during the period in which its registration was suspended. The statutory auditors for year 2006 M/s. Muniff Ziauddin & Co. were forced by the Company to resign on disagreements on the half yearly accounts for the period ended June 30, 2006. The incoming auditors M/s. Khalid Majid Rehman Sarfaraz (KMRS) have withdrawn their opinion on the published audited accounts for the year ended December 31 2006, on the basis of contradicting disclosures, material inconsistency, as well as non-disclosure of material information by the Company. The Company has not published its half yearly accounts for the period ended June 30 2006, quarterly accounts for the quarters ended September 30 2006 and March 31 2007.

The Company has issued substantial capital of Rs.999 million, whereas its total disclosed realizable assets are in the range of Rs. 5-8 million only. None of the agricultural or residential properties appearing in its annual accounts are effectively owned by the Company. It is therefore concluded that Mr. Agha acting in concert with identified parties, has not only violated the provisions of the Ordinance, the 2000 Ordinance, and the 1996 Rules thereof, but has also defrauded the shareholders of the Company at large.

Sd/-
Muhammad Asif Paryani
Assistant Director

Sd/-
Irfan Abbas Fazal
Joint Director

Sd/-
Shahid Nasim
Director”

12. Afterwards, the SECP (non-life insurance division) issued a show cause notice to the respondent on 1.6.2007 under Section 309 (now Section 304 under the Companies Act 2017) read with Section 305 of the Companies Ordinance, 1984 (now Section 301 under the Companies Act 2017) and Section 135 and 143 of the Insurance Ordinance, 2000. Sooner than ruminating constituents of the show cause notice, I would like to first focus on Section 305 of the repealed Ordinance, 1984 which was dealing with the circumstances in which the company could be wound up by court. Concurrently, Section

309 of the same Ordinance, 1984 (now Section 304 under the Companies Act 2017) was germane to the provisions of application for winding up. In proviso (c) it was elucidated that the Commission shall not be entitled to present a petition for winding up of a company unless an investigation into the affairs of the company has revealed that it was formed for any fraudulent or unlawful purpose or that it is carrying on a business not authorized by its memorandum or that its business is being conducted in a manner oppressive to any of its members or persons concerned in the formation of company or that its management has been guilty of fraud, misfeasance or other misconduct towards the company and such petition shall not be presented or authorized to be presented by the Commission unless the company has been afforded an opportunity of making a representation and of being heard.

13. Under Section 135 of the Insurance Ordinance, 2000, the Commission may appoint an Administrator to manage the affairs of the insurer under the direction and control of the Commission if it has reasons to believe that an insurer carrying on insurance business is acting in a manner likely to be prejudicial to the interest of holders of insurance policies, however, the appointment of Administrator would be subject to an opportunity to the insurer to be heard. At the same time, Section 143 of the Insurance Ordinance, 2000, copes with and oversees the winding up by the court. For the ease of reference Section 143 of the Insurance Ordinance, 2000 is produced as under:-

**“(PART XVIII)
Insurance Ordinance, 2000**

“143. Winding up by the Court.--(1) The Court may order the winding up in accordance with the Companies Ordinance, 1984 (XLVII of 1984), of any insurance company and the provisions of that Ordinance shall, subject to the provisions of this Ordinance, apply accordingly.

(2) The Court may, provided that it is satisfied that such order is in the interests of the policy holders of the company, order the winding up of an insurance company:

(a) on the grounds set out in section 305 of the Companies Ordinance 1984 (XLVII of 1984), but subject always to the provisions of this Ordinance;

(b) if with the sanction of the Court previously obtained a petition in this behalf is presented by shareholders not less in number than one-tenth of the whole- body of shareholders and holding not less than one-tenth of the whole share capital or by not less than fifty policy holders holding participating policies of life insurance other than paid up policies, that have been in force for not less than three years and have a total sum insured, including bonuses added to the sum assured of not less than fifty million rupees; or

(c) if the Commission, who is hereby authorised to do so, applies in this behalf to the Court on any of the following grounds, namely:--

(i) that the company having failed to comply with any requirement of this Ordinance has continued such failure or having contravened any provision of this Ordinance has continued such contravention for a period of three months after notice of such failure or contravention has been conveyed to the company by the Commission;

(ii) that it appears from the returns furnished under the provisions of this Ordinance, or from the results of any investigation made thereunder, or from a report made by any Administrator appointed thereunder that the company is insolvent; or

(iii) that the continuance of the company is prejudicial to the interests of the policy holders.

