

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-3980 of 2023.

a/w

C.P No.D-3395 of 2024

Date: Order with signature(s) of the Judge(s)

**Before: Salahuddin Panhwar &
 Amjad Ali Sahito, JJ**

Priority.

1. For Hearing of CMA No.9781/2024.
2. For Hearing of CMA No.9782/2024.
3. For Hearing of Main Case.

04th September, 2024.

Mr. Sabih ul Hussain Qureshi advocate for the Petitioner in CP No.D-3980/2023.

Petitioner Abbadul Hussanian is present in person.

Mr. Khurram Ghayas advocate for KMC.

Mr. Faisal Ahmed Memon advocate for Respondent No.5 & 6 in CP No.D-380/2023.

Applicant/Intervener Ali Nawaz Unar is present in person.

Mr. Shahryar Mehar, AAG a/w

Rehan Iqbal Baloch, Secretary Health Department, Govt. of Sindh.

Nadeem Ahmed Qureshi, Law Officer, Law Department, Govt. of Sindh.

Badar Jameel Mendhro, Secretary Forest & Wildlife Department, Sindh.

Riaz Ahmed Wagan, Chief Conservation Forest, P.D Mangroves Project.

Javed Ahmed Mehar, Conservator of Wildlife Sindh.

Abid Hussain Rind, Divisional Forest Officer, Tando Muhammad Khan.

Hasnain Raza Baloch, Division Forest Officer, Thatta.

Abdul Hafeez, S.O, Finance Division.

Sikandar Hassan, Deputy Secretary, Finance.

Asghar Memon, Special Finance Secretary.

SALAHUDDIN PANHWAR, J. Mr. Shah Bakht Pirzada, advocate, undertakes to file his Vakalatnama on behalf of M/s. Indus Delta.

2. Learned counsel for KMC seeks time, to comply with the order dated 21.08.2024.

3. In compliance of para 'a' of the order dated 21.08.2024, it has come on record that, there is an agreement between a private company, namely Merlin's Wood Pakistan (Pvt) Ltd. and the Forest Department, Government of Sindh, whereby it has been settled between the parties to the agreement that, 60% of the amount generated through Carbon Credit Trading, rewards by VERRA, will be given to the Merlin's Wood Pakistan (Pvt) Ltd., whereas 40% of the amount is to be credited in the account of the Sindh Government's Forest Department, so far about **40 Million (USD)**, have been received through Carbon Credit Trading, out of which **14.7 Million (USD)** are deposited by the Sindh Government's Forest Department, in its Sindh Bank's account, through a Finance Department's letter, which was meant to be deposited in an endowment bank account, however, such amount is admittedly lying in a current bank account, since about two years now. Special Secretary, Finance Department Government of Sindh, present in court contends that as per Finance Department, this amount was to be invested/parked/credited in any one of the AA ranked commercial banks and the proceeds to the same were required to be utilized by the Forest Department. Accordingly, issue notice to C.E.O of Merlin's Wood Pakistan (Pvt.) Ltd., having its office at House No. 425, Street No. 12, F-10/2, Islamabad, Pakistan. Or office at 214/10, Ordinance Road Rawalpindi, Punjab, 46000.

5. On the Court's query, the Forest Department's Secretary and its Chief Conservative Officer, present in court are unable give any satisfactory or justifiable response, when they were categorically asked as to how this grave illegality can be allowed to be perpetuated, as they could only came up with this lame and absurd reply, that the Bank Manager, Sindh Bank, refused to open an endowment bank account, such evasive and misfeasance response from the top officials of Forest Department, speaks volumes about their efficiency and credibility, therefore, Chief Secretary, Province of Sindh, is hereby directed to constitute a high level committee comprising of 3 top officials, i.e. Dr. Shireen Narejo, Member Inspection Team, Mr. Muhammad Mureed Rahimoon, Secretary Auqaf and Secretary Finance Department to ascertain the shortcomings referred hereinabove and in order to fix the responsibility upon the delinquent officials, the committee must submit its

recommendations within 30 days' time, from the date of the present order of this court. Accordingly, Chief Secretary, Province of Sindh shall notify such committee in terms of this order.

6. Under these compelling circumstances and considering the above state of affairs, proprietary demands that's Forest Department shall immediately withdraw, the amount from the present current account and invest the same in any profitable scheme with the concurrence of the Finance Department, within fifteen days positively, without fail and non-compliance will expose the Secretary Forest and the Chief Conservative Officer to the contempt of Court proceedings. Guidelines of forest department are as under:

"The AD may also follow below mentioned Investment Guidelines so as to manage the investment of the Endowment Fund:

- i. The profit generated by the Fund shall be utilized upto 90% of the total profit for the year and the rest 10% shall remain invested along with the total capital.***
- ii. To protect the Capital of the Fund, all investments shall be made in Risk Free Investment Avenues only like Market Treasury Bills, Pakistan Investment Bonds, Government of Pakistan issued Ijara Sukuks or for debt instruments issued by corporate entities having Guarantees issued by the Federal or Provincial Governments, or any other instrument issued by the Provincial Governments.***
- iii. The Investment Committee shall examine the rate of return/tenure of such instruments for investment into / divestment of such instruments. The decision shall be taken while considering the rate of return offered by alternate investment opportunities, the market valuation of the instruments and preferably inviting quotes from three different commercial banks/DFIs. Likewise, the Committee shall have the power to decide upon a rate for participation in any periodic suction of such instruments that is conducted by the SBP/ issuer of such securities/instruments,***
- iv. The Endowment Fund shall be kept in a commercial bank having a minimum credit rating of AA- or above. The fund shall be kept in profit bearing account till the investment decisions are made. The same criteria will remain applicable in case of Term Deposit Receipt (TDR) 10 be placed for short term basis.***
- v. For bank deposits kept under the short-term dally product/savings accounts to meet the day Mo day liquidity needs, the comparative rates from commercial banks may be invited at least once a year. There shall be***

at least three such quotes to enable the Committee to take a decision.

