

IN THE HIGH COURT OF SINDH AT KARACHI
(Execution Jurisdiction Under Section 44-A CPC)

Foreign Execution Application No. 51 of 2019

(*Mena Energy DMCC v. Hascol Petroleum Limited*)

Decree Holder:	Mena Energy DMCC Through Mr. Ijaz Ahmed, Advocate
Judgment Debtor:	Hascol Petroleum Ltd Through M/s Abdul Ahad & Khurram Ashfaq Advocates
Objector / Applicant: (CMA No.2940 of 2022)	Meezan Bank Ltd Through Mr. Abdallah Azzaam Naqvi Advocate
Objector / Applicant: (CMA No.2939 of 2022)	Samba Bank Ltd Through M/s Rashid Anwar & Muhammad Adil Saeed, Advocates
Objector / Applicant: (CMA No.2363 of 2022)	Summit Bank Ltd Through Mr. Afaq Ahmed, Advocate
Date(s) of Hearing:	11-12-2023, 15-12-2023, 18-12-2023, 20-12-2023, 22-12-2023, 22-3-2024 & 24-2-2025
Date of Short Order:	24-2-2025
Date of Reasons:	27-2-2025

ORDER

1. **Sana Akram Minhas, J:** This order adjudicates three Objection Applications (“**Objection Applications**”) filed by three separate Objector Banks primarily under the provisions of Order 21 Rule 58 of the *Code of Civil Procedure, 1908* (“**CPC**”). These Objection Applications are:
 - i) CMA No.2940/2022 filed by Meezan Bank Ltd (“**Objector Meezan**”)
 - ii) CMA No.2939/2022 filed by Samba Bank Ltd (“**Objector Samba**”)
 - iii) CMA No.2363/2022 filed by Summit Bank Ltd (“**Objector Summit**”)

Facts

2. The above Objection Applications have been prompted by an order of attachment dated 12.10.2021 (“**Attachment Order**”) of a Single Judge of this

Court issued in the instant Execution Application (in proceedings under Section 44-A CPC) for the enforcement of a foreign judgment dated 15.6.2018, delivered in Case No.CL-2015-000620 by the High Court of Justice, Business and Property Courts of England and Wales, Commercial Court (QBD).

3. The key portion of the Attachment Order of 12.10.2021 is contained in paragraph 20, which directs:

“ 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 Nos. 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 Nos. 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. ” **[Emphasis Added]**

4. The Judgment Debtor preferred an appeal (bearing High Court Appeal No.186/2021 – *Hascol Petroleum Ltd v. Mena Energy DMCC*) (“**HCA 186**”) against the Attachment Order, wherein the Objector Meezan filed an Intervenor/joinder application under Order 1 Rule 10 CPC. A Division Bench of this Court by consent order dated 8.11.2022 disposed of the HCA 186 in the following terms:

“ 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 obligations”*, 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. ”

Relief Sought By Objector Banks In Objection Applications

5. Pursuant to the Division Bench’s consent order dated 8.11.2022 (rendered in HCA 186), the three Objector Banks (viz. Objector Meezan, Objector Samba and Objector Summit) have come forward with their aforesaid Objection Applications, seeking the following relief(s):

Prayer Clause in Objector Meezan’s CMA No.2940/2022

“ For the reasons disclosed in the accompanying affidavit, it is prayed that this Honourable Court may be pleased to dismiss the instant execution to the extent of satisfaction of the Decretal Amount by sale of all those assets which are under the charge of the above-named Objector or upon those assets on which the Objector has encumbrances.

Or in the alternative, exclude those assets of the Judgment Debtor from these execution proceedings, which are under the charge of the above-named Objector.

The prayer is made in the interest of justice. ”

Prayer Clause in Objector Samba’s CMA No.2939/2022

“ It is most humbly and respectfully prayed on behalf of Samba Bank Limited that for the reasons contained in the accompanying affidavit, this Hon’ble Court may be pleased to modify/recall its order dated 12.10.2021 and de-attach the assets of the Judgment-Debtor, including its Bank Accounts.

Ad-interim orders are also solicited.

This prayer is made in the interest of justice. ”

Prayer Clause in Objector Summit's CMA No.2363/2022

“ For the facts and reasons disclosed in the accompanying affidavit, it is respectfully submitted that this Hon'ble Court may graciously be pleased to release the bank accounts of Judgment Debtor as set out in Appendix A of the Order of October 12, 2021 from attachment and permit the Judgment Debtor to withdraw and transfer credit balance therein for the purposes of its business and permit the Objector to allow Judgment Debtor to do so.

Ad-interim Order are solicited in the above terms.

Prayers are made in the interest of Justice. ”

Respective Submissions

6. Mr. Abdallah Azzaam, Advocate representing Objector Meezan led the arguments on behalf of the Objector Banks, all of whom claim to be secured creditors, advocating for the grant of the Objection Applications. He contended that while the Objector Banks were not involved in the Execution proceedings, they were affected by the Executing Court's Attachment Order, which, inter alia, attached the Judgment Debtor's accounts and assets under their charge to satisfy a foreign decree issued in favour of an unsecured creditor (viz. Decree Holder), thereby rendering the rights of Objector Banks meaningless. He argued that the Attachment Order disregarded the Objector Banks' priority rights as secured creditors, causing irreparable harm and effectively nullifying their claims, and that they would suffer prejudice if the Court ordered the sale of assets under their secured charge. Without prejudice to the foregoing, he maintained that the sentence in paragraph 20 of the Attachment Order (i.e. *“Therefore, subject to any charge or encumbrance existing on those assets,”*) excluded all assets under Objector Meezan's charge or encumbrance.
7. Mr. Rashid Anwar, Advocate averred that rejecting Objection Applications could compel the liquidation of the Judgment Debtor, thereby diminishing the Objector Banks' chances of recovering their full dues – whereas they, as well as the Decree Holder, would have a greater likelihood of doing so if the Judgment Debtor Company remains operational without restrictions. Counsel for Objector Summit adopted the arguments of the aforesaid two Counsel.
8. Mr. Ijaz Ahmed, Advocate, representing the Decree Holder, contended that:
 - i) The Objector Banks were unnecessarily prolonging the matter, possibly acting as a proxy of the Judgment Debtor. According to learned Counsel, the concerns raised by the Objector Banks were already addressed in the Attachment Order, and the present

