

## ORDER SHEET

**IN THE HIGH COURT OF SINDH AT KARACHI**

Suit Nos.202, 203, 204, 205, 206 &amp; 212 of 2011

DATE

ORDER WITH SIGNATURE OF JUDGE

**Suit No.202/2011**

For Hearing of CMA Nos.

1. 1354/11 (U/O 39 Rule 1 & 2 CPC)
2. 1355/11 (U/O 39 Rule 5 CPC)
3. 1356/11 (U/XL(i) CPC)
4. 4069/12 (U/O 1 Rule 10(2) CPC)
5. 9509/12 (U/O 39 Rule 1 & 2 CPC)
6. 9510/12 (U/O 8 Rule 10 CPC)
7. 11856/12 (U/O 1 Rule 10 CPC)

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**Suit No.203/2011.**

1. For hearing of CMA No.4076/12 (U/O 1 Rule 10(2) CPC.
2. For hearing of CMA No.11857/12 (U/O 1 Rule 10. )

**Suit No.204/2011.**

1. For hearing of CMA No.4074/12 (U/O 1 Rule 10(2) CPC.
2. For hearing of CMA No.11858/12 (U/O 1 Rule 10. )

**Suit No.205/2011.**

1. For hearing of CMA No.4075/12 (U/O 1 Rule 10(2) CPC.
2. For hearing of CMA No.11859/12 (U/O 1 Rule 10. )

**Suit No.206/2011.**

1. For hearing of CMA No.4077/12 (U/O 1 Rule 10(2) CPC.
2. For hearing of CMA No.11860/12 (U/O 1 Rule 10. )

**Suit No.212/2011.**

1. For hearing of CMA No.9856/12 (U/O 1 Rule 10(2) CPC.
2. For hearing of CMA No.11861/12 (U/O 1 Rule 10. )

**28.11.2017.**

Mr. Arshad Tayebaly, Advocate for Plaintiffs in all Suits.  
 Mr. Hassan Ali, Advocate for Defendant No.1.  
 Mr. Arshad Qaiser Warsi, Advocate for Defendant No.2.

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**4 & 7 in Suit No.202/2011.** These are two applications filed under Order 1 Rule 10 (2) CPC on behalf of Defendants No.2 & 3 through which it has been prayed that they may be deleted from the array of

Defendants as they are neither necessary nor proper parties in the instant matter. Similar Applications have been filed by the same Defendants in the connected Suits as stated hereinabove and all these applications are being disposed of through this common order.

Learned Counsel for Defendant No.2 submits that they have no concern with the dispute so raised by the Plaintiff as the contract was entered into by Defendant No.1 with the Plaintiff. He further submits that Defendant No.2 and for that matter Defendant No.3 as well are different and distinct entities, therefore, they have been wrongly arrayed as Defendants, hence listed applications.

On the other hand, learned Counsel for the Plaintiff submits that the Plaintiff was induced to invest in the Project of Defendant No.1 on the basis of introduction and patronage of Defendants No.2 & 3 and therefore, they are very much necessary parties before the Court. He further submits that it is not in dispute that Defendant No.1 is owned jointly by Defendants No.2 & 3 with 51% and 49% ownership respectively and therefore, their presence before the Court, at this stage of the proceedings, is must failing which the Plaintiff will not be able to get its decree, if granted, satisfied. Per learned Counsel it is a question of piercing the Corporate Veil, whereas, the Defendants No.2 & 3 very much own Defendant No.1, therefore, listed applications be dismissed.

Similarly, Counsel for Defendant No.1 submits that the Plaintiff entered into a contract with Defendant No.1, which itself is a legal entity, independent of Defendants No.2 & 3, whereas, the land in question is also owned by Defendant No.1 and both the Defendants No.2 & 3 have no concern with the present controversy and therefore, the applications, as above, be allowed.

I have heard all the learned Counsel and perused the record. Precise facts for the present purposes are that the Plaintiff on the representations allegedly made by Defendants No.2 & 3 in relation to the Project in question i.e. Karachi Financial Towers got booked 8335 Square Feet of office space vide reservation Contract dated 01.03.2007 entered into with Defendant No.1. The Plaintiff made a total payment of Rs.33,340,000/- and thereafter the Project has not been completed, hence instant Suit. It may be observed that other Plaintiffs in connected matters (also being represented by the same Counsel) have also made such payments, but of different amounts, which for the present purposes are not materially relevant, hence need not be so stated. The Plaintiff's case is that Defendant No.1 is though, an independent legal entity; but has been sponsored and owned by Defendants No.2 & 3, and therefore, they are necessary and proper parties in the Suit. It is further case of the Plaintiff that in case of grant of a decree, the same would be frustrated in absence of Defendants No.2 & 3 as according to the Plaintiff, the Defendant No.1 is not in a position to satisfy any such decree.