(3) An insurance company in respect of which a winding up order is made shall immediately cease to enter into new contracts of insurance, whether in life or non-life insurance.

(4) All contracts of non-life insurance issued by an insurer which are in force at the date of an order for the winding up of the insurer, shall stand cancelled as at the date of the order or at such later date as may be specified in the order.”

14. The opening segment of show cause notice exemplifies that on 11.01.2005, SECP restored the Bema Pakistan Company Ltd. (Respondent) registration for transacting general insurance business subject to the following conditions:-

“(a) The title of the lands/properties against which capitalization has been made by the company is to be mutated in the name of M/s.Beema Pakistan Company Limited; within the period of four months i.e up to 30 April, 2005; and

(b) The company shall meet the minimum statutory deposit requirements, as laid down under rule 9, sub rule (3) of the SECP Insurance Rules, 2002, by 31 March 2005.”

15. It was further spelled out in the show cause that the respondent company did not confirm mutation of lands/properties in its company name and minimum statutory deposit requirements were only complied with in 2006, after lapse of deadline, hence, the company failed to meet the conditions of restoration of the registration of the company as required. Levelheaded opportunity was provided to the respondent to defend the charges mentioned in the show cause notice, afterward, the Chairman, SECP (Chairman Secretariat) passed an order on 5.11.2007. After deliberating and taking stock of all issues, the Chairman reached to the conclusion that following actions of the respondent conjures up and bring to mind an application under Section 305(f)(iv) of the 1984 Ordinance enabling the Commission to pass an order of compulsory winding up of BPCL (respondent company):-

“i. BPCL’s books of accounts falsely stated the value of the 1999 properties, as outlined in Paragraph 5(i) above.

ii. Capital Gains from the 2002 property swap as explained in Paragraph 5(iii) above were never shown in BPCL books of account.

iii. The premiums and remittances earned by BPCL from its offshore insurance business’s was falsely shown in BPCL’s books of account as a loan from Mr. Agha as explained in Paragraph 5(iv) above.

iv. The Residential Property transaction detailed in Paragraph 5(v) above was falsely shown in BPCL’s books of accounts as a purchase from Mr. Agha for a value of Rs. 77.5 million. However, the actual value of the property was only Rs. 42.5 million. Subsequently, the said property was repurchased by Mr. Agha and his son Mr. Salman Agha for a consideration of Rs. 45 million. the said property is still falsely being disclosed as Company’s Asset in the audited accounts of BPCL for the year ended December 31, 2006. After repurchase of the said property Mr. Agha and his son Mr. Salman Agha, obtained a loan of Rs. 20 million against its mortgage with Faysal Bank Ltd.

v. Shares of Rs. 405 million were fraudulently issued against the properties which BPCL never acquired and these shares were subsequently off loaded into the stock markets. as explained in paragraph 5(v) above.”

