

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

J.C.M. No.33 of 2017

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DATEORDER WITH SIGNATURE OF JUDGE  
-----**Mozaffar Islam & another .....Petitioner****Versus****Dilkusha Enterprises (Pvt.) Ltd.****& others .....Respondents**

1. For hearing of Main Petition.
2. For hearing of CMA No.303/2017
3. For hearing of CMA No.304/2017

**10.10.2019**

Mr. Qazi Umair Ali Advocate for the Petitioner  
 Mr. Muhammad Adil Zafar/ Respondent No.3  
 Mr. Saad Abbasi, Advocate for SECP

**ORDER**

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**Muhammad Junaid Ghaffar, J:-** This Petition has been filed under Section 301 read with 304 of the Companies Act, 2017, by the two (02) Directors / shareholders to the extent of 65% in Respondent No.1 (Company) for its winding up. Notice was ordered and comments have been filed by SECP as well as Respondent No.3, who appears in person.

2. Learned Counsel for the Petitioner submits that two (02) Petitioners and Respondent No.3 are the Shareholders / Directors / Owners of the Company at present, whereas, the Company was initially established as a Tannery; but for the past many years it has stopped any such activity and has lost its substratum. He further submits that Company has also defaulted in making

compliance of the relevant provision of the Companies Act and has not filed requisite forms and details with SECP as well. He submits that there is only one property bearing No. B-26/A, SITE, Karachi, in the name of the Company and the Petitioners as well as Respondent No.3 are in part possession of such property. He further submits that some litigation regarding recovery amongst these parties is also pending before the lower Courts, whereas, the dispute is in respect of amount of rent collected by the parties from the property owned by the Company. He has also argued that the Company has also failed to pay the debt owed to Habib Bank Limited. He prays for passing of order for winding up of the Company in the given facts and circumstances.

3. Respondent No.3 is present in person and has referred to his comments. However, while confronted, he admits that the Company is not involved in any manufacturing since 2001, whereas, he has also made reference to pending litigation and submits that some receiver has been appointed and the issue is pending before the lower Courts.

4. Learned Counsel for the SECP has relied upon comments filed on directions of this Court, wherein, ownership of the Petitioners as well as Respondent No.3 has not been disputed. SECP has acceded to the request of the Petitioners for passing winding up order as the Company is non-functional and has failed to make compliance of the relevant provision of law since 2011.

5. I have heard all the learned Counsel as well as Respondent No.3 in person and perused the record. Instant Petition has been filed by invoking provision of Section(s) 301 and 304 of the

Companies Act, 2017. Section 301 provides for circumstances in which a Company may be wound up by the Court; including but not limited to, (a) if the Company has, by a special resolution, resolved that the Company be wound up by the Court; or (b) if default is made in delivering the statutory report to the Registrar or not holding statutory meetings; or (c) if default is made in holding any two consecutive annual general meetings; or (d) if the Company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding two consecutive financial years; or (e) if the number of members is reduced, in the case of public company, below three and in the case of a private company below two; or (f) the Company is unable to pay its debts. Record placed before the Court on behalf of the Petitioners as well as SECP reflects that Company has not been able to make compliance with the requisite legal requirements as contemplated in the Act. There appears to be no dispute to the effect that Company is no more functioning for the purpose(s) for which it was established. It apparently has lost its substratum and is also unable to pay its debts. Besides this the Company has failed to make compliance of the requisite provisions of the law / rules, and SECP has also supported the prayer of the Petitioners, which otherwise claim to be owners to the extent of 65% shareholding. As to the pending litigation, it may be observed that the same is between the individuals i.e. petitioners and respondent No.3 and not in respect of the Company, whereas, even otherwise, if majority shareholders (not disputed as per SECP record), have approached the Court under the Company jurisdiction, pleading that the Company is no more functional and has lost its substratum and has also failed to make compliance of the requisite

laws; then the Company Court shall not hesitate in passing of a winding up order of the said Company as it is meant for the protection of all shareholders including its creditors. The Companies Act has an overriding effect and caters for all claimants as well.

6. In view of hereinabove facts and circumstances, this Petition merits consideration and is accordingly allowed by ordering winding up of the Company (Respondent No.1). Learned Official Assignee is appointed as Official Liquidator of Respondent No.1 with all powers to perform such functions and take all such proceedings as are required under the provisions of the Companies Act, 2017. He may file his first report within three (3) months from today and shall also give a tentative estimate of his initial fee which will be settled by the Court. The petitioners and respondent No.3 shall approach him and file requisite documents and reports for his assistance.

7. The petition stands allowed along with pending applications in the above terms.

J U D G E

Rafiq/P.A.