IN THE HIGH COURT OF SINDH, KARACHI

Present:
Justice Jawad Akbar Sarwana

Execution Application No.47 of 2019
(Suit No.1461/1998)

Decree-Holder	:	A. Qutubuddin Khan (d/b/a "QMR Expert Consultants") through his legal heirs (1) Mrs. Zahida Qutab, (2) Mr Nadeem Qutab, and (3) Mr Waseem Qutab through duly constituted attorney Mr Nadeem Qutab through Mr. Nadeem Qutub, Advocate
Judgment-Debtor	:	CHEC-Millwala Dredging Co. (Pvt.) Ltd. through Mr. Aitezaz Manzoor, Advocate for judgment debtors for Directors (1) Munir Millwala and (2) Farazdak Millwala
Date of hearing of viz. CMA No.1100/2023, CMA No.188/2024 and CMA No.372/2019	:	20.02.2025
Date of Short Order in CMA No.1100/2023	:	20.02.2025
Date of Short Order in CMA No.188/2024 and CMA No.372/2019	:	25.02.2025
Date of Reasons viz. CMA No.1100/2023, CMA No. 188/2024 and CMA No.372/2019	:	18.03.2025

O R D E R

JAWAD AKBAR SARWANA, J.: This Order articulates the reasons for the Short Order dated 25.02.2025 allowing CMA No.188/2024 (Decree-Holder's application to implead and hold the former directors of the J.D. Company liable for making payment of decretal amount along with interest up to date) [1] and CMA No.372/2019 (Decree-Holder's

[1] CMA No.188/2024 under Sections 398, 399, & 400 of the Companies Act, 2017 (Similar Sections 413, 414 & 415 of Companies Ordinance, 1984) read with Order 21 Rule 50(1)(b)

application to be orally examined as to whether any or what debts are owing to the judgment-debtor, etc.);[2] as well as the reasons for the Short Order dated 20.02.2025 dismissing CMA No.1100/2023 (Decree-Holder's Application for the annulment of illegal striking off and the restoration of the name of JD Company in the Register of Companies).[3]

Arbitral award made Rule of the Court and High Court appeal
First Round

2. By way of background, the Decree-Holder, A. Qutubuddin Khan, the Proprietor of "QMR Experts Consultants" (hereinafter referred to as "QMR") had initiated an arbitration against CHEC Millwala Dredging Co. (Pvt.) Ltd. (hereinafter referred to as "CHEC") in the year 1997, which culminated in the filing of an arbitral award dated 06.12.1997 (hereinafter referred to as "the first arbitral award") docketed in the High Court of Sindh at Karachi as Suit No.1733/1997. The first arbitral award filed before the Court to be made a rule of the court was opposed by CHEC, and by a consent order dated 13.08.1998, the matter was referred to arbitration yet again. Thereafter, another arbitral award dated 11.11.1998 (hereinafter referred to as "the second arbitral award") was announced, which was filed in the High Court of Sindh at Karachi as Suit No.1461/1998. However, the said award was once again subject to objections, except that such objections were barred by limitation, and although the second arbitral award was made rule of the court by order dated 05.09.2000, the said order making the award a rule of the court was subject to appeal in HCA No.311/2000 filed by CHEC. The High Court, by its appellate order dated 19.03.2003, directed the learned Single Judge in Suit No.1461/1998 to re-examine the second arbitral award. Aggrieved by the said appellate order, QMR challenged the appellate order before the Supreme Court of Pakistan, culminating in Civil Appeal ("CA") No.319/2004.

---

and Sections 47(3) and 151 CPC, 1908 filed in Execution No.47/2019 in Suit No.1461/1998 on 13.12.2023 as available on page 365.

[2] CMA No.372/2019 under Order 21 Rule 41 CPC r/w Section 151 CPC filed in Execution No.47/2019 in Suit No.1461/1998 on 16.10.2019 as available on page 9.

[3] CMA No.1100/2023 under Section 414 & 425(6) of Companies Act, 2017 (Similar Section 429 & 439(6) of Companies Ordinance, 1984) read with Section 151 CPC filed in Execution No.47/2019 in Suit No.1461/1998 on 07.04.2023 as available on page 353.

CHEC DISSOLVED under CEES without informing Supreme Court

3. The case record of CA No.319/2004, available on the Supreme Court website, shows that the said civil appeal was listed before the Supreme Court in Islamabad on 28.09.2011, 16.02.2012, 09.04.2012, 10.07.2012 and on 22.01.2014, when the matter was finally heard on the last date by a three-member Bench of the Supreme Court and reserved for Judgment. The record shows that the Respondent's Counsel, Mr. Bilal A. Khawaja, ASC, and Advocate-on-Record (AOR), Mehr Khan Malik, had been appearing on behalf of CHEC in CA No.319/2004 and were also present before the apex Court on 22.01.2014. Yet, four (4) months after 10.07.2012, when CA No.319/2004 was being listed in the Supreme Court and adjourned, CHEC on 29.11.2012 filed an application with the Securities and Exchange Commission of Pakistan ("SECP") under the Company Easy Exit Scheme ("CEES") launched in 2012 under the framework of the Companies Ordinance, 1984, for removal of CHEC's name from the Register of Companies and got itself "dissolved" as of 18.09.2013.[4] Suffice it to say that when CHEC filed its application under the CEES 2012 with SECP on 27.11.2012, CHEC was well aware that CA No.319/2004 filed against it by QMR was still pending before the Supreme Court of Pakistan.

4. Although the CEES process took almost ten (10) months to complete on 18.09.2013, it included on 12.12.2012, SECP publishing a notice under Section 439(3) of the Companies Ordinance, 1984, informing the general public that unless cause is shown to the contrary, the name of CHEC and other companies listed in the said notice would at the expiration of three months of the date of this notice be struck off the register and the companies will stand "DISSOLVED",[5] yet neither CHEC's Counsel nor CHEC's AOR informed the Supreme Court about

---

[4] CHEC's Application for striking off the name of the Company under Section 439 of the Companies Ordinance, 1984 along with supporting documents is available on pages 295-303 of the Execution file.

[5] Copy of SECP's Notice under Section 439(3) of the Companies Ordinance, 1984 is available on pages 209-215 of the Execution file.