16. In paragraph 18, the Chairman concluded the order as under:-

“18. The Commission is empowered under proviso c of Section 309 of the 1984 Ordinance, to present a petition before the High Court for winding up of a Company, and *whereas the investigation into the affairs of BPCL as conducted under Section 59 of the 2000 Ordinance and under Section 231 of the 1984 Ordinance has revealed that the business of BPCL is being conducted in a manner oppressive to any of its members and that the management has been guilty of fraud, misfeasance, and misconduct towards BPCL and to allow BPCL to continue in the business of general insurance will be injurious to the interests of its Members and the general public.*” [emphasis applied]

17. The order passed on the show cause notice unequivocally demonstrates that adequate opportunity was made available to the respondent to defend the show cause notice. Moreover, the Commission asked the respondent to provide relevant documents detailing the relationship between BPCL and Crystal International Trading Company; 1999-2000 audited accounts of Crystal International Company Trading Company evidencing the financial undertaking/guarantee provided to BPCL; complete set of documents related to the undertaking provided by Crystal to BPCL; valuation reports, conveyance deeds, sale and purchase agreements for acquisition of land worth Rs.405 million in 2006 along with payment details; type of business activities of Mr.Agha in USA; type of services rendered by Mr.Agha in said business activities; details of parties with whom Mr.Agha did business in USA, and details of payments received in this regard. Though on 30.07.2007, BPCL (respondent) submitted its reply to the Commission's letter dated 17.07.2007 but reiterated same contentions as incorporated in the earlier reply dated 28.6.2007. According to the Chairman, no documents were submitted apart from valuation documents of the properties, the purchase of which was already rescinded by BPCL (respondent). A cautious and judicious going-over and appraisal of the order passed by the Chairman, SECP, it is obviously discernable that despite

ample opportunity, the respondent company and its officials could not defend the accusations and charges and also failed to make available relevant documents required by the Chairman in the show cause proceedings. Even in this winding up proceedings, neither the respondent could demonstrate that the proceedings initiated by the petitioner against the respondent was unjust or unmerited or the grounds raised for winding up do not exist or subsist nor could substantiate with any convincing documentary evidence that the respondent company is a going concern and it has not lost its substratum.

18. The going concern principle is an assumption that an entity will remain in business for the foreseeable future. The going concern concept is not clearly defined anywhere in generally accepted accounting principles and so is subject to a considerable amount of interpretation regarding when an entity should report it. A firm's inability to meet its obligations without substantial restructuring or selling of assets may also indicate that it is not a going concern. The going concern concept is extremely important to generally accepted accounting principles. Without the going concern assumption, companies wouldn't have the ability to prepay or accrue expenses. Conditions that lead to substantial doubt about a going concern include negative trends in operating results, continuous losses from one period to the next, loan defaults, lawsuits against a company and denial of credit by suppliers. The respondent failed to fortify and substantiate that it is a going concern seeing that it is not engaged in the insurance business admittedly for last several years. The grounds raised in the support of winding up petition are very essential and severe and continuance of the company would be prejudicial to the interests of the policy holders. I also fully endorsed the dictum laid down by the learned single judge of this court in the case of Pakistan International Insurance Company (Pvt.) Limited (*supra*) that an Insurer plays a very important role in the development of the trade and commerce and also in other

financial fields in the country and an un-reliable or financially unsound or bogus Insurer can play havoc in such fields and can also destroy or cause irreparable loss to the people, financially big or small, who rely upon such Insurers. The respondent in this case too failed to controvert or rebut that they have not committed such violations or defilement ascribed in the investigation report and winding up petition. I have also analyzed the case law cited by the learned counsel for the respondent but in the present set of circumstances, I found it distinguishable.

19. In **J.C.M. No.19/2016** filed by **Securities & Exchange Commission of Pakistan versus M/s.Dadabhoy Insurance Company Limited, (authored by me)** while relying on my own another order passed in the winding up petition in the case of **Mrs.Syma Mehnaz Vayani & others versus Molasses Export Company (Pvt.) Ltd. (2013 CLD 1229)**, it was held as under:

8. The winding up is a course of an action for culminating or disintegrating/dispelling a business enterprise which activity encompasses vending all assets, recompensing creditors and mete out remaining assets to the shareholders. Winding up a business can be compulsory or voluntary which is a legally recognized process regulated by the corporate laws in tandem with the articles of association. The compulsory winding up ensues as soon as laws or court orders appoint official liquidator, he puts up for sale the assets and distributes the proceeds to creditors. A company's creditors may also activate the process. Voluntary liquidation is ordinarily commanded through a Board Resolution. If the stakeholders resolve that the company will face undefeatable and unbeatable risks and challenges, they may also call for a resolution to dissolve.