vi. For term deposits, any decision shall be made after inviting quotes from at least three different banks and that too if such offered rates are higher than those being given by of comparable tenure issued by the Government.

vii. For investment into term finance certificates/sukuks/corporate debt instruments, investment shall be subject to the following conditions:

(a) Investment shall only be made where either the issuer or the instrument has a long-term credit rating of at least "AA".

(b) The issuer is a commercial bank or development finance institution (DFI) having an equity size of at least Rs.10,000 million, has been in existence for at least a decade and has a track record of profitable operations in at least four out of the last five years.

(c) For issuers other than commercial banks & DFIs, participation shall only be permissible where the issuer has an equity base at least Rs.3,000 million, annual sales of Rs. 10,000 million, has been in existence for at least a decade and has a track record of profitable operations in at least four out of the last five years. Furthermore, if such issuer is operating under a regime where its profits are guaranteed by the federal or provincial Government, or its debt is fully secured by virtue of a sovereign or provincial guarantee, all other conditions shall stand relaxed.

(d) Not more than 10% of any instrument (inclusive of any green-shoe option) shall be subscribed to.

viii. No investment shall be allowed in Collective Investment Schemes or Shares (Listed /Unlisted) from the fund.

7. Regarding the agreement signed by the Forest Department, with a private company, namely Merlin's Wood Pakistan (Pvt) Ltd, which is otherwise not traceable at the site of the project(s), and as per the Forest Department's Chief Conservative Officer, their described role as per agreement, is only to supervise and nothing else, however, conversely it is strange and shocking to note here, that this private company is receiving the lion's share from the fund generated through carbon credit trading contrarily, with the only assignment of a mere supervisory nature, hence the committee, to be constituted as directed above shall also examine the

veracity/legality of the agreement signed by the parties and also with regard to the existence or genuineness of the company and committee shall also verify the record of around 26 Million (USD), received on account of carbon credit trading fund, during the last two years.

8. Mr. Wagan, Project Director of D.B-I & D.B-II, undertakes that he will produce evidence of all logistic support provided by the Merlin's Wood company, including the financing transactions carried out between the parties, and he further admits that this company is never practically available or seen at the project site, thus all the activities, including the plantations are being carried out by the Forest Department, Government of Sindh, under their supervision.

9. With regards to encroachments, learned Registrar shall ensure removal of the same, in accordance with and in compliance of the orders passed earlier by this Court.

10. As far as, compliance of Paragraph No. 2 of order dated 21.08.2024 in concerned, learned AAG contends, that partial compliance is made and for the remaining part of the compliance, which is yet to be complied with, he will seek assistance of Rangers.

11. Learned MIT-II shall ensure compliance of Paragraph No.3 of order referred above by the Learned District & Sessions Judges in its letter and spirit.

12. In compliance of Paragraph No.4 of the order dated 21.08.2024, with regard to the directions for the need to legislate, Secretary Finance Department, states that they have submitted a Bill of Forest Act 2024, which is being vetted by the concerned Law Department and presently summary is lying with Worthy Chief Minister, Sindh. Accordingly, Secretary Law, and Chief Secretary Sindh, shall pursue the same and must ensure the legislation is made with regard to this new scheme of forest laws, in order to bring the province of Sindh, at par with two of the other provinces, who have legislated on the subject issue, and rightly treating the same as a pressing priority. Needless to mention here, that this Court at Sukkur Bench, the CP No. **D- 1115 of 2009**, vide order dated **09.03.2023**, has already given such directions, but despite lapse of considerable time, the same has not been complied with, excerpt from the order dated 09-03-2023, is reproduced herewith,

"Divisional Forest Officers as well as Conservators of Forests, Afforestation Circles are present and contend that in KPK and Balochistan, there is legislation whereby separate forest force has been provided to secure the forest land. Admittedly, thousands of acres pertaining to forest department, which needs proper lookafter, hence Secretary (Law) shall examine the new legislation on forest issue by KPK and Balochistan and shall proceed further in accordance with law".

As well in the present petitions similar directions were issued by order dated 09.03.2024.

13. Mr. Riaz Ahmed Wagan, Chief Conservation Forest, Project Director Mangroves Project contends, that he will produce complete evidence with regard to the plantation of mangroves trees.

14. Secretary Finance shall submit complete breakup of all account endowment funds in all department and all allocation of budget for the period of last two years.

15. Forest Secretary shall appoint any other competent officer of Forest Department as Project Director of DB-II. The jurisdiction of Phithey creek shah Bandar falls within DB-I and Sir Creek falls within DB-II.

Adjourned to **25.09.2024** at 11:00 a.m.

JUDGE

JUDGE