CHEC being struck off the Register and that it stood "DISSOLVED" as of 18.09.2013, nor did CHEC make any submission in writing about the non-existence of CHEC on the Register of Companies as of 18.09.2013, before the Supreme Court of Pakistan's announcement of Judgment on 03.04.2014.

5. In the absence of this material information, the Supreme Court, after hearing Counsel submissions on 21.01.2014, by a majority of two to one, about three (3) months later, announced its Judgment in CA No.319/2004 on 03.04.2014, setting aside the Order of the learned Single Judge dated 05.08.2000 in Suit No.1461/1998 and remanded the case to the learned Single Judge to decide whether to make the second arbitral award a rule of the Court after examining as to whether the said award is a nullity or prima facie illegal or not fit to be maintained or suffers from any other invalidity which is self-evident or apparent on the face of the record, notwithstanding that the objections filed by the Respondent ("CHEC") are time-barred.[6]

Second Round - Arbitral award made Rule of the Court
CHEC Counsel does not inform CHEC DISSOLVED under CEES

6. When proceedings before the learned Single Judge in Suit No.1461/1998 in the High Court recommenced post April 2014 in terms of the Supreme Court's Judgment dated 03.04.2014, from April 2014 to September 2015, none appeared on behalf of CHEC, and no intimation was received from them by the Court, nor was there any mention of the removal of CHEC's name from the Register of Companies by any of the parties. Even Counsel Mr Bilal M Khawaja did not withdraw his earlier filed Vakalatnama on behalf of CHEC even though, arguably, his client, CHEC, stood "DISSOLVED" as of 18.09.2013, as the Court continued to issue notices to CHEC and its Counsel for another 15 months. Finally, on 30.09.2015, CHEC Counsel made an appearance and submitted to the Court that he would call his client and seek instructions

[6] QMR had also filed Civil Review Petition No.142/2014 in C.A. No.319/2014 against the Supreme Court's judgment dated 03.04.2014 in the said CA, but no case for review was made out and the said review was dismissed vide Order dated 16.03.2015. None appeared on behalf of CHEC.

regarding the controversy involved. CHEC Counsel still did not inform the Court on 30.09.2015 that his client, a corporeal entity, did not exist anymore and that its name had been removed from the Register of Companies under the CEES as of 18.09.2013. The Court diary shows that CHEC's Counsel again disappeared. On 19.05.2016, the Court observed that although the perusal of the record indicates that CHEC's Counsel had previously been contesting the matter, which had gone in High Court Appeal as also before the Hon'ble Supreme Court, yet he had had not been appearing for quite some time. Accordingly, the Court ordered notice be issued to Mr Bilal Khwaja, Advocate, as also the defendant directly by pasting its copy on the outer door of his premises. According to the Court's Order dated 04.05.2016, the clerk of CHEC's Advocate appeared before the Court and informed that they were no longer representing CHEC. Thereafter, on 19.05.2016, the Court observed that, as per the bailiff's report, he (Mr Bilal Khwaja) was no longer representing CHEC. Once again, on both occasions, i.e. on 04.05.2016 and 19.05.2016, neither CHEC nor CHEC's Advocate nor Court Clerk bothered to update the Court that CHEC had not been in existence on the Register of Companies being maintained by SECP since 18.09.2013. By 16.11.2016, service of notice of Suit No.1461/1998 had also been effected upon CHEC through publication in Daily Jung on 03.10.2016, Registered Post A.D., TCS and by the Bailiff, including by way of pasting. Yet, no one appeared for CHEC, and the matter was finally reserved for orders on 13.02.2019. The second arbitral award was made a rule of the Court as per the Judgment dated 24.04.2019 and the Decree dated 13.05.2019, assuming that CHEC was still in existence. Yet, from April 2014 to May 2019, the High Court was kept oblivious of the fact (as none informed the Court), that the Defendant, and now Judgment-Debtor, CHEC through the CEES, had got itself removed from the Register of Companies and "DISSOLVED" during the pendency of the court proceedings before the Supreme Court of Pakistan, and thereafter before the learned Single Judge of the High Court of Sindh.

<u>Continuing silence in Execution Proceedings until 29.10.2020</u>

when two Directors of CHEC inform CHEC DISSOLVED under CEES

7. The Decree-Holder, QMR, initiated execution proceedings against CHEC on 08.08.2019 through Execution Application No.47/2019. The Court continued to attempt to effect service on CHEC when on 16.10.2019, Counsel for Decree-Holder, QMR filed the instant CMA No.372/2019, and the Court issued notice on the said application. On 25.11.2019, the Executing Court was informed that the notice issued to CHEC was returned unserved with the endorsement of the process server that the office clerk of the Judgment-Debtor Firm, after consultation with his master, namely Munir [I. Millwala] refused to receive the notice, saying that the Company (Judgment-Debtor) no longer exists. Following the update, another year went by. Meanwhile, the Court ordered service on CHEC through publication in Daily Dawn and Daily Jung Karachi, and thereafter, the matter kept being listed for filing objections in the Execution Application and hearing of CMA No.372/2019 and other CMAs until September 2020.

8. During the Coronavirus (Covid-19) pandemic, on 10.09.2020, Counsel for Decree-Holder, QMR obtained orders from the Court for issue of notices of service on the judgment-debtor/CHEC through its Directors (i) Farazdak F. Millwala and (ii) Munir I. Millwala, under Order 21 Rule 50 CPC (which provision ordinarily relates to suits against firms and persons carrying on business in names other than their own, such, as partner(s) of a firm). According to the Bailiff's Report dated 29.09.2020, Farazdak F. Millwala, Owner of Base Wedding Company, 13, West Wharf Road, Karachi, personally received the Court Notice; whereas the Court Notice for Munir I Millwala, Millwala Manzil, Steel House, West Wharf Road, Karachi (adjacent to Allied Bank) was received by Fawaad Hussain Bhaiji, the Group Chief Accountant & Company Secretary, who also provided the bailiff with his professional card. During arguments, on pointation of QMR Counsel, I examined the original professional card attached to the bailiff's report which was handed to the bailiff in September 2020. I noted that the top portion of the professional card has four (4) logos, one of which logo is a green

colored logo with the letter “M” and an inverted letter “W” appearing slightly diagonally underneath the “M” and right below this logo the company name: “MILLWALA DREDGING CO. (PVT.) LTD.” is printed in green color font in the professional card. It appears that the officer who received the court notices still used a professional card indicating CHEC’s company name and logo even after almost seven (7) years after the company’s dissolution.

