

# ORDER SHEET

## IN THE HIGH COURT OF SINDH AT KARACHI

Execution No. 51 of 2019

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Date: Order with signature of the Judge  
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1. For orders on CMA No.2363 of 2022
2. For hearing of CMA No.2939 of 2022
3. For hearing of CMA No.2940/2022
4. For hearing of CMA No.409/2021
5. For hearing of CMA No.411/2021
6. For hearing of CMA No.413/2022

### **06.09.2023**

Mr. Aijaz Ahmed Zahid advocate for the decree holder  
Mr. Waqar Ahmed, advocate  
Mr. Mayhar Qazi, advocate for objectors (at s. nos. 4,5&6)  
Mr. Abdallah Azzam Naqvi, advocate for objector Meezan Bank  
Mr. Khurram Ashfaq advocate holds brief for Mr. Arshad M. Tayebally,  
advocate for JD  
Mr. Afaq Ahmed, advocate for the objector/Summit Bank  
Mr. Raashid Anwar, advocate  
Mr. Hassan Mandviwala, advocate

1. Notice.

2-3. Learned counsel for the decree holder submits that he has received these applications and will be filing counter affidavit in due course. Adjourned.

4to6. These applications arise pursuant to an order of this court dated 12.10.2021, in proceedings under Section 44-A CPC for enforcing of a foreign judgment dated 15.06.2018 passed in case No.CL-2015-000620 by the High Court of Justice, Business and Property Courts of England and Wales, Commercial Court (QBD). The operative part of the order is paragraph 20, which reads as follows:

*"20. To conclude, the foreign decree is conclusive between the parties within the meaning of section 13 CPC and is executable under section 44-A CPC. Consequently, the objections of the JD are dismissed and the Execution is allowed.*

*The assets of the JD that are sought to be attached and sold are mentioned in the Execution Application read with CMA No.s 300/2019 and 301/2019. Under cover of statements dated 28-04-2021 and 05-05-2021 the JD has also filed a list of its assets. Therefore, subject to any charge or encumbrance existing on those assets, and as a first step towards execution, the following assets of the JD are hereby attached until further orders as follows:*

(i) *The JD is prohibited from transferring the shares held by it in the following companies together with any bonus and right shares:*

*(a) Hascombe Lubricants (Pvt.) Ltd., having its office at Suite No. 105-106, The Forum, Khayaban-e-Jami, Block 9, Clifton, Karachi;*

*(b) VAS LNG (Pvt.) Ltd. having its office at Suite No. 102, 1st Floor, The Forum, Khayaban-e-Jami, Block 9, Clifton, Karachi;*

(c) Hascol Terminals Ltd. having its office at Plot No.s D-15 to D-18, G5 and G6, North Western Industrial Zone, Port Qasim Authority, Bin Qasim, Karachi.

- (ii) The JD is prohibited from withdrawing or transferring the credit balances of its bank accounts maintained with the banks listed in CMA No. 300/2019, the details of which are in Appendix „A“ to this order (filed by the JD), and said banks are restrained accordingly.
- (iii) The JD is prohibited from transferring or charging in any way the immovable properties listed in Appendix „B“ to this order. The above order of attachment of movables shall be transmitted by the office to the companies and banks mentioned in sub-paras (i) and (ii) above as per Order XXI Rule 46(2) CPC, and said companies and banks shall report compliance to the Nazir of this Court. Along with the relevant compliance of Order XXI Rule 54(2) CPC, the attachment order of the immovable properties in sub-para (iii) above shall be communicated to the relevant record keepers and Registrar of properties. CMA No. 143/2021 stands disposed of as above”

In the order referred to supra, the objections of the judgment debtor were considered and addressed. The appeal filed there against, by the judgment debtor only, culminated in an order dated 08.11.2022 rendered by the learned Division Bench of this Court in High Court Appeal No. 186 of 2021. It is considered illustrative to reproduce the relevant order herein below:

*“After hearing the learned counsel for the parties at some length, by consent, instant High Court Appeal is disposed of with the directions to all the parties to appear before the learned Single Judge and file appropriate applications in Execution No.51/2019 (Mena Energy DMCC v. Hascol Petroleum Limited), if not filed so far, seeking recall/modification of the impugned order dated 12.10.2021, as may be permissible under the law. It is expected that the parties who have not so far filed any appropriate application before the learned Executing Court, the same shall be filed within seven days from the date of this order, whereas, the learned Single Judge after hearing the learned counsel for the parties may pass appropriate orders on such application(s) at an early date, preferably, within a period of four weeks from the date of hearing such application(s). However, in the meanwhile the interim order passed on 15.10.2021 in the instant High Court Appeal, to the extent of operation of the bank accounts of the appellant i.e. “However, such bank accounts shall only be utilized for the purposes carrying on day to day business affairs of the company, including disbursement of the salaries to its employees and to meet statutory legal objections”, shall remain operative, however, it will be subject to further orders, as may be passed by the learned Executing Court to this effect in accordance with law. Instant High Court Appeal stands disposed of in the above terms along with listed applications”.*