9. In the judgment authored by me in the case of **Syma Mahnaz Vayani versus Molasses Export Company Pvt. Ltd**, reported in 2013 CLD 1229, I have discussed the perception of winding up of a company and expressed that object of winding up of a company is to release the assets of the company and pay its debts in accordance with law. In winding up cases, utmost endeavor should be made for survival of the corporate sector rather than to dismantle it. A company may be wound up on any of the grounds mentioned in section 305 of the Companies Ordinance, 1984. The conjoint effect of sections 305 and 306 of the Companies Ordinance,

1984 made it clear that the court had discretion to order or not to order the winding up of a company after taking into consideration relevant facts.....For winding up a company, the court has to consider whether the substratum of the company is gone, the object for which it was incorporated to carry on the business except at loss and no reasonable hope that the object of trading at profit can be attained and the existing or probable assets are insufficient to meet liabilities. Jurisdiction to wind up a company was circumscribed by limitation laid down by S.314 of the Companies Ordinance, 1984 and usually the discretion to wind up was to be exercised in extreme cases and the court in the first instance was to find ways and means to remedy the wrong and pass orders which were appropriate to regulate the conduct and affairs of the company. Substratum of a company was deemed to be gone when the subject matter of the company was gone or the object for which the company was established had substantially failed or there was no reasonable hope that the object of trading at profit could be attained or that existing and probable assets were insufficient to meet the existing liabilities.....

10. A comprehensive survey to a book "Guide to the Companies Act", 17th Edition 2010 authored by A Ramaiya give rise to innumerable instances through distinct pronouncements wherein courts lean to winding up of a company and orders were passed on the following grounds:

1. where the mine for which a company was formed to work could not be found. *Haven Gold Mining Co.*, (1882) 20 Ch D 151;
2. where the patent it was to work was not granted. *German Date Coffee Co., Re*, (1882) 20 Ch D 169;
3. where the bulk of the property had been sold and its liquidity and capital exhausted; *Diamond Fuel Co. (No. 2)*, (1879) 13 Ch D 400 (CA);
4. where there was no reasonable chance of the grant of a contract or concession which the company was supposed to undertake, *Bleriot Mfg. Aircraft Co.*, (1916) 32 TLR 253;
5. where on account of a deadlock in management the company could not carry on business for several years, nor there was any evidence of plans and prospects of revival, *Ramesh G. Bhatia v. Gopala Gases P. Ltd.*, (1994) 3 Comp LJ 435 (Del);
6. where there was suspension of business for over a year, the number of members was reduced to less than two, all directors but one were absconding and assets were taken over by the lending institution, the petition by the sole remaining director for winding up was admitted. The argument of the lending institution that the winding up was being

resorted to, to escape the remaining liability to the institution was not accepted. *Surendra Kumar Pareek v. Shree Guru Nanak Oils P. Ltd.* (1995) 82 Com Cases 642 (Raj).