9. According to the Court’s Order of 30.09.2020, one Mr. Ghulam Hussain, an associate of Mr Bilal A Khawaja, filed power on behalf of the Judgment-Debtor/CHEC on the said date of hearing, however no such power is available on record, except that a Vakalatnama of Mr. Bilal A Khawaja signed by both the Millwalas on behalf of the Judgment-Debtor/CHEC dated 05.10.2020 and duly signed as accepted by Mr. Bilal A. Khawaja is available in the record of Ex.App.No.47/2019 as presented on 05.10.2020. The record also reflects that on 15.10.2020, yet another Vakalatnama was filed by the associates of Mohsin Tayebaly & Co. on behalf of Judgment Debtor No.2 (Munir I Millwala) followed by another Vakalatnama of the same Law Firm on behalf of Judgment Debtor No.1 (Farazdak F. Millwala) was filed on 29.10.2020. All three Vakalatnamas of Bilal A. Khawaja and Mohsin Tayebaly & Co. representing Farazdak Millwala and Munir Millwala, are still available on record in Ex.App.No.47/2019, and none have been withdrawn.

10. On 29.10.2020, the Counsel of the Judgment-Debtor Nos.1 and 2, namely from the Law Firm of Mohsin Tayebaly & Co. filed a Statement of even date formally informing the Executing Court for the first time that that CHEC had been dissolved and attached a copy of the SECP’s Notice dated 12.12.2012 (mentioned in paragraph 4 above). Following the aforementioned Statement, the Counsel for QMR/Decree-Holder submitted to SECP, between 02.12.2020 and 15.08.2022, several letters of complaint, including an application to set aside the dissolution of CHEC, whereafter the Registrar of Companies after hearing QMR/Decree-Holder, by its Order dated 29.07.2022, dismissed the said application in the following terms:

"10. In order to conclude the matter, hearing was held on May 18, 2022, when the applicant appeared and reiterated the stance already submitted in the application. The applicant stated that the defunct company was in litigation when they submitted the application to dissolve the company under CEES and hence, the declaration submitted by the C.E.O and other directors regarding pending cases in any court of law is false and attracts penal provisions as provided under Section 496 of the Act. During the course of hearing, the applicant was informed that the Act separately provides the provision under Section 425(5) of the Act for any criminal or civil liability of director(s) and the pending litigation in the subject matter does not necessitate restoration of the defunct company. Accordingly, the arguments were heard and the record was perused.

11. Section 425(5) of the Act provides that:

> Section 425. Registrar may strike defunct company off register...
>
> (5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company or the liquidator, as the case may be, strike its name off the register, and shall publish notice thereof in the official Gazette, and, on the publication in the official Gazette of this notice, the company shall be dissolved:
>
> Provided that the liability criminal, civil or otherwise (if any) of every director, officer, liquidator and member of the company shall continue and may be enforced as if the company had not been dissolved:

12. The registrar concerned in his comments also endorsed that in light of the provisions under Section 425(5) of the Act, the liability criminal, civil or otherwise (if any) of every director, officer, liquidator and member of the defunct company shall continue and may be enforced as if the company had not been dissolved and the restoration of the defunct company in the subject matter is not necessitated.

13. Keeping in view the aforementioned facts, comments of the registrar concerned, documents as provided by the applicant, and in light of the supra provision of the Act, it is clear that the liability of every director, officer, liquidator and member of the company, criminal, civil or otherwise (if any) shall continue and may be enforced as if the company had not been dissolved. Accordingly, it appears that the pending litigation against the defunct company does not require restoration of the defunct company and the instant application is hereby dismissed. However, this office shall comply with any direction regarding restoration of the defunct company passed by the Honorable Court, if deemed appropriate.

14. The order shall be without prejudice to any civil and criminal proceedings or any other inquiries or proceedings initiated by any authority or agency regarding the affairs of the defunct company, if any."

(Underlining added)

11. QMR/Decree-Holder did not file any appeal or review against the Order dated 29.07.2022 passed by the Registrar of Companies. Instead on 07.04.2023, he moved the instant application, i.e. CMA No.1100/2023 seeking orders from the Executing Court to direct the Registrar Companies (SECP) for the annulment of illegal striking off and the restoration of the name of the Judgment-Debtor Company, CHEC,

in the Register of Companies and declare the dissolution void. The said application was followed by QMR/Decree-holder filing another application, i.e. CMA No.188/2024 praying that under the several provisions of the Companies Act, 2017 (and the repealed Companies Ordinance, 1984) stated therein and further reasons stated in the accompanying affidavit both the Directors who are before this Hon'ble Court namely Mr Farazduk F. Millwala and Munir I Millwala be held responsible for making payment of decretal amount along with interest up to date.

12. The instant CMA Nos.372/2019, 1100/2023 and 188/2024 have been listed on several dates of hearing after Mr Farazduk F. Millwala and Munir I Millwala have entered appearance in September 2020, and according to the Orders passed by the Executing Court, copies of the said applications were also supplied to Counsel, yet they have filed no Counter-Affidavit. None is available on record. The said Judgment-Debtors Nos.1 and 2 only challenge to the Ex. App. No.47/2019 is recorded in their Statement dated 29.10.2020 and the Objections on behalf of the Ex-Directors, namely Farazdak Millwala and Munir I Millwala, to the Reply filed by the QMR/Decree-Holder to their Statement dated 29.10.2020 filed on 31.03.2021. QMR/Decree-holder filed the CMA Nos.1100/2023 and 188/2024 after the Judgment-Debtors had filed their above statement/objections. The applications remained unrebutted at the time of the hearing, notwithstanding that same was the case with CMA No.372/2019 (no counter-affdavit was filed), when I heard all three (3) applications.

