

**ORDER SHEET****IN THE HIGH COURT OF SINDH, KARACHI****J. C. M. No. 18 of 2025**

Date	Order with signature of Judge
	1. For hearing of CMA No.3103/2025.
	2. <u>For hearing of main petition.</u>

**18.11.2025**

Barrister Salman Ahmed, for Petitioner.  
M/s. Muhammad Ahmed Masood and Mirza Moiz Baig,  
Advocates for the Respondent No.1.  
Syed Hafiz Ebad, Advocate for SECP.

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**MUHAMMAD OSMAN ALI HADI J.-** Learned Counsel for the Petitioner states that they have filed this Winding-Up Petition under section 301 of the Companies Act 2017 (“**2017 Act**”) as the Respondent No. 1 allegedly owes the Petitioner certain sums of money, which they state the Respondent No. 1 is unable to pay back. In this regard, Counsel has referred to Page 355 of the File, whereby there is a letter dated 30.10.2024, which he submits is the basis for his initiating winding-up proceedings. Also available on record (at Page 27), is the Petitioner’s Civil Suit No.1273/2024<sup>1</sup> filed by the Petitioner (Plaintiff in the said Civil Suit) for recovery against the named Respondents, which remains pending.

2. Learned Counsel for the Petitioner cites section 301 of the Companies Act 2017, and submits that under the said section, the Respondent Company can be wound up. Learned Counsel for the Petitioner also submits that there is no bar for filing the instant Petition, despite the Civil Suit pending. He has relied upon several case laws in support of his contentions. <sup>2</sup>.

3. Learned Counsel for the Respondents is present and objects to maintainability of the instant Petition, by submitting that as there is already a Civil Suit pending between the parties, this Petition is not maintainable. He further submits that in any

<sup>1</sup> Initially filed before the High Court of Sindh at Karachi in its erstwhile Original Civil Jurisdiction, which would now stand transferred to the Trial Court below (since abolishment of the Original Civil Jurisdiction at the High Court at Karachi).

<sup>2</sup> 2004 CLD 1272; 2015 CLD 203; 2014 CLD 1482; Unreported judgment passed in J.M. No.09 of 2013; Unreported Order passed in J.C.M. No.16 of 2010

event, there may be a contractual / commercial dispute between the Parties, but the same cannot be used as basis to initiate winding-up proceedings against the Company. He states that section 301 of the 2017 Act remains inapplicable to the matter at hand as the legal requirements remain unfulfilled by the Petitioner. He further contends that this matter is a dispute the *inter-se* between the parties (*sans* the Company), and does not have any bearing on the affairs of the Company. In support of his contentions he has relied upon several case laws <sup>3</sup>.

4. I have heard learned Counsels. Foremost, I confronted the learned Counsel for the Petitioner regarding the issue of jurisdiction under company law. I asked Counsel as to which exact provision or circumstance of the Companies Act 2017 had been ignored or violated, due to which the instant Petition was instituted? However no satisfactory response was provided. Counsel simply referred to section 301 of the 2017 Act in a very generalized manner, without showing any specific provision within the said section being utilized to invoke winding-up proceedings. Furthermore, when Counsel for the Petitioner was asked as to how he can establish that the Petitioner was indeed a creditor of the Company, and/or that they are definitively owed monies by the Respondent No. 1 / Company, which the said Company was unable to pay? Counsel remained unable to provide any cogent response.

5. The Company Jurisdiction is founded under section 5 of the 2017 Act. Part X, and in particular section 301 of the 2017 deals with matters pertaining to winding-up of companies. Per section 301 of the 2017 Act, there are several requirements provided under which a company may be wound up.<sup>4</sup> In the instant matter, none of those obligations have been legitimately argued or established by the Petitioner. Ergo, since none of those circumstances have been established, the requirements to invoke

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<sup>3</sup> 2022 CLD 1557; 2024 CLD 685; 2020 CLD 339; PLD 2022 Supreme Court 769; 2020 CLD 945; 2008 CLD 214; 2018 SCMR 1860; 2014 CLD 1567 & 2023 SCMR 714

<sup>4</sup> Not listed here for the sake of brevity.

jurisdiction of this Court remains unfulfilled, and hence this Petition under the Company Jurisdiction cannot be maintained.

6. In the given circumstances, I have found that at the best it appears there is a commercial dispute between the Petitioner and Respondents, which is already in the process of adjudication before the learned Civil Court. Whilst there is no bar on winding-up proceedings commencing when there is a civil suit pending (as has been settled by the Hon'ble Apex Court), but the jurisdiction under section 5 of the Companies Act 2017 must still be first formed, showing that some violation or incurrance, creating a causation under the Companies Act 2017, has occurred. In the case of *First Dawood Investment Bank Ltd. v Bank of Punjab*,<sup>5</sup> the Apex Court held:

*“11. We note that the word "may" employed in section 305 of the Ordinance, for the company court to admit the winding-up petition, clearly denotes the discretionary nature of the jurisdiction vested in the company court to pass a winding-up order. Thus, the company court must, first and foremost, be fully cognisant that it is called upon to examine the merits of the need of a winding-up order, and not settling disputes of a civil nature that may arise out of a contract or obligations arising under an agreement.”* (emphasis supplied)

7. In the case of *Khalid Siraj Textile Mills*,<sup>6</sup> the August Supreme Court opined on the topic of winding-up, *inter alia* holding:

*“Winding up a business has serious consequences both economic and social and even though this is a matter for the discretion of the judge, winding up should be ordered with extreme caution, as a last resort, when it is evident that the business cannot be saved”.*<sup>7</sup>

8. The requirements for winding-up a company are entirely separate from a commercial dispute / claim. A claim for a commercial recovery cannot be equated with a demand for winding-up, both of which follow separate conditions and constraints, which has been thoroughly deliberated in settled jurisprudence by the Supreme Court, in cases such as *Platinum*

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<sup>5</sup> PLD 2022 SC 769

<sup>6</sup> 2022 CLD 1557

<sup>7</sup> In Para No. 6 of the Judgement

*Insurance Co. Ltd.*<sup>8</sup> in which *Ajmal Mian, CJ* (as he then was) exhaustively opined that the object of filing a winding-up petition is not to coerce a debtor company to make payment to a creditor, but is in fact to see whether or not a company was financially solvent or not.

9. The Petitioner has not brought anything on record showing insolvency on behalf of the Respondent Company. In fact and to the contrary, when the parties were asked if the Respondent Company had other creditors, the answer was in the affirmative with further admission that no other such creditor had come forth against the Respondent Company. This would be understood (by a prudent mind) to show that the Respondent Company (at least at this stage) does not appear to be under financial duress (else other creditors would have also joined for claims of recovery). Hence even on this front, no ground for winding-up is visible.

10. To conclude, the Petitioner has first and foremost remained unable to establish themselves as creditors of the Respondent Company; Secondly, they have further remained unsuccessful in displaying fulfillment of any legal condition required for seeking a winding-up order, as mandated under section 301 of the 2017 Act or any other law; The Petitioner has not shown any financial insolvency on part of the Respondent Company; and lastly but perhaps most pertinently, the Petitioner have remained unable to show how invocation of the Company Jurisdiction could be attained by them in the given circumstances.

11. Therefore, for reasons above explained, this instant Petition cannot be entertained and is accordingly dismissed along with all listed applications.

*Petition dismissed*

**JUDGE**

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<sup>8</sup> PLD 1999 SC 1