applications were merely an attempt to delay the execution of the decree. He specifically referred to paragraph 20 of the said order, emphasizing that it explicitly protected the rights of all secured creditors which included the Objectors Banks.

- ii) The Objector Banks have themselves pursued independent recovery suits, which have been recently resolved through compromise decree(s), thereby following a legal trajectory similar to the proceedings that resulted in the present decree. Therefore, they cannot object to the measures taken by the Decree Holder to enforce its legally granted rights.
- iii) In any event, no grounds exist to undermine the protections afforded to the Decree Holder in enforcing its judicially recognized rights.

Court's Opinion

- 9. The submissions made by the Counsel have been heard, and the accompanying record duly considered.

Adequate Protection For Secured Creditors In Attachment Order

- 10. The central contention raised by the Objector Banks is that the Attachment Order failed to recognize the rights of secured creditors or unduly favoured unsecured creditors over them. However, a plain reading of paragraph 20 of the said Order contradicts this assertion. The Attachment Order explicitly states "**Therefore, subject to any charge or encumbrance existing on those assets**", which means that the action being taken (viz. the attachment of assets), is conditional upon and subordinate to any existing legal claims, charges, or mortgages on them. Put simply, if there are prior claims by other parties (such as a bank with a loan secured against the asset), those claims will take precedence. In summary, this phrase is a legal safeguard ensuring that the attachment of assets does not interfere with pre-existing rights of other parties and that the Court acknowledges and respects any legal claims or financial burdens that were already in place before issuing the Attachment Order.
- 11. Likewise, the phrase "**and as a first step towards execution**" indicates that the attachment of assets vide the Attachment Order is an initial action in the process of the Executing Court and that further legal steps are to follow.

12. Thus, the argument that the order disregards secured creditors (specifically the Objector Banks) is unfounded. The Attachment Order fully safeguards the rights of secured creditors from any prejudice, ensures their interests remain protected and unaffected, and their priority status remains intact.

Stalling Execution Proceedings On Speculative Concerns

13. The next argument presented by Objector Banks rests on the premise that liquidation of the Judgment Debtor would result in negligible recovery for creditors, that would adversely impact their financial position and, by extension, the interests of depositors and corporate entities. Instead, they propose granting a “*standstill*” period to the Judgment Debtor (a plea specifically taken in Objector Summit’s listed CMA), allowing it to continue operations, which in their opinion would lead to a better chance of higher recovery for creditors. However, this argument is flawed for several reasons:
 - i) One, the Objector Banks’ argument is largely speculative in nature. There is no concrete assurance that allowing the Judgment Debtor to continue business operations will lead to a better financial outcome for creditors. The assertion that greater amounts will be repaid over time is uncertain, particularly given the Judgment Debtor’s already dire financial situation as asserted by the Objector Banks themselves.
 - ii) Two, the enforcement of a judgment is based on the legal right of a creditor to recover outstanding amounts. The financial impact on other creditors or depositors does not override the legal entitlement of the Decree Holder to seek enforcement. The Judgment Debtor’s financial distress cannot serve as a justification to deny the legitimate enforcement of the debt.
 - iii) Three, the assertion that the interests of depositors and major corporate entities would be harmed is unsubstantiated. The enforcement of a judgment is a legal process aimed at protecting creditors’ rights. If the Judgment Debtor’s financial situation is as precarious as claimed, it is unclear how continued operations would safeguard public interest better.
 - iv) Four, precarious financial position of a debtor (in this case the Judgment Debtor) alone is not a ground to deny a creditor (in this case the Decree Holder) its right to enforce a judgment. If such arguments were to be accepted, it would set a dangerous precedent

where financially distressed entities could indefinitely delay enforcement by merely citing their poor financial health.

- v) Five, the secured creditors may have mutually agreed to accord a “*standstill*” to the Judgment Debtor, but such an arrangement cannot be imposed on the Decree Holder, which is not a party to such an informal agreement.

Conclusion

14. In light of the foregoing, this Court finds that the arguments presented by the Objector Banks lack merit and do not establish a sufficient basis for the grant of their respective applications under consideration.
15. By a short order on 24.2.2025, the Objector Banks’ respective Objection Applications (viz. CMAs No.2940, 2939 and 2363 of 2022)¹ were **dismissed**. This is why. No costs are imposed.

JUDGE

Karachi
Dated: 27th February, 2025

¹ For the record, a similar set of applications (bearing CMAs No.409, 411 and 413 of 2021) filed by another set of secured creditors (viz. The Bank of Khyber & National Bank of Pakistan, Bank Alfalah Ltd and BankIslami Pakistan Ltd respectively) were dismissed vide order dated 6-9-2023 passed by another Single Judge in the present Execution proceedings