13. Counsel for QMR/Decree-Holder has argued that CHEC and its directors have played a fraud with the Court(s) and the SECP. He contended that CHEC, its CEO and its directors as well as their Counsel, Bilal A Khawaja, all misrepresented to (i) the Supreme Court in Civil Appeal No.319/2004 on 22.01.2014, and (ii) the High Court in Suit No.1461/1998 on several dates, when they concealed from the both forums the fact that CHEC stood dissolved under the CEES as of 18.09.2013. He argued that all eight (8) directors of CHEC knowingly,

false to their knowledge, submitted a sworn affidavit to SECP claiming that the Company had no liabilities to any private parties, even though they all knew that an arbitral award had been passed against CHEC. Further, they also made a false declaration in the said affidavit affirming that no case was pending against the company before any court of law when the Supreme Court of Pakistan Civil Appeal No.319/2004 was still pending hearing in the apex Court. He contended that the Shareholders' Resolution dated 27.11.2012 submitted to the SECL was also false. He submitted that in view of the foregoing, CHEC's dissolution under the CEES was liable to be set aside, and the two named Directors were liable for the decretal amount claimed by QMR/Decree-holder in Ex.App.No.47/2019.

14. Counsel for the two Judgment-Debtors submitted that the Company, CHEC, alone was liable for the decretal amount and none else. The directors of the Company could not be held liable. QMR/Decree-Holder's claim to pierce the corporate veil and to hold the two Directors liable was subject to proof, and this could not be agitated in the Execution proceedings. QMR/Decree-holder would have to file a separate suit against the directors of CHEC alleging fraud. Yet such a claim is now barred with the demise of the sole-proprietor of QMR, and the legal heirs would have no cause against the former Directors of CHEC. Counsel defended that no fraud was played with the Court, and the dissolution of CHEC involved a public notice published by SECP, and the entire exercise was well-known to the general public. Thus, all the parties, including the Court, were well aware of the dissolution of CHEC under the CEES. QMR/Decree-Holder's application to set aside the dissolution had been rejected by the Registrar of Companies Order dated 29.07.2022, and he did not prefer any appeal to the said Order. Therefore, he could not agitate the same relief before the Executing Court. When the Court made the second arbitral award a rule of the Court by Judgment dated 24.04.2019 and Decree dated 13.05.2019, the Judgment-Debtor did not exist, and the said Judgment and Decree could not be enforced against the former Directors of the Judgment-Debtor Company, CEES.

15. I have heard Counsel, perused the record available in the Ex.App.No.47/2019 and Suit No.1461/1998.

16. All three CMA Nos.372/2019, 1100/2023 and 188/2024, in addition to the provisions of the civil procedure code, also turn on, inter alia, the interpretation of the Company Easy Exit Scheme ("CESS") under Section 439 of the Companies Ordinance, 1984. It is pertinent to mention that CHEC stood dissolved on 18.09.2013, under the CEES Circular No.23/2012 dated Islamabad, 20.06.2012, issued by SECP (Company Law Division), Corporatization & Compliance Department.[7] Although this CEES 2012 was operative for a period of two months from 02.07.2012 to 31.08.2012, its period was extended vide Circular No.34/2012 dated 01.11.2012. CHEC filed its application to strike off its name during this extension period of CEES 2012.[8] Ultimately, the CEES was incorporated into the parent statute, the Companies Act 2017, under Sections 425 and 426 and its regulations framed thereunder. The QMR/Decree-Holder's application to set aside the dissolution of CHEC was heard by the Registrar of Companies under the Companies Act, 2017.

17. The selected provisions of the CEES 2012, as they stood in November 2012, are reproduced herein below.

> Clause (b): The companies not having any assets and liabilities, not carrying on any business and are not in operation shall be eligible to make application under the scheme to get their names struck off the register of companies in terms of Section 439 of the Ordinance. Format of the application is provided at Annexure-I.
>
> Clause (c) The scheme shall be applicable to only private and non-listed companies. However, the scheme shall not apply to the following companies:
>
> i. . . .
> ii. . . .
> iii. Companies which have any assets and liabilities or are carrying on any business are in operation,
> iv. Companies having liabilities outstanding in relation to loan(s). . .or any obligations towards. . .private parties;

---

[7] Available on pages 281-293 of the Execution file.

[8] CEES 2012 was different from CEES 2014. While CEES 2012 was provided to defunct companies to get their names struck off the register of companies under Section 439 of the Companies Ordinance, 1984; CEES 2014 was issued under Section 506A and also supported by CEES Regulations 2014.

v. . . .
vi. . . .
vii. Companies against which any matter is pending before the Court of law,
viii. . . . .

Clause (e): The application shall be supported by a resolution of the shareholder of the company. In case of resolution passed with simply majority, view point of the dissenting shareholders shall also be furnished. The format of resolution is given at Annexure-II.

Clause (g): Majority of the directors including chief executive of the company shall also furnish a declaration/ indemnity duly verified by an affidavit administered before the Class I Magistrate/ Oath Commissioner/ Notary Public that company has no assets or liabilities and that it is not carrying on any business or any operation; and that it has no liabilities outstanding in relation to any loan(s) obtained from the banks/ financial institutions, taxes, utility charges, or any obligations toward government departments or private parties, and they indemnify to pay any claim if any complaint comes to surface. The format of declaration/ undertaking is given at Annexure-III."

Clause (k): If no objection is received. . .the registrar shall strike off the name of the company from the register and shall send notice thereof for publication in the Official Gazette in terms of Section 439(5) of the Ordinance and on the publication of this notice in the Official Gazette, the company shall be dissolved: Provided that the liability criminal, civil or otherwise (if any) of every director, officer, liquidator and member of the company shall continue and may be enforced as if the company had not been dissolved; Provided further that nothing in this scheme shall affect the powers of the Court to wind up a company the name of which has been struck off the register.

(underlining added)

18. While in ordinary circumstances a liability of a company operates to the extent of the Company and cannot be transferred to the directors or its member, it may be noted that CEES 2012 provided that as the directors had certified that there were no liabilities outstanding against CHEC and there was no obligation towards private parties, they had indemnified the Company to pay any claim if any complaint comes to surface.

19. Before proceeding further, it would be appropriate also to reproduce Section 439 of the Companies Ordinance, 1984, as it stood in the year 2013:

"**Section 439. Registrar may strike defunct company off register**. - (1) Where the registrar has reasonable cause to believe that a company is not carrying on business or is not in operation, he may send to the company by post a letter inquiring whether the company is carrying on business or is in operation.

