

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**H.C.A. No.290 of 2009**

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Date

Order with signature of Judge  
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**PRESENT:**

**Mr. Justice Aqeel Ahmed Abbasi**

**Mr. Justice Abdul Mobeen Lakho**

- 1.For orders on CMA No.1378/2022
- 2.For orders on CMA No.1379/2022
- 3.For orders on CMA No.1242/2014
- 4.For hearing of CMA No.1690/2013
- 5.For hearing of CMA No.1719/2012
- 6.For hearing of main case.
- 7.For hearing of CMA No.1632/2009

**16-05-2022**

M/s.Muhammad Mushaffy, Fahad Mushaffy & Faizan Mushaffy, Advocates for the Appellant along with Syed Munir Hussain Kazmi s/o Syed Wajih Hasan Kazmi (Managing Trustee of the appellant)

Mr.Asim Mansoor, Advocate for the Respondents along with Mst.Abida Sultana daughter of Hameedullah Khan, Mst.Zahida Khan daughter of Hameedullah Khan and Syed Muhammad Abbas Kazmi son of Syed Shaiq Hussain Kazmi (Respondents) are present in person.

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**ORDER**

1. Urgency granted.
2. Listed application (CMA No.1379/2022) has been filed under Order XXIII Rule 3 CPC duly signed by the appellant through its authorised person, namely, Syed Muneer Hussain Kazmi and respondent Nos.2 to 4, who are also present in Court, seeking disposal of instant High Court Appeal pursuant to a compromise reached between the parties in terms of agreement dated 13.05.2022 between the appellant (Syed Muneer Hussain Kazmi s/o Syed Wajih Hassan Kazmi, Managing Trustee of the Appellant Trust) and Respondent No.2 (Mst.Abida Sultana daughter of Hameedullah Khan) Respondent No.3 (Mst.Zahida Khan daughter of Hameedullah Khan) and Respondent No.4 (Syed Muhammad Abbas Kazmi son of Syed Shaiq Hussain Kazmi), whereby, the parties have settled their dispute outside the Court.

Learned counsel for the appellant and the respondents submit that since the matter has been compromised outside the Court between all the concerned parties, therefore, it has been

prayed that instant HCA may be disposed of in terms of the compromise deed executed between the parties, and the impugned judgment dated 07.10.2009 passed in J.M.No.07/2006 by the learned Single Judge may be modified accordingly.

The compromise application is duly supported by affidavits of the parties, who are also present in Court and have verified the contents of listed application as well as the terms of compromise agreement, whereas, learned counsel for the appellant has also produced original agreement dated 13.05.2022 for the purpose of verification.

For the sake of brevity and reference the compromise agreement reached between the parties is reproduced as under:-

### “AGREEMENT

The agreement is made at Karachi, this the 13<sup>th</sup> day of May, 2022 between the trustees of Kazmia Trust (Regd.) through Managing Trustee namely (i) Syed Munir Hussain Kazmi son of S. Wajih H. Kazmi (Late) having CNIC No. 42201-19653098-1 Muslim Adult residing at C-42, Block-2, K.A.E.C.H.S, Karachi, herein after referred to as the party of the **FIRST PART**.

AND

Mr. Muhammad Abbas Kazmi son of S. Shaiq Hussain Kazmi (late) & nephew of Syed Wajih Hasan Kazmi (Late) have CNIC No. 42201-565039-3 Muslim, Adult residing at House No. A-59, Tariq Bin Zayed Housing Society, Jinnah Avenue, Near Airport, Karachi, herein after referred to as party of the **SECOND PART**.

AND

Ms. Abida Sultana daughter of Mr. Hamid Ullah Khan having CNIC No. 42301-4559209-6 Muslim, Adult residing at House No. 11/1, Zulfiqar Street No. 1, Phase-8, D.H.A., Karachi & Ms. Zahida Khan Daughter of Mr. Hamid Ullah Khan having CNIC No. 42301-6329505-4 Muslim, Adult residing at House No. 11/1, Zulfiqar Street No. 1, Phase-8, D.H.A., Karachi, herein after referred to as party of the **THIRD PART**.