7. where various banks and financial institutions refused to advance term loans on account of the antecedents of the managing director, and by change of management also, the position of the company could not be revived. *Kerala State Industrial Development Corporation v. Poonmudi Tea Pack Ltd.* (1988) 63 Com Cases 575 (1987) 3 Comp LJ 180 (Ker).
 8. The directors of a company which had cheated investors, banks and financial institutions were also involved in the respondent company. Statutory notice was simultaneously given to it also with no reply. Advertisement also made without any objection. No business was done by the company since incorporation. *Registrar of Companies v. Amit Inter Chemicals P. Ltd.*, (2003) 42 SCL 743 (All).
11. In the case of Registrar of Companies v. Bihar Wire and Wire Products (P.) Ltd., (1975) 45 Com Cases 194 (Pat), the court pointed out a long line of decisions on the question of winding up which establish among others, the following propositions of law:
1. That the mere fact that business has not been commenced within a year or that business has been suspended for a whole year or more by itself is not a ground for a court to order winding up, although they give the jurisdiction to the court to do so.
 2. That it has to be found out whether the non-commencement or suspension of business was for some good reason accounting for it.
 3. That the fact of non-commencement or suspension of business is an evidence which indicates that the company has no intention of carrying on business or that it is not likely to do so.
 4. That the decisive question is whether there is a reasonable hope of the company commencing or resuming business and doing it at a profit, and whether the substratum of the company has disappeared.
 5. It has to be clearly established that the company was incorporated for the sole purpose that could no longer be achieved. Winding up is not appropriate where the directors in the exercise of their managerial powers decide to dispose of the main but not the sole business of the company. *Strong v. J. Brough & Son (Stratsfield) Pty. Ltd.*, (1991) 5 ACSR 296 (SC of New South Wales).
 6. Winding up order was passed: Where the substratum of the company was gone or its only business had become impossible; Re, Haven

Gold Mining Co., (1882) 20 Ch D 151; *Re, German Date Coffee Co.*, (1881-5) All ER Rep 372 : (1882) 20 Ch D 169; *Amalgamated Syndicate, Re*, (1897) 2 Ch 600 : (1895-9) All ER Rep 340; *Re, Taldua Rubber Co. Ltd.*, (1946) 2 All ER 763; *Cf. Re, Kiston & Co. Ltd.*, (1946) 1 All ER 435; *Re, Perfectair Holdings Ltd.*, 1990 BCLC 423 (Ch D); *In Re, H.C. Insurance Society Ltd.*, (1960) 65 CWN 68. See *Kumarpuram Gopalakrishnan Ananthakrishnan v. Burdwan-Cutwa Rly. Co. Ltd.*, (1978) 48 Com Cases 211 (Cal) and on appeal at page 611 followed in *Bombay Gas Company Ltd. v. Hindustan Mercantile Bank Ltd.*, (1980) 50 Com Cases 202 (Cal); *Akola Electric Supply Co. Ltd., In Re*, (1962) 32 Com Cases 215 : AIR 1962 Bom 133; *Davco Products Ltd. v. Rameswarlal Sadhani*, AIR 1954 Cal 195 (There was no reasonable chance of the company starting business again). But not where the substratum had not completely gone and the majority shareholders opposed. See *Mohanlal Dhanjibhai Mehta v. Chunilal B. Mehta*, (1962) 32 Com Cases 970 : AIR 1962 Guj 269; *Janbazar Manna Estates Ltd., Re*, (1931) 1 Com Cases 243 : AIR 1931 Cal 692; *George v. Athimattam Rubber Co. Ltd.*, (1965) 35 Com Cases 17 (Ker).

12. So far as other crucial and pivotal factors required significant consideration is with regard to the substratum of a company that seems to have gone when (a) the subject-matter of the company is disappeared, or (b) the object for which it was incorporated has substantially collapsed, or (c) it is impossible to carry on the business of the company except at a loss and there is no reasonable hope of trading at a profit. But, where a company sold its undertaking, if there is still some business which it can carry on, it cannot be said that the substratum had disappeared. Ref: *George v. Athimattam Rubber Co. Ltd.*, (1965) 35 Com Cases 17. Where the company in question had totally disappeared with nobody attending its office and high officials were absconding and the company's office being under lock, no one received notice and even to newspaper announcement there was no response from any quarter, naturally it was a fit case for an order of winding up. Ref: *Bhartiya Gramin Vikas Vitta Nigam Ltd. Re*, (2000) 27 SCL 249 (All).

20. As a result of above discussion, it is ordered that the respondent company be wound up. Official Assignee is appointed Official Liquidator. The company shall submit the statement of affairs to the Official Liquidator in accordance with law. The Official Liquidator after complying with all requisite formalities shall submit the report.

Karachi:

Dated. 21.6.2019

Judge