(2) If the registrar does not within one month of sending the letter receive any answer thereto, he may within thirty days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received and that, if an answer is not received to the second letter within one month from the date

thereof, a notice will be published in the official Gazette with a view to striking the name of the company off the register.

(3) If the registrar either receives an answer from the company to the effect that it is not carrying on business or is not in operation, or does not within one month after sending the second letter receive any answer, he may publish in the official Gazette, and send to the company by post a notice that, at the expiration of three months from the date of that notice, the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4) Without prejudice to any other provisions, if, in any case where a company is being wound up, the registrar has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of three consecutive months after notice by the registrar demanding the returns has been sent by post to the company, or to the liquidator at his last known place of business, the registrar may publish in the official Gazette and send to the company a like notice as is provided in the last preceding sub-section.

(5) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by the company, strike its name off the register, and shall publish notice thereof in the official Gazette, and, on the publication in the official Gazette of this notice, the company shall be dissolved:

Provided that the liability criminal, civil or otherwise (if any) of every director, officer, liquidator and member of the company shall continue and may be enforced as if the company had not been dissolved:

Provided further that nothing in this section shall affect the powers of the Court to wind up a company the name of which has been struck off the register.

(6) If a company or any member or creditor thereof feels aggrieved by the company having been struck off the register, the Court, on the application of the company or a member or creditor made before the expiry of three years from the publication in the official Gazette of the notice aforesaid, may, if satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the register, order the name of the company to be restored to the register and, upon the filing of a certified copy of such order with the registrar, the company shall be deemed to have continued in existence as if its name had not been struck off, and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had not been struck off.

(7) A letter or notice under this section may be addressed to the company at its registered office, or if no office has been registered, to the care of some director, chief executive or other officer of the company whose name and address are known to the registrar or if no such address is known to the registrar, may be sent to each of the persons who subscribed the memorandum, addressed to him at the address mentioned in the memorandum.

(8) The provisions of this section shall not apply to a company which has any known assets and liabilities, and such company shall be proceeded against for winding up.

(9) If due to inadvertence or otherwise the name of any company which has any assets and liabilities or which has been in operation or carrying on business or about whose affairs any enquiry or investigation may be necessary has been struck off the register, the registrar may, after such enquiries as he may deem fit, move the Commission to have the name of the company restored to the register and thereupon the Commission may,

> if satisfied that it would be just and proper so to do, order the name of the company to be restored in the manner provided in sub-section (6).
>
> (10) The provisions of this section shall mutatis mutandis apply to a company established outside Pakistan but having a place of business in Pakistan as they apply to a company registered in Pakistan."

(underlining added)

20. Once again, a bare reading of the first proviso of Section 439(5) states "that the liability criminal, civil or otherwise (if any) of every director, officer, liquidator and member of the company shall continue and may be enforced as if the company had not been dissolved."

21. As mentioned earlier, the CEES 2012 required that the members of the Company pass a shareholder's resolution as per the proforma given in Annexure-I of the said CEES. According to the Shareholders' resolution, the following eighteen (18) members of CHEC attended the meeting of the company held on 27.11.2012 at 11:00 am at the company's registered address at Steel House, West Wharf Road, Karachi:

S. No.	Shareholders/Members	S. No.	Shareholders/Members
1.	Munir Millwala	2.	Mr Shi Yin Tao
3.	Juzar Millwala	4.	Farazdak Millwala
5.	Hu Jianhua	6.	Yang Fujian
7.	Wang Nan	8.	Faizullah F. Millwala
9.	Fayyaz F. Millwala	10.	Hussaini I. Millwala
11.	Noor Bhai Millwala	12.	Shabbir I Millwala
13.	Qutbuddin A Millwala	14.	Zoeb A Millwala
15.	Muhammad Ali Millwala	16.	Mehdi H. Millwala
17.	Sharaf Ali E. Millwala	18.	China Habour Engg Co. Shareholder/ C.E.O.

According to the Shareholders' Resolution, all eighteen (18) members of CHEC acknowledged and agreed that as of 27.11.2012:

> "the Company, [CHEC] has no assets and liabilities. . .; that it has no. . .obligations towards. . .private parties; and neither any case is pending against the company before any court of law;. . .and accordingly, after carefully considering all aspects, have resolved unanimously / with majority. . .the following:

a) That an application under Company Easy Exit Scheme (CEES) seeking striking the name of our company off the register of companies under section 439 of the Companies Ordinance, 1984; and,

b) That Mr Munir Milwala, the Director of the Company is hereby authorized to file the application under CEES in this behalf. . . .”

22. It transpires that as per the duly stamped Declaration/Indemnity (Annexure-II) dated 27.11.2022 duly signed by the seven (7) directors of CHEC, namely by:

(1) Munir Millwala s/o Ibrahim (CNIC No.42301-9699439-1),

(2) Juzar Millwala s/o Abbas Bhai (CNIC No.42301-0792729-9),

(3) Farazdak Millwala s/o Fakhruddin (CNIC No.42301-7335028-9),

(4) Shi Yin Tao s/o Yin Tao, 10 Fuxing Road, China (P.P. No.1277106),

(5) Hu Jianhua s/o Jianhua, 10 Fuxing Road, China (P.P. No.575676),

(6) Yang Fujian s/o Fujian, 10 Fuxing Road, China (P.P. No.1090290, and

(7) Wang Nan s/o Nan,10 Fuxing Road, China (P.P. No.2094963),

all the said directors declared in the affidavit attested by Notary Public, Shakil Ahmed Khan, that:

“1. . . .

2. . . .
3. . . .

4. That the Company has no assets and liabilities;

5. . . .

6. That the Company has no liabilities outstanding in relation to any loan(s) obtained from the banks, financial institutions, taxes, utility charges, or any obligations towards government departments (including FBR) or private parties;

7. That neither any case is pending against the company before any court of law nor is any investigation, enquiry or prosecution pending against the company before Federal Government, Provincial Government, SECP, SBP, NAB, FBR or any competent authority;

8. That in case of any loss(es) to any person or any valid claim from any person, if any, arising out of the striking off the name of the Company from the register of companies, we hereby undertake in writing:

   (a) to pay and settle all lawful claims arising out of the striking off the name of the Company.

