

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

**J.C.M. No. 10 of 1985**

Petitioner: Abdul Khaliq  
None present for Petitioner.

In Liquidation: M/s Amin Jute Mills Ltd.  
Through Dr. Choudhry Waseem Iqbal  
Official Liquidator.

Applicant / Purchaser: M/s Amin Agencies (Pvt.) Limited.  
Through Mr. Mansoor-ul-Arfin Advocate.

- 1) ***For hearing of CMA No. 106/2019.***
- 2) ***For hearing of CMA No. 152/2017.***
- 3) ***For orders on O/A's Reference No. 03/2017.***

**Date of hearing: 11.02.2020**

**Date of order: 12.03.2020**

**ORDER**

**Muhammad Junaid Ghaffar, J.** The aforesaid two applications have been filed by the Amin Agencies (Pvt.) Limited [**Applicant**], through which it has been prayed that directions be issued to the Official Liquidator to release the amount and shares as mentioned therein to the applicant, whereas, the Official Liquidator's Reference No.3/2017 also relates to the applications filed by the Applicant. Similarly, objections have also been filed by the Official Liquidator to the listed applications.

2. Learned Counsel for the Applicant has contended that the Official Liquidator is holding more than Rs. 53,940,000/- as well as 8706 shares of National Refinery Limited ("**NRL**") out of which the Applicant is entitled to 90.47% of the said amount and 7900 shares of NRL; that the Applicant is a creditor of the Company in liquidation and not a shareholder; that time and again Official Liquidator was approached to make such payments and hand over / transfer the shares; but no action has been taken; that the objection of the Official Liquidator regarding validity of the Agreement dated 27.11.1971 entered into by the Applicant with the Company in liquidation is not proper and tenable

in law inasmuch as the said Agreement has already been accepted and acted upon by the Official Liquidator as well as this Court; that pursuant to such Agreement, immovable property has already been transferred in the name of the Applicant; that the Applicant has performed its part of the Agreement by paying the balance amount(s) to the Official Liquidator who has since accepted the same; hence, cannot raise any objection on the said Agreement; that the Official Liquidator is holding the amount paid in lieu of compensation by the Government of Pakistan in respect of shares of NRL taken over and nationalized by the Government plus the bonus shares as above which are to be paid and transferred to the Applicant and therefore, by allowing these two applications directions be issued to the Official Liquidator.

3. On the other hand, learned Official Assigned who also acts as the Official Liquidator of the Company in question has objected to the grant of these applications and has contended that the Agreement in question was never disclosed in the Petition; though as per the case of the Applicant, it was entered into before filing of the Petition; that pursuant to order(s) dated 5.9.2006 and 10.11.2006 claims were called from creditors and shareholders of the Company; that this Court vide its order dated 18.8.2008 had deferred the matter as to the scrutiny about the shareholders of the Company in liquidation; hence, a public notice must be issued to all shareholders before any orders are passed on the applications; that the Agreement in question appears to be doubtful and maneuvered through which the entire West Pakistan assets of the Company in liquidation have been acquired by the Applicant; that Rule 148 of Companies (Court) Rules, 1997 provides that if after admission of a proof if the liquidator has reason to think that the proof has been improperly admitted or admitted by a mistake, he may apply to the Court to expunge the proof or reduce the amount owed to the creditor after due notice, whereas, in terms of Rule 197 *ibid* the Official Liquidator acts as the officer of the Court and works under its directions; hence, this Court can go into this aspect of the case including the validity of the Agreement; that even financial institutions are shareholders of the Company in liquidation and therefore, it would be more appropriate if before passing any orders on these applications, a public notice be issued through newspapers to the shareholders of the Company. He has prayed for orders accordingly.