However, I am not impressed with the submissions made on behalf of the Plaintiff inasmuch as it appears to be an admitted position that Defendant No.1 is a separate legal entity being a Company incorporated under the then Companies Ordinance, 1984, having a registered Office in Karachi. It is, for the present purposes, immaterial that Defendants No.2 & 3 own Defendant No.1 in the ratio of 51% and 49% respectively. If any contrary view is taken in the given facts of this case, then perhaps it would defeat the very purpose and intent of incorporation of a Private Limited Company under the Companies Ordinance, 1984. Notwithstanding this, the learned Counsel for the

Plaintiff has not been able to show that the Plaintiff entered into any contract with Defendants No.2 & 3, whereas, admittedly the contract was signed by Defendant No.1. It has also come on record and not in dispute that the payments, as above, were made in the name of Defendant No.1 and cheques have been placed on record. Merely for the fact that Defendant No.1 was sponsored and incorporated by Defendants No.2 & 3 would not *ipso facto* make them liable for the conduct of Defendant No.1, which operates as an independent and distinct legal entity. The question that in case of a decree in favour of the Plaintiff, the same would be frustrated in absence of Defendants No.2 & 3 appears to be very much pre-mature, and is rather misconceived at this stage of the proceedings. It cannot be presumed that necessarily a decree for that matter would be passed in favour of the Plaintiff. Even if, it is done, then proper recourse is available under law through Execution Proceedings and the Court at this stage cannot presume that Defendant No.1 will not be in a position to satisfy the decree. On the other hand, it has come on record that the land in question is owned by Defendant No.1.

Insofar as the argument regarding lifting or piercing the Corporate Veil is concerned, I may add that yes, it is a concept which has developed over the years and in cases having peculiar facts, Courts have been exercising their powers to unveil such Corporate Governance methods. But at the same time it may further be added that the same has evolved on the basis of judicial exercise of powers by the Court to do complete justice, and as it is not based on statutory instrument. And again it cannot be said to be a rule of universal applicability in each and every case. <sup>1</sup>It is evident that by now the device of lifting of veil of incorporateness is well-established. However, it may be observed

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<sup>1</sup> Union Council, Ali Wahan, Sukkur v Associated Cement (Pvt) Limited (1993 SCMR 468)

that the same cannot be pressed into service as a matter of course in every case, but there should be some justifiable reason which may warrant the lifting of veil of incorporateness.<sup>2</sup> The sum and substance of the views of various authors is that no hard and fast rule can be laid to limit the cases in which veil of incorporation can be lifted. Some definite instances as stated above have attained universal acceptance but it would not be safe to limit them to these given cases alone. In view of the broad spectrum in which the commerce, business and industry are developing creating new situations, novel commercial relationships and innovative dealings unknown in the past, the piercing of the veil of incorporation will entirely depend on particular facts of each case. In the same manner in my humble view all cases which lay down the principles for lifting the veil have to be read with particular reference to the facts of that case.<sup>3</sup> The doctrine of piercing the veil of incorporation is the product of judicial interpretation necessitated by the exigencies of modern commercial practices. However while resorting to the doctrine of piercing the corporate veil the Courts have always been cautious and circumspect. Through the device of liberal interpretation the very object of providing statutory protection to a shareholder of a limited liability cannot be defeated on every occasion when a company defaults. It would then certainly defeat and not advance the very object of statutory protection.

Even otherwise the case of the plaintiff in fact is not a case of piercing of the Corporate veil as the Defendants No.2 & 3 have admitted that they hold shareholding in Defendant No.1 and the same has been incorporated as an independent entity from day one and at no point of time they ever entered into any agreement with the plaintiff. Mere

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<sup>2</sup> Union Council, Ali Wahan, Sukkur v Associated Cement (Pvt) Limited (1993 SCMR 468) [Additional note of Saleem Akhtar, J as his lordship then was]

<sup>3</sup> Sakhi Dattar Cotton Industries And Oil Mills v Mahmood Pvt Ltd., (2006 CLD 191) [SB-SHC]

reliance on some advertisement or news report regarding launching of project by and or on behalf of Defendants No.2 & 3 will not in legal terms make them liable for the acts and omissions of Defendant No.1 with whom the plaintiff acted independently. It is but settled law that Directors and or sponsors are only liable in a company to the extent of their shareholding and not beyond that. If any company is unable to meet its liabilities then recourse is to sell the assets of the company itself. This is how corporate management under the Companies Ordinance goes ordinarily and barring exceptions and in my view the present case does not fall within such exceptions because of the peculiar facts of this case.

In view of hereinabove facts and circumstances of the case, the applications filed on behalf of Defendants No.2 & 3 merits consideration and accordingly such applications listed above in all listed Suits are hereby allowed and both these Defendants are ordered to be deleted from the array of Defendants. The Counsel for the Plaintiff shall file amended title accordingly.

Adjourned to 19.12.2017, for hearing of other pending applications in Suit No.202/2011 and other connected matters.

J U D G E

Ayaz P.S.