   (b) to indemnify any person for any such losses that may arise pursuant to striking off the name of the Company.

   (c) to settle all lawful claims and liabilities which have not come to our notice at this stage, even after the name of the Company has been struck off in terms of Section 439 of the Companies Ordinance, 1984.

9. That we are fully aware of the fact that in case we make any false statement about any of the above matters, we shall be liable for civil as well as criminal consequences.

10. That the contents of the application and whatever stated above are true and correct according to our best knowledge and belief."

(underlining added)

23. It is pertinent to mention here that all seven (7) directors of the Company, CHEC, held out by way of an Affidavit duly notarized before a Notary Public:

> "8. That in case of any loss(es) to any person or any valid claim from any person, if any, arising out of the striking off the name of the Company from the register of companies, we hereby undertake in writing:

(a) to pay and settle all lawful claims arising out of the striking off the name of the Company.

(b) to indemnify any person for any such losses that may arise pursuant to striking off the name of the Company.

(c) to settle all lawful claims and liabilities which have not come to our notice at this stage, even after the name of the Company has been struck off in terms of Section 439 of the Companies Ordinance, 1984.

9. That we are fully aware of the fact that in case we make any false statement about any of the above matters, we shall be liable for civil as well as criminal consequences."

(underlining added)

24. When this Court queried the Counsel of the two Judgment-Debtors whether on 27.11.2012 **(A)** there was a case pending against the company before the Supreme Court, and **(B)** the second arbitral award which was pending review by the learned Single Judge following the appellate Court's Order dated 19.03.2003 in HCA No.311/2000, constituted a "contingent liability" that the Company would have recorded in its books of account, he candidly responded in the affirmative to both **(A)** and **(B)**. Indeed, even if Counsel had denied the facts **(A)** and **(B)**, which he did not, the same form part of the court's record, requiring no further proof. On 27.11.2012 when CHEC filed its application to strike off its name from the Register of Companies under the CEES 2012 **(A)** the C.A. No.319/2004 filed against the company, was still pending hearing before the Supreme Court; and, **(B)** the second arbitral award pending final adjudication existed as a contingent liability in the books of account of the Company. CHEC, its directors and shareholders, as well as its pleader, knew at all times that when CHEC filed its application for striking off its name with the SECP under the CEES 2012, **(A)** a case was pending against the company before the Supreme Court. Equally, they all knew as of 27.11.2012, including the Company auditor, that **(B)** a debt/obligation/liability against the Company stood crystallized upon the announcement of the arbitral award which was to be made a rule of the Court. At this stage, CHEC's

liability was no longer an ordinary contractual claim subject to the production of unimpeachable and confidence-inspiring evidence. Once an arbitral award had crystallised, QMR's claim against CHEC, having undergone the scrutiny and rigor of trial, including evidence, was at a higher pedestal awaiting the final step before its enforcement within the ongoing court proceedings of making the award a rule of the Court. At this stage of the legal proceedings, QMR needed no further evidence or proof to justify its claim against CHEC. The burden was on CHEC to raise objections against the arbitral award. The Civil Appeal No.319/2004 had been pending against CHEC since 2004 and had not been disposed of. As a matter of fact, in the year 2012 alone, the civil appeal was listed three (3) times in the Supreme Court, i.e. on 16.02.2012, 09.04.2012 and 10.07.2012, but got adjourned on each occasion. Further, CHEC's pleader also attended the hearing before the Supreme Court on 22.01.2014 (about four (4) months after SECP dissolved the Company on 18.09.2013). Thus, it is beyond doubt that the directors, members and officers of CHEC were well aware of their liability under the arbitral award when they applied to SECP to strike off their name from the Register of Companies under the CEES 2012.

25. Given the above, the affidavit submitted by the Directors duly attested before the Notary Public with the SECP as per CEES, 2012, was/is contrary to the facts set out in **(A)** and **(B)** above. Additionally, the shareholders' resolution, passed by the eighteen members of the Company, was also contrary to the facts mentioned in **(A)** and **(B)** above. While the Registrar of Companies, SECP, accepted CHEC's application to strike off its name supported by the duly notarized directors affidavit, the shareholders' resolution and the certificate from the Auditor, it did so with the caveat of Section 439(5) of the Companies Ordinance, 1985 and the first proviso to paragraph (k) of the CEES 2012 was well in place. Additionally, the seven (7) directors and eighteen (18) members of CHEC accepted that the civil liability or otherwise of every director, officer and member of the company shall continue and may be enforced against them as if the company had not been dissolved. Finally, the seven (7) directors as per clause 8 of the Affidavit of

Declaration/Indemnity, which was duly notarized before a Notary Public, also acknowledged, accepted and undertook that in case of any loss(es) to any person, such as, QMR/Decree-Holder, arose out of the striking off the name of the Company from the register of companies then the directors would pay and settle as well as indemnify such claims and liabilities. Here in the instant case, an adjudication had taken place concerning QMR's claim which was pending enforcement before the Supreme Court. As a result, QMR's claim for damages, after adjudication had taken place, the resultant decree for damages in the form of the arbitral award announced against CHEC, was a clear liability of the company. Last but not least, in terms of clause 9 of the declaration, the Directors also accepted that if they made any false statement about any of the matters, they shall be liable for civil consequences. Thus, while QMR obtained the judgment and decree against CHEC after the dissolution of the Company, the said Company was dissolved during the Court proceedings in terms of the CEES 2012 while the arbitral award was pending a legal challenge on point of law, alone. Without seeking leave of the Court with regard to such obligation/debt/liability due on the part of the Company to QMR, its ex-directors and ex-shareholders, who, following the dissolution of CHEC, took over the liability of the said dissolved Company under the statutory framework of the CEES 2012. The ex-directors, the ex-shareholders, the ex-officers and the ex-company auditor knowingly submitted an affidavit, passed a resolution and issued an auditor certificate to SECP, as the case may be, during the pendency of an ongoing court case against the Company, CHEC, the contents of which affidavit/resolution/certificate was/is contrary to their knowledge to the facts described as facts **(A)** and **(B)** above. Facts **(A)** are anchored and recorded in public documents, such as Court diary. The orders of the Court require no proof; whereas, fact **(B)** is rooted in international accounting standards, i.e. when an arbitration award accrues, it triggers a contingent liability, and the principle of res ipsa locquitur applies, meaning that the arbitral award speaks for itself to be recorded as a contingent liability in the books of accounts of the Company. The directors, shareholders and officers of CHEC who applied to SECP to

strike off the name of CHEC from the Register of Companies did so with open eyes and fully aware of the consequences that could flow from their actions under the CEES 2012, including being personally liable for any of the Company's valid claim which arose out of the striking off the name of the company from the Register of Companies.

