ORDER SHEET
HIGH COURT OF SINDH AT KARACHI
Judicial Companies Miscellaneous No.19 of 2022

DATE	**ORDER WITH SIGNATURE OF JUDGE**

<u>Present:</u>
Justice Ms. Saman Rafat Imtiaz

Muhammad Ahmed & another…………………………………………..Petitioners

Versus

M/s. Ideal Industries (Pvt.) Ltd. & others………..…………………..Respondents

Date of Hearing: 03.08.2026
Date of Judgment: 09.09.2026

Mr. Badar Alam, Advocate for the Petitioners a/w
Ms. Farzana Yasmin and Mr. Muhammad Kashif Badar Advocates.

Mr. Muhammad Salim Thepdawala, Advocate for the
Respondents No.1 to 8

<u>JUDGMENT</u>

<u>Saman Rafat Imtiaz; J</u>: This petition has been brought under Sections 304 and 305 of the Companies Act, 2017, for winding up of the Respondent No.1 [M/s Ideal Industries Pvt. Ltd.] and for appointment of a liquidator.

2. Briefly stated, the facts alleged as per the memo of petition are that the Respondent No.1 is a private limited company incorporated under the Companies law by the late Mubeena Khatoon and late Muhammad Arif, who were its founding shareholders and directors. The Petitioners and Respondent Nos.2 to 8 are members of the same family and are shareholders/legal heirs of the deceased founders. The Petitioner No.1 was serving as the Chief Executive Officer of the Company, while respondent Nos.2 and 3 were its directors. The Respondent No.1 Company had an issued and paid-up share capital of Rs.9,689,700/- divided into 96,897 ordinary shares of Rs.100/- each. It was engaged in the manufacture of auto parts and other products but has ceased carrying on any business since the year 2010. It is the petitioners' case that upon the demise of the founding shareholders, their shareholding devolved upon their legal heirs in accordance with Muslim law of inheritance,

resulting in petitioner No.1 and respondent Nos.2 and 3 becoming the principal shareholders of the Company. The last undisputed election of the Board of Directors was held in the year 2019, whereby petitioner No.1 and respondent Nos.2 and 3 were elected as directors for a term of three years commencing from 31.10.2019, and petitioner No.1 was appointed as the Chief Executive Officer. The petitioners further allege that before expiry of the tenure of the elected Board, respondent Nos.2 and 3 unlawfully conducted another election, removed petitioner No.1 from the management, and appointed respondent No.2 as the Chief Executive Officer. Consequently, petitioner No.1 instituted proceedings under Section 160 of the Companies Act, 2017 (JCM No.17 of 2021), wherein this Court, through orders dated 17.05.2021 and 17.08.2022, restored the status of petitioner No.1 as Chief Executive Officer in accordance with the existing Form-29 and directed the parties to hold elections of the Board of Directors in accordance with law. It is further pleaded that the Company is involved in certain pending litigations concerning its immovable property and tenancy matters. The petitioners also rely upon an undertaking dated 03.04.2011 allegedly executed between petitioner No.1 and respondent Nos.2 and 3, whereby they agreed to wind up the Company. It is also averred that the Board of Directors, through a resolution dated 18.04.2020, resolved to dispose of the remaining factory land and distribute the sale proceeds amongst the shareholders according to their respective shareholding. On the basis of the foregoing facts, the petitioners seek winding up of respondent No.1 Company.

3. The learned counsel for the Petitioners submitted that the Petitioner No.1 owns 27% shareholding in the Respondent No.1 Company which they seek to wind up through the instant petition, whereas the Petitioner No.2 holds 0.27% thereof. In a nutshell, he explained that the petition has been filed on the grounds as per Section 301 (g) (iii) and (iv) and (m) of the Companies Act, 2017. He further submitted that the company is conducting its business in a manner oppressive to minority members as the Respondents No.2 and 3 are carrying on private business in the premises of the Respondent No.1 company and that they have failed to render proper and true accounts of the amounts they have received in rent from the company's properties and misappropriated the same. He submitted that the business of the Respondent No.1 company has been closed since the year 2010, which is undisputed. He submitted that the