**WHEREAS** all the above mentioned parties agree to have shareholding in the company M/s. KAZ International (Pvt.) Ltd. (hereinafter referred to as the Company), in the proportion as under:

a. M/s. Kazmia Trust (Regd.)	40.0%,
b. Mr. Abbas Kazmi	22.5%,
c. Ms. Abida Sultana	25.0%
d. Ms. Zahida Khan	<u>12.5%</u>
Total	<u><b>100 %</b></u>

**AND WHEREAS** the party of the Second Part and the party of the Third Part at an Extra Ordinary Special General Meeting resolved to voluntarily liquidate the Company and passed a special resolution dated: 24-01-2006.

**AND WHEREAS** the said resolution of the Company was challenged by the Party of the First Part by filing judicial miscellaneous application before the Company Judge of High Court of Sindh at Karachi being J.M.A. No. 7 of 2006, which application was dismissed by the Company Judge vide judgment dated 07-10-2009.

**AND WHEREAS** the Party of the First being aggrieved by the said judgment filed an appeal before the Hon'ble High Court of Sindh at Karachi being H.C.A. No. 290 of 2009 which appeal is pending before the High Court of Sindh and wherein an injunctive order was obtained by the Appellants restraining the Official Liquidator from disposing off the assets of the Company.

**AND WHEREAS** beside the assets of the company there is a warehouse, furniture & fixtures, bank account in Habib Metropolitan Bank I.I. Chandigarh Road, Karachi having a balance of Rs. 12.318 Million.

**AND WHEREAS** since litigation is going on among the shareholders nobody was taking any interest hence no accounts books are being maintained, financial statements are not being prepared or audit is not being carried out as is required by laws. Additionally statutory returns are also not being filed with the Security & Exchange Commission of Pakistan and no Income Tax Returns & Statements have been filed with the Income Tax Department.

**AND WHEREAS** through this agreement is entered into among the shareholders of the company i.e. M/s. KAZ International (Pvt.) Ltd. to carry on the following works, for this purpose a committee has been constituted and the following persons shall be the members of the committee

1. Syed Munir Hussain Kazmi,
2. Ms. Abida Sultana, and
3. Mr. Iqbal Yousuf,

**AND WHEREAS** the committee shall be empower for do the following things:

- 1) To cause the party of the first part to withdraw H.C.A No. 290/ 2009 in terms of this compromise / arrangement duly sign by all the parties. That a separate agreement is made among parties for settlement after disposal of property and payment out of bank account which is duly signed by all the parties.
- 2) To determine the liabilities of the Company and pay the entire liabilities of the Company.

- 3) To dispose of the warehouse & other assets if by the three members committee.
- 4) To distribute the sale proceed for the sale of the warehouse and other assets of the Company among the shareholders in proportion to their holding after settlement of all liabilities of the Company.
- 5) To pay the liabilities of the company in top priority, including professional tax in any.
- 6) To prepare and file statutory returns with SECP, Income Tax, etc. if required.
- 7) To contest any litigation or liability before any authority, tribunal or court of law.
- 8) To close bank account maintained with Habib Metropolitan Bank I.I. Chandigarh Road, Karachi and withdraw all amount lying therein and distribute the same amongst the shareholders proportionately after settlement of all liabilities of the Company.
- 9) To take all steps to have the Company liquidated and having its name struck-off from the register of companies maintained by S.E.C.P.

**AND WHEREAS** as a first step Bank Accounts to be started its operation and to determine the liabilities of the Company and after completion of all documentation withdraw an amount not exceeding Rs. 500,000/- payment of the liabilities of the Company including but not limited to Income Tax, etc.

