

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

J.C.M. No.43 of 2017

DATEORDER WITH SIGNATURE OF JUDGE

Al-Ameen Trading Corporation (Pvt) Ltd.....Petitioner

Versus

Al Abid Silk Mills Ltd. & others.....Respondents

For hearing of main petition**01.10.2019**Mr. Muhammad Hanif Khetana, Advocate Petitioner
Mr. Abdullah Azzaam Naqvi, Advocate for Respondents No.1 to 9
Mr. Saad Abbasi, Advocate for SECP**ORDER**

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Muhammad Junaid Ghaffar,J:- This Petition has been filed under Section 301 of the Companies Act, 2017 for winding up of Respondent No.1. Notice was ordered and so also publication was effected under the Companies (Court) Rules, 1997, whereafter, comments have been filed by the Respondents as well as Securities & Exchange Commission of Pakistan.

2. Learned Counsel for the Petitioner submits that Respondent No.1 owed money to the Petitioner, and for that a Notice dated 19.06.2017 was issued in terms of Section 302 of the Companies Act, 2017, whereas, Company in question has failed to pay the amount within thirty (30) days period; hence, this petition. He submits that the Petitioner is a creditor falling within the Companies Act, under Section 301 and 302 ibid; hence, Respondent No.1 is liable to be wound up.

3. Learned Counsel for Respondents No.1 to 9 submits that the claim of debt allegedly owed by Respondent No.1 is denied, whereas, the Petitioner has failed to place on record any material to substantiate its claim that any debt is owed by Respondent No.1. He further submits that it is the case of Respondent No.1 that any amount due, if any, is no more recoverable as the claim / debt is now time barred and the Petitioner to overcome such legal issue has filed this winding up petition, wherein limitation is not an obstacle in filing of such a petition. He prays for dismissal of the petition.

4. Learned Counsel for SECP submits that as per their record, petitioner is not a secured creditor.

5. I have heard all the learned Counsel for the parties and perused the record. At the very outset, learned Counsel for the Petitioner was confronted as to the claim of being a creditor of Respondent No.1 and to refer to any supporting material available on record; however, he has not been able to assist the Court in this regard. He though requests for time to place on record such material; however, this request at this stage of the proceedings cannot be considered as after filing of this Petition the entire process as mandated under the Companies Act, 2017 as well as Companies (Court) Rules, 1997, has been completed, and therefore, this is not a stage, wherein, any such documents could be considered. The law is very clear on this issue that it is the creditor who can come before the Court invoking provisions of Section 302 read with 301 of the Companies Act, 2017, for winding of a Company, if on a notice issued by a creditor and duly served at the registered office of the Company; the claim in the notice is

not satisfied, or the Company neglects to pay the sum as mentioned in the said notice, then proceedings for winding up of the Company can be initiated on the ground that the Company is unable to pay its debts as provided in Section 301(f) of the Companies Act, 2017. In the entire memo of Petition except the amount mentioned in Para-1 as allegedly due from Respondent No.1, nothing more has been said as to why the petitioner is a creditor of Respondent No.1. Though material on the basis of which the petitioner claims to be a creditor has not been placed on record; however, the contention of the learned for the Respondent No.1 to the effect that the claim is now time barred; at the same time cannot be ruled out. Such fact is substantiated by the conduct of the Petitioner by not placing on record any material to justify its claim.

6. In view of hereinabove facts and circumstances of this case, since the Petitioner has failed to satisfy its claim and stance as a creditor of Respondent No.1 with any supporting material; therefore, the Petition appears to be misconceived as it has failed to fulfill the requirements of the relevant provisions of the Companies Act, 2017, and is accordingly hereby dismissed.

Dated: 01.10.2019

J U D G E

Rafiq/P.A.