26. Ex-Directors to pay and settle all lawful claims if any complaint comes to surface even after the name of the Company has been struck off under the CEES, 2012. As per Clause (g) of the CEES, 2012, the Directors of the Company agreed to indemnify the Company to pay any claim if any such complaint came to surface. When the Company filed its application for removal of its name on 27.11.2012, as discussed above, the arbitral award had already been announced and was merely pending in the Court to be made a rule of the Court. The Company's liability through the second arbitral award had already crystallised. Thus, when the directors and shareholders of CHEC acknowledged, accepted and indemnified the Company in terms of CEES, 2012, they all knew that such liability existed against the Company when the CHEC applied for striking off its name from the Register of Companies, and that they were/are personally responsible for such debt/obligation/liability. They cannot now summersault, at this late stage, and walk away from their liability, duly acknowledged and admitted by way of a notarized affidavit in which they have attested before the notary public that they will be individually liable for such debt/obligation/liability post CEES 2012. In other words, the directors and members cannot take the plea that now that the company stands dissolved under the CEES, they cannot be held liable for the arbitral award, which was made a rule of the Court by way of a Judgment against the Company. To accept the arguments of Counsel for the Judgment-Debtors would be most inequitable and unjust, to say the least. They, along with the rest of the directors and shareholders of CHEC, accepted the liability of the Company personally when they accepted the terms and conditions of CEES 2012. They were willing to take on the risk of the Company's liability and were fully aware of facts **(A)** and **(B)**. Hence, all seven (7) directors and the eighteen (18)

members are jointly and severally liable to pay the decretal amount to QMR.

27. There is another aspect of the matter. When the SECP announced its Order dated 29.07.2022 holding that:

> "it is clear that the liability of every director, officer, liquidator and member of the company, criminal, civil or otherwise (if any) shall continue and may be enforced as if the company had not been dissolved. Accordingly, it appears that the pending litigation against the defunct company does not require restoration of the defunct company."

No one challenged SECP's aforesaid Order. According to the Regulator's interpretation too, the facts and circumstances of the case, did not call for the restoration of the defunct company given the undertaking and the statutory protection extended to lawful claims that the same could be enforced against the director, officer, member of the company as if the company had not been dissolved. SECP's rational to reject QMR's application to restore CHEC because the directors, officers and members are personally liable under the CESS 2012 read with Section 439 of the Companies Ordinance, 1984, also merits consideration.

28. Personally liable under the statute: It may be noted that the personal liability of the ex-directors and ex-shareholders for the liability of the Company arises out of a statutory provision of law, i.e. the now repealed Section 439 of the Companies Ordinance, 1984 and the framework of the CEES 2002 and its annexures. These statutory provisions and the regulations framed thereunder, which are in play in the facts and circumstances of the case, trump the common law principles. Clause (g) of CEES 2012, read with paragraph 8(c) of the Declaration in terms of Annexure II, etc., clearly finds the ex-directors attested before a notary public to pay and settle all lawful claims and

liabilities, which come to their notices even after the name of the Company has been struck off in terms of Section 439 of the Companies Ordinance, 1984, such as the arbitral award. The ex-directors and ex-shareholders cannot be rescued by relying on the common law protection of non-lifting of the corporate veil to wriggle out from their personal liability of claims against the Company. Given the above statutory landscape, they, i.e. the ex-directors and ex-shareholders, accepted their liability by acknowledging the terms and conditions of the CEES 2012 and elected to waive the common law protection notwithstanding what is apparent on the face of the record that they also made a false statement in terms of facts **(A)** and **(B)** and accepted to file its civil consequences.

29. Consequence of misrepresenting to the Supreme Court and the Single Judge of the High Court: Notwithstanding the foregoing, the silence on the part of the directors and shareholders before the SECP and thereafter before the Court, concealing material information which before the Court concerned CHEC's dissolution, the CHEC's directors, shareholders and officers conduct constitutes misrepresentation played upon the Court, which is apparent on the face of the record and requires no further evidence. The ex-directors and ex-shareholders cannot take advantage of their actions to mislead the Court by arguing at this belated stage of execution that the decree can only be enforced against the Company. Under the circumstances, QMR/Decree-Holder in whose favor the award was rendered and made a rule of the Court cannot be left without a remedy to effect recovery against the erstwhile Company whose ex-directors and ex-shareholders and the pleader, deliberately concealed material information from the Court, i.e. misrepresented before the two foras: the Supreme Court and High Court, to neutralize the liability crystallised after adjudication of the dispute between QMR and CHEC in the shape of an arbitral award. The proper time and place for the ex-directors/ex-shareholders to raise the defence was to do so before the Supreme Court, and thereafter before the learned Single Judge of the High Court. Mr Bilal Khawaja and AOR represented CHEC, both chose to remain quiet before the Supreme Court. Further,

after the company stood dissolved on 18.09.2013, the directors and shareholders stepped into the shoes of the Company in terms of the liability of the Company based on the undertaking and indemnity executed by them. Yet they did not advise Mr. Khawaja and the AOR, to inform the Court about the dissolution of CHEC. Mr Khawaja and AOR, post the company dissolution, based on the undertaking and indemnity given by the ex-directors/ex-shareholders indirectly continued to protect the interests of the directors and shareholders, too, who, under the CESS 2012, were liable to QMR but did not disclose to the Supreme Court that the company stood dissolved. Thus, the ex-directors and ex-shareholders cannot now turn around and play mischief with this Court, asserting that QMR must initiate legal proceedings against them afresh. Further, no purpose will be served if the defunct Company is restored. When the matter was argued on 22.01.2014, Mr Bilal Khawaja and the AOR, misrepresented to the Supreme Court by concealing the fact of dissolution from the Supreme Court and did not inform the Court of the status of CHEC, which they could have done so orally by way of submission during the hearing of 22.01.2014, and, once again, before the announcement of judgment on 03.04.2014 in writing by way of filing a Statement, and as a pleader for CHEC. The status of CHEC was necessary information to enable the Supreme Court and the parties to effectually and completely adjudicate upon and settle all the questions involved in the dispute. This would have nipped in the bud the questions that this Court has to now address in this Order at the stage of execution, i.e. impleading the ex-directors and ex-shareholders post CEES, 2012 in the execution proceedings. This was particularly important because both material and necessary facts for the decision of the apex Court, i.e. facts **(A)** and **(B)** upon the subjects in dispute and to prevent further litigation concerning them and between the parties which the Supreme Court could have taken up were concealed from the Court by CHEC and post-CEES 2012, by its ex-directors and ex-shareholders who had taken over the liability of the Company. Without knowing the true facts (concealed by CHEC and its directors and its shareholders), the apex Court remanded the matter to the learned Single Judge of the High Court in the ordinary course. The