**AND WHEREAS**, the Parties herein above agree to settle the matter and avoid any further litigation.

**NOW, THEREFORE**, In consideration of mutual covenants and promises made by the parties hereto, (individually, each a "Party" and collectively, the "Parties") covenant and agree as follows:

**1. DISMISSAL OF PENDING LITIGATION.**

Within (TIME FRAME) from the date of this Agreement, the parties agrees to dismiss or effect withdrawal/ dismissal of all claims existing or pending in any jurisdiction between each other relating to the Incident, including the claim filed on (DATE) in (JURISDICTION) (the "Pending Litigation").

**2. RELEASE OF FUTURE CLAIMS.**

- i. The First Party hereby irrevocably releases and forever discharges the Second and Third Parties from any future claims arising from Incident.
- ii. The First Party hereby irrevocably and forever waives all rights it may have arising under the law with respect Pending Litigation and the above release.

iii. The Parties agree and acknowledge that A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE REEASE, WHICH IF KNOWN BY HIM MAY HAVE MATERIALLY AFFECTED HIS DISCISION TO SETTLE.

**3. SETTLEMENT.**

In consideration for this settlement and release, the Defendant agree to carry out winding up of company, subject to the terms and conditions of this Agreement and according to the schedule attached hereto as Exhibit A.

**4. TIME OF THE ESSENCE.**

The Parties agree and acknowledge that time is of the essence with regard to Settlement.

**5. NO MODIFICATION UNLESS IN WRITING.**

No modification of this Agreement shall be valid unless in writing and agreed upon by all Parties.

**6. FULL INTEGRATION.**

This Settlement Agreement supersedes any prior agreements, understandings, negotiations, whether written or oral.

**7. FURTHER ASSURANCES.**

The Parties shall make any further assurances as may be necessary to implement and carry out the intent of this Agreement.

**8. CONFIDENTIALITY.**

Any information pertaining to either Party to which the other Party is exposed as a result of the relationship contemplated by this Agreement shall be considered to be "Confidential Information." Either Party may disclose any Confidential Information to any person or entity, except as required by law, without the express written consent of the affected Party.

**9. FURTHER ACTIONS.**

The Parties hereby agree to execute any further documents and to take any necessary actions to complete the ultimate goal of dissolution of the Company.

**10. FURTHER ASSURANCES.**

Each Party shall execute such deeds, assignments, endorsements and other instruments and evidences of transfer, give such further assurances and perform such acts as are or may become necessary or appropriate to effectuate and to carry out the provisions of this Agreement. All such deeds, assignments, endorsements and other instruments and evidences of transfer and all other acts of any kind which are to be as of the date of this Agreement shall be delivered or taken as soon as possible following the date of this Agreement.

**11. AMENDMENT.**

This Agreement may not be amended except by a written instrument executed by both Parties.

**12. GOVERNING LAW.**

This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of Pakistan, without regard to conflicts of law principles.

**13. VENUE**

This Settlement Agreement and the interpretation of the terms herein shall be governed by and construed in accordance with the laws of the State of Pakistan. The Parties irrevocably submit to the exclusive jurisdiction in respect of any dispute inter-se between the Parties to this agreement shall lie with the courts in Karachi.