mistrust between the Petitioners and the Respondents is evident from the litigation filed by and against each other including JCM No.17 of 2021 which the Petitioners were compelled to file due to midterm elections illegally held by the Respondents during the three years' term of the Petitioner No.1 as Chief Executive which petition was disposed of by this Court vide order dated 17.08.2022 in view of the conceding statement made on behalf of the Respondents that the midterm elections may be annulled as the elections are anticipated in three months' time on completion of the statutory period of three years. He referred to JCM No.20 of 2009 filed by some of the Respondents and submitted that since it was a frivolous case it was dismissed by this Court as withdrawn on 22.08.2011. The learned counsel for the Petitioners also relied upon an *Iqrarnama* dated 03.04.2011 between the Petitioner No.1 and the Respondents No.2 and 3 agreeing to dispose of the assets of the Respondent No.1 company and argued that such *Iqrarnama* evidences the agreement in principle between the parties to wind up the Respondent No.1 company. He submitted that similarly a resolution was passed by the Respondent No.1 company on 18.04.2020 to sell half of the factory located at Plot No.L-1-C/1, Block-21, Federal B Area, Karachi. He submitted that although it was resolved by the Board of the Respondent No.1 Company on 15.03.2020 that process for transfer of shares of the deceased parents of the parties shall be proceeded with it has not yet transpired due to the non-cooperation of the Respondent Directors. Admittedly, Respondent No. 2 is currently the CEO of the Respondent No. 1 Company. The learned counsel for the Petitioners read out the grounds taken in the petition for the winding up of Respondent No.1 company.

4. On the other hand, the learned counsel for the Respondents argued that no ground exists for the winding up of the Respondent No.1 company which was owned and started by the deceased father and in whose loving memory the Respondents want to continue the business operations of the Respondent No.1 Company and to this end are willing to purchase the shares of the Petitioners but the Petitioners are adamant to shut down the Respondent No.1 Company for no apparent reason. When asked whether the company is currently in operation, he submitted that it has not been in operation since 2010 due to the acts and omissions of the Petitioner No.1 who was the CEO from 2011 till 2023. However, he submitted that suspension of business is a ground for winding up under

301 (m) of the Companies Act, 2017, only in case of a listed company which is not available against the Respondent No.1 as the Respondent No.1 company is a private limited company. He submitted that the petition cannot be heard due to noncompliance of Section 304 (e) of the Companies Act, 2017, which provides that the Court shall give a hearing to a petition for winding up a company by the company until the company has furnished with its petition in the prescribed manner the particulars of its assets and liabilities and business operations and the suits or proceedings pending against it. He submitted that under the circumstances, neither Section 301 nor Section 304 is attracted and it is Section 286 which is relevant for which purpose the Respondents are willing to buy the shares of the Petitioners. Learned counsel referred to the *Iqrarnama* relied upon by the Petitioners and highlighted that it states nothing about winding up. When asked as to why the Respondents have not been able to revive the company's operations since 2022 despite the Respondent No. 2 being the CEO and the Respondents collectively have the majority shareholding, at first, the learned counsel for the Respondents submitted that the shareholding given in para-9 of the petition which was relied upon by the learned counsel for the Petitioners during his arguments to show that the Respondents have the majority is inclusive of the shares of the deceased parents which has not yet been transferred. When asked about the previous shareholding as per para-6 of the petition which too reflects that the Respondents collectively hold approximately 38% whereas the Petitioners own less than 17% cumulatively, he submitted that half of the property is not in the possession of the Respondent No. 1 Company. Initially, the learned counsel argued that such property has been sold by the Petitioner No.1 but it appears that only a sale agreement was executed of which the vendee is seeking specific performance through as suit which is pending. Next, he submitted that even otherwise the property has been rented by the Petitioner No.1 and as such is not with the Respondents while several suits are pending between the Respondent No.1 company and the various tenants in respect of which the Petitioner No.1 has appointed his son as the authorized representative for the Respondent No.1. He stated that in case the petition is dismissed, the Respondents shall file appropriate proceedings for the transfer of the deceased parents' shares to all the legal heirs which will enable the Respondents to revive the company's

operations which were stopped also due to pendency of the instant petition.

