

carried by "Waterman" and in terms of Section 55 of the Customs Act, 1969, was required to execute general bond in respect of any claim for the damage or short delivery, which may be established by the owner of any goods brought through Vessels of "Waterman". He further submits that U.S.A. Company defaulted in the year 2002, whereas, the last remaining Vessel of that Company was also sold for scrap, whereas, "Waterman" has filed Chapter 11 of Bankruptcy proceedings in United States Bankruptcy Court, Southern District of New York. Learned Counsel submits that law provides winding-up of unregistered Foreign Company, whereas, the petitioner has come before this Court as Contingent Creditor seeking winding-up in terms of the then Companies Ordinance, 1984 and now the Companies Act, 2017. In support, he has relied upon the case laws reported as **2002 CLD 746 [Lahore] (re: Messrs Pak Shaheen (Pvt.) Ltd. v. In the Matter of the Companies Ordinance, 1984, through Agent Messrs Pak Shaheen (Pvt.) Ltd., 1986 CLC 2933 (Messrs James Finlay P.L.C. v. Messrs Hellenic Lines Limited and another** and an unreported **Order dated 30.05.2006 in J.M. No.30 of 2005 (re: Gac Shipping Pakistan (Pvt.) Limited)**.

3. I have heard the learned Counsel for petitioner and examine the record. After filing of this petition, notice was issued upon "Waterman" through DHL and Fedex and as per record, the same was served, but no one has turned up to contest the matter on behalf of "Waterman". Subsequently, directions were issued for publication of advertisement of main petition in terms of Rule 76 read with Rule 19 of the Companies (Court) Rules, 1997, and the advertisement was published in *Daily Jang* and *The News* on 20.10.2017, but none has objected. It further appears that

thereafter, gazette publication has also been effected in the Gazette of Pakistan dated 20.12.2017 regarding filing of this petition to all concerned. Securities & Exchange Commission of Pakistan has filed its comments and an objection has been raised to the effect that "Waterman" is not registered in Pakistan, therefore, in terms of Section 5 of the Companies Act, 2017, Court may consider the issue of jurisdiction. In the 1984 Ordinance, relevant provision for winding-up of such Company was provided in Section 444(3), whereas, in the Companies Act, 2017, it is governed through Section 428(3), which reads as under:-

“428(3) Where a company incorporated outside Pakistan which has been carrying on business in Pakistan ceases to carry on business in Pakistan, it may be wound up as an unregistered company under this Part, notwithstanding that it has been dissolved or otherwise ceased to exist as a company under or by virtue of the laws of the country under which it was incorporated.”

The aforesaid provision provides that where a company incorporated outside Pakistan, which has been carrying on business in Pakistan ceases to carry on business, it may be wound up as an unregistered Company, notwithstanding the fact that it has been dissolved or otherwise ceases to exist as a Company under or by virtue of the laws of the country under which it was incorporated. Since the plea as raised through this petition on behalf of petitioner has got un-rebutted and therefore, they are to be considered by this Court as correct, whereas, the relevant provision of law provides and caters to the given situation. Insofar as, the petitioner is concerned, though it was working as an Agent of "Waterman"; however, position of the petitioner is that of a prospective or Contingent Creditor which has gone unchallenged. The advertisement has been published and so also Gazette notification, and none has come forward to object on the grant of this petition, whereas, the objection of Securities & Exchange

Commission of Pakistan regarding jurisdiction in terms of Section 5 of the Companies Act, 2017 is of no relevance as by virtue of Section 428(3), it has been taken care of; hence overruled. The case laws relied upon by the learned Counsel for petitioner reported as **James Finaly P.L.C., (Supra)** is a complete answer to all further objection(s) which could otherwise be raised in the given facts and I am fully in agreement with it. The other judgments relied upon are also in consonance with the said principle of law.

4. In view of the hereinabove facts and circumstances of the case, in my view the petition is competent and this Court has jurisdiction to pass an order for winding of “Waterman”. Accordingly the instant petition for winding-up is allowed. Learned Official Assignee is appointed as Official Liquidator of “Waterman” with all powers to perform such functions and take all such proceedings as are required under the provisions of the Companies Act, 2017. Initially and tentatively, a sum of Rs.100,000/- be deposited in Court by the petitioner towards the fee of the Official Liquidator.

J U D G E

Faizan/P.A.