

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
HCA Nos.64, 65, 66 and 67 of 2023.

Order with signature of Judge

1. *For orders on office objections*
2. *For hearing of CMA No.2297 of 2023*
3. *For hearing of main case*
4. *For hearing of CMA No.1037 of 2023.*

30.05.2023.

Mr. Abdul Sattar Pirzada, Advocate for appellants in HCA No.64 and 65 of 2023.

Mr. Khalid Jawed Khan, Advocate for respondents No.1 and 2 in HCA Nos.64, 65 and 66 of 2023.

Mr. Khaleeq Ahmed, Deputy Attorney General.

Mr. Zeeshan Adhi, Additional Advocate General Sindh for appellants in HCA No.66 and 67 of 2023 along with Mr. Zameer Ahmed Jagirani, Cane Commissioner .

Instant High Court Appeals were reserved for orders on 05.05.2023, however, before order could be penned down, CMA No.2297 of 2023 under Order 41 rule 5 CPC has been filed on behalf of respondents 1 to 3 with the request that till the decision in the instant High Court Appeals, an interim arrangement for export of the remaining quota may be allowed subject to deposit of the amount before the Nazir of this Court. Notice of such application were issued to the petitioners and learned DAG and AAG who have not filed any objections to such application. A joint statement on behalf of appellants and respondents 1 to 3 dated 29.05.2023 duly signed by all the appellants, the respondents 1 to 3 and their representatives has been filed wherein detailed proposal for interim arrangement to allow export of the remaining sugar has been given. Learned Additional Advocate General Sindh and the learned DAG were supplied copy of such joint statement, whereas, Cane Commissioner Sindh was also called in Court, who have extended their no objection if the joint statement is taken on record and the export of the remaining 32000 MT is allowed to be exported in terms of the joint settlement. Accordingly, by consent, the said joint statement is taken on record which is reproduced as follows:

**“JOINT STATEMENT ON BEHALF OF APPELLANTS
AND RESPONDENTS NO.1 TO 3**

Respectfully submitted,

That in response to M.A. No.2297/2023 filed by Respondents No.1 to 3, the Appellants and Respondents No.1 to 3 submit the following joint statement for disposal of the said application.

1. That in order to secure the interests of all parties and stake holders and to ensure inflow of substantial foreign exchange in the country, it is proposed without prejudice to the claims, rights and submissions of the parties to the appeal and without affecting the final outcome of the proceedings in any manner, that this Hon'ble Court may, in continuation of earlier order dated 09.03.2023 (allowing export of 48,000 MT sugar out of total quota of 80,000 MT allocated to the sugar mills in Sindh) be pleased to pass an order to allow export of the remaining 32,000 MT in the following manner:

Undisputed quantity.

32 mills (Appellants' and Respondents' sugar mills) to export:
 $32 \times 507 = 16,224 \text{ MT}$

All 32 sugar mills shall be entitled to export 507 MT each and retain the proceeds. The undisputed quantity shall be referred to as "Quantity 1".

Disputed quantity.

32 mills (Appellants' and Respondents' sugar mills) to export
 $32 \times 493 = 15,776 \text{ MT}$

The disputed quantity shall be referred to as "Quantity 2".

Total amount of Quantity 1 + Quantity 2 = 32,000 MT

- (i) As to Quantity 2, the Appellants and Respondent Nos. 1 to 3 agree that the local prevailing price of sugar is @ Rs. 100 Per Kg (net of 18% sales tax) (the 'local sugar price') while prevailing international sugar price is USD 708.50 per MT FOB, which is the equivalent of Rs. 202.60 per Kg.
- (ii) Accordingly, each sugar mill maybe allowed to export 493 MT from Quantity 2. Out of the export proceeds of Quantity 2, each sugar mill shall retain the following amounts which have been calculated on a per Kg basis:
 - a. Rs. 100 (net of 18% sales tax) being the local sugar price.
 - b. Rs. 6.50 being all export related expenses including freight, mill to port expenses and land route expenses.
- (iii) The balance amount from the export proceeds of Quantity 2 which are hereby calculated at Rs. 96.10 per Kg (the 'balance amount'), shall be deposited by each exporter mill with the Nazir of this Honourable Court within one week of the receipt of export proceeds.
- (iv) For fulfilment of the above exercise, all Appellants' and Respondents' sugar mills shall, within 7 days of the date of the order passed by this Honourable Court, write to the Cane

