

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

JCM No. 19 of 2023
[Zarmina Darius Dastur & others v. the SECP & others]

DATE	ORDER WITH SIGNATURE OF JUDGE
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For hearing of CMA Nos:

1. 1510 of 2023.
2. 1511 of 2023.
3. 1526 of 2023.
4. 1547 of 2023.
5. 1592 of 2023.
6. 1593 of 2023.
7. 2410 of 2023.
8. 2411 of 2023.
9. For orders on CMA No. 1528 of 2023.
10. For orders on CMA No. 1571 of 2023.
11. For hearing of CMA No. 2262 of 2024.
12. For hearing of CMA No. 3091 of 2025.
13. For hearing of CMA No. 3092 of 2025.
14. For hearing of main petition.

23-04-2025

M/s. Muhammad Ali Lakhani and Mujtaba Sohail Raja,
Advocates for the Petitioner.

Mr. Arshad M. Tayebaly, Sameer Tayebaly and Aitzaz
Manzoor Memon, Advocates for Respondent No.2.

Mr. Shahan Karimi, Advocate for Respondents 3 and 5.

Mr. Shahrukh Khan Brohi, Advocate for Respondents 6, 7&10.

Mr. Talha Ahmed, Advocate for the Intervener.

Adnan Iqbal Chaudhry J. - This petition under section 286 of the Companies Act, 2017 by shareholders of Decagon Pakistan (Pvt.) Ltd. (Respondent No.2) asserts oppression and mismanagement in relation to the affairs of said company. It seems that what started as a dispute between Board members over a meeting held on 07.07.2023, has by now aggravated into disputes over day-to-day management of the Respondent No.2. A Court verdict on such disputes hardly returns an ideal situation for either side, and by such time the profitability of the company also erodes. Apparently, the Respondent No.2 and its shareholders were conscious of that fact, hence clause 90 of the Articles of Association of the Respondent

No.2 provides for mediation before formal dispute resolution as follows:

“DISPUTE RESOLUTION

90. In the event that a dispute, claim or controversy arises between the Company, its management or its shareholders, or between the shareholders inter-se, or the directors inter-se, all steps may be taken to settle the dispute and resolve the issue through mediation by an accredited mediator before taking recourse to formal dispute resolution such as arbitration or litigation.”

The benefits of mediation as an alternate to litigation, and especially for businesses, has been highlighted by the Lahore High Court in the cases of *Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. v. Morgah Valley Limited* (2024 CLD 685) and *Faisal Zafar v. Siraj-ud-Din* (2024 CLD 1), and recently by the Supreme Court in *Mughals Pakistan (Pvt.) Ltd. v. Employees Old Age benefit Institution* (PLD 2025 SC 1). In *Province of Punjab v. Haroon Construction Company* (2024 SCMR 947), the Supreme Court of Pakistan has also urged Courts to exhibit a pro-settlement and a pro-mediation bias.

Admittedly, before approaching this Court, the parties did not resort to mediation by an accredited mediator. It is settled law that Articles of Association of a company constitute a binding contract between its members and between the company and its members. I am therefore inclined to enforce clause 90 of the Articles of Association of Respondent No.2 and refer the parties/shareholders to an accredited mediator to explore if they can arrive at an agreement to manage the affairs of the company; or alternatively, to arrive at a price at which the majority can buy-out the minority, or *vice versa*. If the parties so endeavor, mediation may save them time and cost. Learned counsel for the parties are not averse to mediation as long as a time-line is fixed.

Therefore, the dispute is referred for mediation to the Musaliha International Center for Arbitration and Dispute Resolution (MICADR), situated at the FTC Building, Karachi for mediation. The fee of the mediator is tentatively fixed at Rs.100,000/- which shall be paid by the Respondent No.2 (company). If the parties fail to make any progress in 45 days, the

mediator shall refer the matter back to the Court and the mediator's fee shall be treated as costs of these proceedings. The parties shall appear before the mediator for preliminaries on 30.04.2025 at 10:30 a.m.

The office of the Court shall use the Referral Form made for the purpose while remitting the matter to the mediator along with a copy of this order. In the meanwhile, counsel for the parties shall email soft copies of the pleadings in this JCM to the mediator.

Interim orders passed in these proceedings shall continue till the next date of hearing.

JUDGE

*PA/SADAM