4. I have heard the learned Counsel for the Applicant and the Official Liquidator and have perused the record as well. It appears that this Petition was allowed by ordering winding up of the Company in question on 25.03.1998 and the said order is also reported as ***Abdul Khaliq V. Abandoned Properties Organization (1998 CLC 1194)***. The Petition was filed by one of the shareholders in terms of Section 271 of the Companies Act, 1913 corresponding to Section 444 of the then Companies Ordinance, 1984 in respect of winding up of the Company in question which in fact was based in the former East Pakistan. It appears that subsequently, the Applicant approached this Court by way of the Agreement in question and pleaded that the entire West Pakistan assets of the Company as mentioned in Schedules thereto, were sold to the Applicant and such fact was also brought to the notice of the Official Liquidator (see pg:105-Part-II) vide letter dated 20.10.1998. It further appears that by way of a series of orders the said Agreement was entertained by the Court and that too at the request of Official Liquidator through various References. It is a matter of record that through these References, which were mostly allowed by consent, the immovable properties, machinery, furniture and fixtures etc. as mentioned in the schedule were handed over to the Applicant, whereas, the Applicant was also directed to make payment of the balance sale consideration as mentioned in the Agreement. There was also a dispute as to value on which the stamp duty is to be affixed and was decided vide order dated 22.11.2017. It is not in dispute; nor it is the case of the Official Liquidator, that the Applicant has not complied with such directions, rather the amount has been received by the Official Liquidator and part of the Agreement stands performed to the extent of the property etc. as above. The Agreement also states that 105,200 original shares of NRL and 10,840 bonus shares have also been sold to the Applicant making it a total of 116,040 shares as per Annexure III of the said Agreement. It further appears that the Company in liquidation in fact owned 130642 shares of NRL which was nationalized by the Federal Government in the year 1973 and out of these shares the Federal Government acquired 127740 shares in December 1973, whereas, the balance 2902 shares were surrendered to the Abandoned Properties Organization by NRL. Subsequently, dividend was received up to 30.06.1984, whereas, some right shares of NRL was also

purchased by the Abandoned Properties Organization. It is an admitted fact that the Federal Government thereafter issued compensation amount in lieu of 127740 shares (owned by the Company in liquidation) acquired by it, and the amount of such shares including interest was paid by the Abandoned Properties Organization to the Official Liquidator for and on behalf of the Company in liquidation. The Applicant now claims this amount to the extent of its purchased shares as well as the shares i.e. 7900 from the available shares of NRL with the Official Liquidator. The Applicant claims 90.74% of the amount / rupees available with the Official Liquidator on pro rata basis as against the number of shares sold to it from the total shares of NRL held / owned by the Company in question.

5. Insofar as the objection of the Official Liquidator opposing this disbursement or payment to the Applicant is concerned, I am not much impressed with it as the Agreement in question no doubt (though surprisingly) was not even disclosed in the petition, and was brought to the knowledge of the Court as well as Official Liquidator much belatedly; but at the same time, no sooner it was disclosed, the Official Liquidator if so advised or aggrieved; ought to have objected to the validity of the Agreement and to act further for its non-performance. He could have simply refused to accept the same on behalf of the Company and was then required to seek its cancellation through proper proceedings in accordance with law. This is not the case as apparently not only the Agreement has been accepted by the Official Liquidator; but so also has been further acted by him through accepting balance payment and transferring the property in question by executing a Sale Deed in favour of the Applicant to the extent of the immovable property covered by the same Agreement. Now at this stage of the proceedings, in my view, such an objection cannot be entertained and examined as even the limitation to challenge or impugn the said Agreement has also expired, whereas, no such efforts have been made by the Official Liquidator to call in question the said Agreement, either by way of cancellation or for that matter in any other manner. In fact, various orders have been obtained by the Official Liquidator pursuant to the said Agreement and its implementation. It is needless to mention that the Official Liquidator after his / her appointment acts for and in the interest of the Company, whereas, onerous responsibility of discharging