5. Heard the learned counsel for the parties and minutely perused the record.

Suspension of business since 2010

6. Although it has been admitted that the Respondent No.1 Company's operations have been suspended since 2010, a private limited company may not be wound up on such ground as suspension of business for one whole year is a ground of winding up only of a listed company under Section 301 (m) of the Companies Act, 2017.

Embezzlement of rental income of the Respondent No. 1 Company by the Respondents Nos. 2 and 3 and Operation of Respondent No. 3's business at the premises of the Respondent No. 1 Company and misappropriation of company equipment and machineries

7. With regard to the ground as stated in the petition that the Respondents No.2 and 3 have received sums of Rs.6,200,000/- and Rs.10,200,000/- from the tenants of the Respondent No.1 company which have not been deposited in the accounts of the company, the learned counsel for the Petitioners was unable to point out a shred of evidence to support such allegations. Similarly with regard to the ground that the Respondent No. 3 was operating his personal business in the premises of the Respondent No.1 Company to the prejudice of the minority shareholders of the Respondent No.1 Company and later when he shifted the operations to another location, he took away the Respondent No. 1's equipment and machineries, he was unable to point out any evidence. Instead argued that this is for the liquidator to investigate.

8. However, if investigation is required, members holding not less than one tenth of the total voting power may make an application to the Securities and Exchange Commission of Pakistan **("Commission")** to investigate into the affairs of the company and if the Commission is satisfied that investigation is necessary it may order such an investigation in terms of Section 256 of the Companies Act, 2017. The inspector

submits her report under Section 262 and under Section 268 if it appears to the Commission based on such report that the company is liable to be wound up, it may present to the Court a petition for its winding up. However, the Petitioners have not made any such application to the Commission. An investigation may also be ordered by the Court under Section 257 but no such petition has been filed for an order of investigation into the affairs of the Respondent No. Company either. Thus, the ground of oppression has not been brought home.

Iqrarnama and Resolution to wind up the Respondent No. 1 Company

9. Perusal of the *Iqrarnama* dated 18.04.2020 does not reveal any provision reflecting agreement between the parties to wind up the Respondent No.1 company nor the Resolution dated 18.04.2020 reflect any such decision or agreement between the parties. The agreement between the shareholders to sell out the company's assets does not by and in of itself reflect an intention to wind up the company which can only be done through a special resolution especially when such agreement has not even been acted upon by way of actually selling out such company's assets.

Just and equitable

10. The Petitioners have alleged that in view of the foregoing circumstances there is complete mistrust between the shareholders and there is no likelihood of the Respondent No. 1 Company reviving and as such it is just, proper and equitable to wind up the Respondent No. 1 Company.

11. In *Mian Waqar-ud-Din Vs United Industries Limited*, 2017 CLD 696, the Lahore High Court explained that Courts tend to treat private limited companies like partnerships and as such apply the same principles in the winding up of a private limited company as would entitle a partner to have the partnership dissolved. Commonly a state of deadlock between the partners or justifiable lack of confidence in the management have been regarded as just and proper grounds for dissolving a private limited company. However, the dispute amongst shareholders ought to be of such nature that it becomes virtually impossible to smoothly run the affairs

of the company. The Court was not convinced on principle or on authority that a private limited company is required to be wound up whenever a shareholder wishes that it should be.

12. The Petitioners in the instant case are admittedly minority shareholders and as such there is no deadlock in the management of the Respondent No. 1. The allegations brought forth do not justify the winding up of the Respondent No. 1 Company on just and equitable grounds. On the other hand, the learned counsel for the Respondents submitted that they would like to revive the Respondent No. 1 Company in the loving memory of their parents who were its founders and are willing to buy the shares of the Petitioners. The learned counsel for the Petitioners was unable to satisfy this Court as to why the Petitioners are unwilling to sell their shares to the Respondents if they see no future and are instead bent on dissolving the Respondent No. 1 Company.

13. Therefore, it is clear that there is another remedy available to the Petitioners which they are unreasonably refusing to pursue and as such I hereby dismiss this petition for winding up of the Respondent No. 1 Company in exercise of the powers conferred under Section 308(2).

[SAMAN RAFAT IMTIAZ]
JUDGE

Announced in open Court on this 9th September, 2026

Asif