**14. ARBITRATION**

Either Party may cause to be submitted to arbitration all disputes, controversies or questions of interpretation arising out of this Agreement or any breach or default hereunder by giving to the other Party notice to that effect. The arbitration shall be held in Karachi and shall be conducted in accordance with the Arbitration Act, 1940 and the Rules made thereunder as in effect at the time of such arbitration except as follows. The Party desiring arbitration shall include in its notice to the other Party the name of the arbitrator chosen by it. Within twenty days after receipt of such notice the Party receiving notice shall, by written notice to the Party desiring arbitration, name the arbitrator chosen by it and within twenty days after the appointment of the second arbitrator an additional arbitrator shall be selected by the two arbitrators therefore appointed; provided, however, if one of the Parties shall have failed to appoint an arbitrator as hereinabove provided, the sole arbitrator appointed by the other Party shall arbitrate the matter alone. If the two arbitrators shall have failed to select an additional arbitrator within the above stated time, the additional arbitrator shall be appointed by the two arbitrators so appointed, acting in his individual capacity. No arbitrator shall be an employee or former employee of the Company, or acquaintance of either Party, or an Affiliate of either Party. After their selection, the arbitrators (or sole arbitrator as the case may be) shall proceed promptly with the arbitration proceedings and shall come to a decision and shall deliver a written report thereof to both Parties no later than ninety days after the selection of the last of their number (or in the case of a sole arbitrator, 110 days after his selection). Each Party shall pay the cost and expenses of the arbitrator appointed by it and shall share equally the other costs and expenses of the arbitration, including the costs and expenses of the additional arbitrator.

**15. COUNTERPARTS.**

This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

**16. THIRD PARTIES.**

No person not a party to this Agreement shall have or acquire any rights by reason of this Agreement nor shall any party hereto have any obligations or liabilities to such other person by reason of this Agreement.

**17. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between the parties hereto relating to the subject matter hereof and there are no other understandings, representations or warranties, oral or written, relating to the subject matter of this Agreement, which shall be deemed to exist or to bind any of the parties hereto, their respective successors or assigns except as referred to herein.

**18. SEVERABILITY.**

If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect. If any provision of this Agreement is deemed invalid or unenforceable by any court of competent jurisdiction, and if limiting such provision would make the provision valid, then such provision shall be deemed to be construed as so limited.

**19. NOTICE.**

Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

If to First Party:

If to Second Party:

If to Third Party:

**20. BINDING AGREEMENT.**

Subject to the restrictions on transfers and other dispositions set forth herein, this Agreement shall inure to the benefit of and be binding upon the undersigned Parties and their respective successors and assigns.

**21. HEADINGS.**

The headings for section herein are for convenience only and shall not affect the meaning of the provisions of this Agreement.

**22. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement between First Party and Second Party, and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. That the Parties acknowledge that it has read this Agreement and the Contract Terms and understands and agrees to be bound by them.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

**FIRST PARTY**

Sd/-  
Signature

Syed Munir Hussain Kazmi  
Print Name

42201-9653098-1  
Print CNIC Number

**SECOND PARTY**

Sd/-  
Signature

Abida Sultana  
Print Name

42301-4559209-6  
Print CNIC Number

**THIRD PARTY**

Sd/-  
Signature

Zahida Khan  
Print Name

42301-6329505-4  
Print CNIC Number

Sd/-  
Signature

Syed Muhammad Abbas Kazmi  
Print Name

42201-5665039-3  
Print CNIC Number

**WITNESS NO. 1**

Sd/-  
Signature

Syed Safdar Ali Kazmi  
Print Name

42201-8090505-1  
Print CNIC Number

**WITNESS NO 2**

Sd/-  
Signature

Mahmood Ali Khan Lodhi  
Print Name

42201-0527153-1  
Print CNIC Number

That the liquidation HCA 290 of 2009 has been withdrawn and settlement be made with the liquidator.

Sd/-  
Syed Munir Hussain Kazmi"

Since the parties under litigation in the proceedings in J.M.No.01/2006 have settled their dispute outside the Court in terms of compromise agreement as referred to hereinabove and have agreed for disposal of instant High Court Appeal in such terms, therefore, by consent of all present, instant High Court



Appeal stands disposed of in the aforesaid terms along with listed applications. Office is directed to modify the judgment dated 07.10.2009 passed in J.M.No.07/2006 by the learned Single Judge accordingly. However, it is clarified that disposal of Instant High Court Appeal in terms of compromise agreement between the parties is without prejudice to the right and interest of third party, if any, and subject to law, including company law, and will have the binding effect between the parties to compromise agreement in accordance with law.

JUDGE

JUDGE

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