Commissioner and inform him of their ability to export both Quantity 1 & 2 collectively. In the event that any sugar mill is unwilling or unable to export Quantity 1 & 2 collectively, and / or fails to inform the Cane Commissioner of its willingness to do so within the period of 7 days as stipulated above, the remaining sugar from Quantity 1 and Quantity 2 which has not been exported shall be distributed equally on a pro rata basis between all those sugar mills who expressed their willingness to export as provided above. For the avoidance of doubt the pro rata distribution shall apply mutatis mutandis as per the formula for division of quantities of sugar to be exported under Quantity 1 and Quantity 2, which shall be implemented and exported as in accordance with the mechanism as provided in the preceding paragraphs. It is further clarified that notwithstanding any pro rata distribution / adjustment which is to be made under this Paragraph, the disputed quantity, i.e. Quantity 2, shall never exceed 15,776 MT.

- (v) After the expiry of the 7 days period as stipulated above, the Cane Commissioner shall, within a further period of 7 days, issue a quota allocation letter for export based upon the intimations received from the sugar mills within the said 7 days period as provided in Paragraph (iv) above. The allocation letter shall specify the number of sugar mills and the exact quantity of sugar to be exported by each sugar mill under Quantity 1 & 2. This includes any quantity to be distributed / adjusted on a pro rata basis as stipulated in Paragraph (iv) above.
- (vi) Notwithstanding the aforementioned, the Cane Commissioner, Sindh shall oversee and facilitate the entire exercise which shall be completed no later than sixty days from the date of the quota allocation letter to be issued by the Cane Commissioner, Sindh in accordance with Paragraph (v) and in terms of the order to be passed by this Honourable Court. The Federal Government, SBP and all relevant authorities including but not limited to Customs and Port authorities shall also facilitate the expeditious export of the sugar to be exported by the sugar mills, including condoning the expiration of any deadline previously set for the export of the entire allocated quantity of 80,000 MT and to be exported by the sugar mills by virtue of either the order passed on the basis of this Joint Statement or the order dated 09.03.2023.
- (vii) Failure by any sugar mill (whether party to the title appeal or not and availing benefit of export of allocated quota of sugar in terms of the Court orders) to deposit the balance amount with the Nazir of the Court within the period stipulated in clause (iii) above plus one week shall be treated as violation of the order of the High Court and appropriate orders may be passed by the Court to ensure compliance and further action for its breach.
- (viii) On receipt of the balance amount of Quantity 2, from the sugar mills, Nazir shall invest the entire amount in a profit bearing Government scheme and file a statement of compliance before the Court. Each sugar mill shall deposit Nazir fee of Rs.10,000/- each
- (ix) The invested balance amount and accrued profit would be finally disbursed either to Respondent Nos.1 to 3 if the case is ultimately

decided on merit in their favour. On the other hand, if the quota of 2500 MT each as ordered by the Cane Commissioner, Sindh and challenged by Respondents No.1 to 3 is ultimately upheld and / or the underlying suits filed by Respondent Nos. 1 to 3 are dismissed, the balance amount with accrued profit from Quantity 2 as deposited with the Nazir of the Court would be distributed between all sugar mills including the Appellants' and Respondents' sugar mills in the same proportion i.e. the manner in which they deposited the amount with Nazir or as ordered by the Court.”

By consent, listed application stands disposed of in terms of the joint statement. The parties may act upon such joint statement, whereas, the Cane Commissioner Sindh shall also perform his part of duty as per aforesaid agreement. This is, however, without prejudice to the decision in the Instant High Court Appeals, and the rights and claims of the parties in the main suit, which may be decided on own merits in accordance with law.

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