ex-directors/ex-shareholders not only misrepresented the Supreme Court within the context of the court proceedings but also did so before the learned Single Judge of the High Court. The misrepresentation by CHEC, based on the undertakings and statements made by the ex-directors and ex-shareholders, carried forward to the proceedings before the High Court. Once again, while the High Court was considering making the arbitral award a rule of the Court, the ex-directors and ex-shareholders and their Counsel remained silent before the learned Single Judge too. As discussed in detail with references to the hearing dates and orders recorded above, this deliberate concealment occurred during the High Court proceedings, leading to the Judgment and Decree being passed against CHEC without appreciation that the ex-directors and its ex-shareholders had taken over the liability of the Company dues. Thus, they must now face the consequences of their actions on this score, too, i.e. misrepresentation (by way of concealment of material facts) before the two foras, i.e. the Supreme Court and the High Court. It is not their case (or defence) that they were unaware of the court proceedings. They misrepresented the facts before the learned Single Judge (by remaining quiet in spite of being served Court notices), leading the High Court to pass a judgment and decree against CHEC – a company they knew had been dissolved on 18.09.2013. As they have not pleaded want of knowledge of court proceedings against CHEC, their entire motive was to wriggle out of their personal liability under CEES 2012 on the grounds that the judgment and decree were passed against a company that did not exist in the Register of Companies with SECP. Clearly, this bench cannot facilitate the fraud played upon the two Courts by CHEC, its ex-directors, its ex-shareholders and the pleaders as discussed above. Therefore, the ex-directors and the ex-shareholders must be held accountable for the liability they undertook to bear on behalf of the dissolved Company under CEES 2012, which, based on their conduct described herein, the Company, initially and thereafter following its dissolution under the CEES 2012, the ex-directors and ex-shareholders have attempted to escape from their liability from 1997/98 till to date (August 2025).

30. Court's Discretion in effecting service of CMA No.188/2024 on Judgment Debtor Nos.1 and 2: Finally, the entire conduct of CHEC and its directors, shareholders, and officers does not merit any exercise of discretion under the inherent powers of this Court. To this end, their conduct does not call for any discretion to be exercised by this Court in favor of the ex-directors and ex-shareholders of CHEC. They abused the due process of law and dissolved the Company during the pendency of the Court proceedings without informing the Court to reduce the arbitral award to a cipher. The ex-directors, ex-shareholders, and ex-officers knew about the litigation. They knew the second arbitral award had been announced against them. QMR's claim for damages against them had crystallised into a liability accrued against the Company and it was pending before the Supreme Court when they decided to dissolve the company under the CESS 2012. The ex-directors and ex-shareholders cannot benefit from their wrongdoings. They must be accountable as per the undertaking, indemnity and provisions of law discussed above in this Order. Therefore, even if the ex-directors/ex-shareholders were affected court notice of CMA No.188/2024 (under Order 21 Rule 50 CPC, which provision ordinarily relates to suits against firms and persons carrying on business in names other than their own, such, as partner(s) of a firm), nevertheless, the two Judgment-Debtors have stepped forwarded and have defended and/or have been defending the execution proceedings unconditionally and without claiming any prejudice since 2019 till present. They cannot approbate and reprobate now in oral arguments. It is clarified that such liability is not limited to the two ex-directors/ex-shareholders, who are before this Court as Judgment-Debtor Nos.1 and 3. The Decree-Holder is at liberty to include the remaining ex-directors/ex-shareholders in the execution proceedings given the undertaking, indemnity and provisions of law discussed, which apply to all of the ex-directors, ex-shareholders, and ex-officers of the dissolved CHEC under the CEES, 2012 read with Section 439 of the Companies Ordinance, 1984.

31. In view of the above, this bench, on 20.02.2025, after hearing the parties, reserved the matter on the said date, and, thereafter, on

25.02.2025, announced the short order allowing CMA No.188/2024 and CMA No.372/2019. The above are the reasons for the short order passed on 25.02.2025.

32. I now turn to CMA No.1100/2023, which application was dismissed by this bench vide its short order dated 20.02.2025.

33. CMA No.1100/2023 seeks the same relief from this Court as sought by the Decree-Holder earlier from the SECP when it filed its application to set aside the dissolution of CHEC under the CESS 2012 with SECP. The SECP, after hearing the Decree-Holder passed Order dated 29.07.2022, holding that the liability of every director, officer, liquidator and member of the company, criminal, civil or otherwise (if any), shall continue and may be enforced as if the company had not been dissolved, and dismissed the Decree-Holder's application. The Decree-Holder had the right to appeal against the said Order passed by SECP, but the Decree-Holder did not prefer any appeal, and as such, the matter attained finality. This bench cannot allow the Decree-Holder a second attempt at the cherry by way of CMA No.1100/2023 filed on 07.04.2023. Even otherwise, Section 439(6) of the Companies Ordinance, 1984 provided three years from the publication in the Official Gazette of the notice to dissolve the Company to set aside the dissolution of the Company, which time has expired in the present case as CHEC stood dissolved on 13.09.2013. QMR/Decree-holder has exhausted its remedy to set aside the dissolution of CHEC and cannot repeatedly raise the same challenge. Accordingly, the above are the reasons why this bench dismissed CMA No.1100/2023 by its short order dated 20.02.2025.

JUDGE