These applications, at serial numbers 4 till 6 herein, were filed by banks / objectors and seek the following relief

*“On the basis of facts and grounds set out in the accompanying affidavits, it is humbly prayed that this Hon’ble Court may graciously be pleased to release the bank accounts of the Judgment Debtor as set out in Appendix A of the Order dated 12.10.2021 from attachment and permit the Judgment Debtor to withdraw and transfer credit balances therein for the purpose of its business and permit the banks to allow the Judgment Debtor to do so.*

*Ad-interim orders are solicited in the above terms  
This prayer is made in the interest of justice”*

Mr. Mayhar Qazi advocate has articulated the case for the applicants / objector banks and sought the grant of the applications; predicated upon the grounds that the order of the learned Single judge ignores secured creditors, that will be unduly and adversely affected unless the applications are allowed; a possible consequence of dismissal of these applications could be the forced liquidation of the judgment debtor and under such circumstances, the objectors might not be able to receive their entire dues, as they have a higher chance to doing so if the company remains unfettered as before; and finally that the objectors are not seeking to frustrate the decree, however, the same could not be construed to give precedence to claims of unsecured creditors.

Mr. Aijaz Ahmed advocate, representing the decree holder, submits the objectors appear to be agitating the matter gratuitously, perhaps as an alter ego of the judgment debtor. Per learned counsel, the concerns of the objectors have already been duly addressed in the order dated 12.10.2021 and that the present applications are just another measure to frustrate the decree. Learned counsel referred to paragraph 20 of the order dated 12.10.2021 and submitted that it is very clear that the order passed is “*subject to any charge or encumbrances existing on those assets*”. It was further argued that the banks have already filed their independent recovery suits and such proceedings follow the same linear progression as that which culminated in the present decree. Therefore, these banks could not then oppose measures taken by the decree holder, to obtain the benefit granted thereto in its suit. Learned counsel referred to J.C.M. No. 31 of 2022, being a compromise / arrangement sought by the judgment debtor with its secured creditors under Section 279 of the Companies Act 2017, and submits that the present objectors have even failed to convene the court ordered meeting in such regard to come to an arrangement with the judgment debtor. Finally it was added that decree preceded most of the financing extended by the present objectors, therefore, the objectors ought to have considered the viability of the judgment debtor or judgments / claims there against prior to entering into any relation therewith and in any event no case is made out to whittle away any protection granted to the decree holder securing its judicially adjudicated rights.

Heard and perused. It is observed at the outset that the objections of the judgment debtor were considered and addressed by this Court, as demonstrated from order dated 12.10.2021. While the order in appeal contemplated filing of applications seeking recall / modification of the order, however, the present applications (*filed by persons other than the judgment debtor*) *prima facie* seek permission for the judgment debtor to withdraw and transfer credit balances *for the purpose of its business*. These applications do not seek any manifest protection for the applicants; instead have confined themselves to seemingly hold brief for the judgment debtor. This, is in the very least, demonstrates that the primary interest of the present objectors is to facilitate the continuation of the judgment debtor’s cause and preclude the decree holder from securing its decree. It appears inconceivable as to how and under what law could the assets of a judgment debtor be exposed to dissipation in the subsistence of a decree and an order in execution securing the same. It was the primary interest of the judgment debtor that it remains unfettered by the decree passed there against and the objections taken in such regard are available in the file and addressed in the order under reference. It may be inferred that the present applications seek to achieve a similar objective once again and afford the protection to the judgment debtor that it could not achieve on its own.

The basic thrust of the objectors’ learned counsel’s arguments was that the order dated 12.10.2021 ignored the existence of secured creditors or accords undue priority to the unsecured. *Prima facie* perusal of paragraph 20 of the said order dispels this argument as it is clearly stated that the charge or encumbrances existing on those assets remains protected.

The next issue to address is whether the execution could have the corollary effect of a forced liquidation of the judgment debtor; resulting in perceived loss to the creditors; as they claim that they may not recover the correct quantum of the amount due. With respect, such a presumption could not be construed to defeat execution of judgment and decrees. It has been stated that the amount due to the decree holder is a minimal fraction of the total debt of the judgment debtor, represented in unison to be 1% or less. Under such circumstances, it is not reasonable to apprehend that satisfaction of the same would force the entity into liquidation. Even otherwise, execution proceedings

could not be held hostage on such grounds otherwise the entire law would be rendered otiose.

Learned counsel for the objectors had categorically stated that the objectors are in no circumstances attempting to frustrate the decree and that they merely seek protection of their secured status as creditors. This argument is appreciated and it is observed that the priority accorded to secure creditors vide paragraph 20 of the order under reference appears to adequately address the concerns of the objectors.

In view hereof this court is constrained to observe that the objectors have failed to make out a fit case for grant of the applications under consideration, hence, the same are dismissed.

**J U D G E**

Amjad/PA