his duties and efforts rests in his office, in completing the winding up proceedings. As soon as the Applicant came with the Agreement, it was incumbent upon the Official Liquidator to question the validity and the genuineness of the Agreement as is being now questioned. This was never done; rather the Court was requested to accept the Agreement and permit the Official Liquidator to act accordingly. Mere change of person in the office of the Official Assignee, who in the present case is acting as the Official Liquidator of the Company in question would not warrant any interference or indulgence by this Court in respect of the instrument which has been accepted and acted upon so long ago. Even any challenge to it is hopelessly time barred and therefore, it is otherwise, not advisable to accept the contention of the Official Liquidator. Nothing prevented the Official Liquidator from challenging the same in accordance with law through any independent means; but at least now, at this stage of the proceedings, this Company Bench cannot altogether overturn the acts and deeds completed at the request of the Official Liquidator.

6. Insofar as implication of Rule 148 *ibid* is concerned, it may be noted that though this Rule empowers the Court to expunge or reduce an improperly admitted proof or proof admitted by mistake of a creditor; however, in the present facts it is not applicable. The proof in this case has never been challenged on this ground. It is only being disputed for the reason that the Official Liquidators predecessor in interest never challenged it. This is not a situation covered by the said Rule. Moreover, the order dated 22.11.2017, whereby, the stamp duty was directed to be affixed at the value declared in the Agreement was passed when the present Official Liquidator was already holding such office, and such order was also accepted and never challenged any further. In these facts, I am of the opinion that any reliance on this Rule is not of any help or relevance and the contention to that effect is misconceived.

7. Notwithstanding the above observations, it is also reflected from the record (see pg:407) that in fact the Applicant's request for transfer of 104200 shares was already filed with NRL and at the time of nationalization / acquisition of NRL it was available with them. It is an acknowledgement of NRL dated 14.12.1973 received from the Applicant [Amin Agencies Limited] accepting request for transfer of these shares

asking the Applicant to collect the share certificates on 2.1.1974; however, before that could be done, NRL stood nationalized and shares acquired. The shares were admittedly owned by the Company in liquidation, whereas, the Company, pursuant to the Agreement did made an effort to get these shares transferred in the name of the Applicant / purchaser, as otherwise, the record of NRL could not have shown the transfer documents and its acknowledgement. On this ground also the Agreement in question cannot be questioned or denied now.

8. The stance of the Official Liquidator is even otherwise apprehensive as is reflected from his pending Reference and the objections filed by him. It is a matter of record that vide order dated 5.9.2006, on one of his references, he was allowed to call claims from the creditors of the Company which was done by him through publication in one Urdu and one English daily, whereas, the date for inviting claims was fixed on 12.10.2006; however, in response to this, admittedly no claims were received by him. This was reported by the Official Liquidator through his Reference No.05/2006. In fact, similar is his stance as of today that there are no claimants or creditors of the Company before him, except the Applicant herein. It is also a matter of record that the issue regarding any claims of the shareholders and their rights, is still pending and no final decision has been taken. But one thing is to be kept in mind that the claim of a creditor has got preference over the shareholder's interest who is only entitled for a dividend from the amount left after settlement of claims of the creditors. Both these claims cannot be mixed or confused. As and when the amount in excess is available, the matter regarding shareholders and their claims can be decided in accordance with law. For that the Official Liquidator has to proceed accordingly.

9. In view of hereinabove facts and circumstances of the case, I am not inclined to entertain the objection of the Official Liquidator and would allow both the listed applications filed by the Applicant with directions to release the amount to the Applicant. However, the quantum of such amount shall be calculated by the Official Liquidator independently in respect of shares, its value and the interest amount earned on it in addition to the transfer of the 7900 shares as claimed.

For such exercise, if needed, assistance may be obtained from any Chartered Accountant. Once such exercise is completed, the same be placed before the Court for approval and disbursement of the amount to the Applicant. With these observations, the applications are allowed and the objections are dismissed.

**Dated: 12.03.2020**

**J U D G E**

ARSHAD/