IN THE HIGH COURT OF SINDH AT KARACHI

High Court Appeal No.05 of 1995
[**Sindh Flour Milling Corporation** *versus* **M/s Punjab Roller Flour Mills**]

along with
High Court Appeal No.196 of 2000
[**Messrs Ahmed Rahman Flour Mills** *versus* **Sindh Flour Milling Corporation**]

and
High Court Appeal No.447 of 2003
[**Sindh Flour Milling Corporation** *versus* **M/s Goodluck Industries**]

Present:
Mr. Muhammad Faisal Kamal Alam, J.
Ms. Sana Akram Minhas, J.

Date of hearings : 30.10.2025, 11.11.2025, 17.11.2025, 20.11.2025, 26.11.2025 and 02.12.2025

H.C.A. Nos.05 of 1995 & 447 of 2003

Appellant : Sindh Flour Mills Corporation, through M/s. Muhammad Mustafa Hussain and Muhammad Mohib Hussain, Advocates

Respondent(s) : M/s. Punjab Roller Flour Mills and M/s. Goodluck Industries, through Ms. Navin S. Merchant, Advocate.

Syed Hussain Shah, Assistant Advocate General.

JUDGMENT

Muhammad Faisal Kamal Alam, J: In view of the commonality of issues, namely the issue relating to the period of limitation and the law governing the same, all three High Court Appeals **[“HCAs”]** are decided by this Judgment.

HCA No. 05 of 1995

2. Through this Appeal, the Appellant has challenged the Judgment dated 30.08.1994 in Judicial Miscellaneous No.08 of 1993, preferred by the present Appellant, under Section 7 of the Flour Milling [Control and Development] (Repeal) Ordinance, 1977 [the **"Relevant Law"**], read with Sections 39 and 40 of the Industrial Development Bank of Pakistan Ordinance, 1961 – **IDBP Law**, against M/s Punjab Roller Flour Mills **[PRFM],** for recovery of Rs.10,98,860.84.

HCA No. 196 of 2000

3. This Appeal is filed by the Appellant [Messrs. Ahmed Rahman Flour Mills] against the Respondent-Sindh Flour Milling Corporation – [**"Corporation"**], challenging the Judgment dated 12.03.1999 passed by learned Single Bench of this Court in J. Misc. Application No.17 of 1998, preferred by the Corporation, under the above Statutes, directing the present private Appellant Ahmed Rahman Flour Mills [**"ARFM"**] to pay an amount of Rs.6,11,761.09 within six months and in default, the Management of the Flour Mills shall be transferred to the Official Respondents-Corporation.

HCA No.447 of 2003

4. This Appeal has called in question, the Order dated 01.11.2002 handed down in J.M. Application No.157 of 1995 preferred by the present official Appellant-Corporation, against the private Respondent, viz. Goodluck Industries **{GI},** which J.M. was dismissed being time barred.

5. Mr. Mustafa Hussain Shah, Advocate, representing the **Corporation** in all these Appeals, has argued that under the scheme of the Relevant Law, different Flour Mills were nationalized earlier through the Flour Milling

[Control and Development] Ordinance, 1976, as amended through Act No. LVII of 1976 [the Flour Milling Control and Development Act, 1976], which was repealed by the above Relevant Law, and consequently Flour Mills [the **"Establishments"**] earlier acquired under the above Law of 1976, were returned to previous Management under the scheme of the Relevant Law; these Establishments were liable to make the payment of amounts as demanded in the Correspondence(s) of the Corporation. Contends that the Impugned Order passed in HCA No.447 of 2003 has incorrectly placed reliance on another impugned Order, which is subject matter of HCA No.05 of 1995, because in the latter case, no installments were paid, as against in the present ***Lis*** [HCA No.447 of 2003]. Has referred to the Demand Notice dated 07.05.1991 [*page-111*], replied by Respondent vide Correspondence dated 14.01.1993 [*page-147*], followed the Correspondence of 31.01.1993 of the Appellant [*page-151*]. Draws our attention to the fact that in terms of the above Correspondence of Respondent, the part payments were made and the last one was on 07.07.1994, whereafter, again demand was raised for the balance outstanding dues, vide Legal Notice dated 19-11-1994 [*page-181*], but, upon default, J.M. No.157 of 1995 was instituted on 13.11.1995, which is within time. Supported the impugned Judgment in HCA No. 196 of 2000. Stated that the Appeal filed by ARFM/Establishment should be dismissed because it defaulted in making payments after December 1993, in response to the written demand of the Corporation. Sum total at the relevant time [when the Proceeding was filed] was Rs. 611,761.09. Has referred to the grounds of Appeal and states that the Relevant Law being special law, Law of Limitation as well as limitation prescribed in Section 39-A of the above referred IDBP Law, were not applicable, as incorrectly ruled in the

impugned Judgments, *inter alia,* because Section 39-A was incorporated in September 1981, and cannot be applied retrospectively to the present facts, because the correspondence *"was going on between the parties from 1980 onwards till the final amount after adjustment was worked out….."***.**

In rebuttal to the arguments of Establishments' Counsel, stated that once the outstanding amounts were acknowledged by the Establishments, then the claims of the Corporation cannot be held to be time barred, because in terms of Section 19 of the Limitation Act, 1908, a fresh period of limitation is to be computed from the last date of payments made by the Establishments/ Flour Mills; besides, Section 25 [3] of the Contract Act, 1872 was overlooked in both the impugned Judgments under challenge, because the latter provision specifically speaks about time barred debts and provides an additional legal cover to the Corporation for recovery of its outstanding dues. To augment his arguments has cited the following Case Law_

i- **2007 CLD 1459 [Karachi]**
[Soaleh Muhammad and Brothers versus Cantonment Board]

ii- **1994 MLD 2276 [Karachi]**
[Habib Bank Limited versus Hussain Corporation Ltd]

iii- **1991 CLC 1758 [Karachi]**
[United Bank Limited versus Kurnool Muhammad Muneer]

iv- **1997 SCMR 536**
[Behlol versus Quetta Municipal Corporation and another]

6. The above line of arguments is rebutted by Ms. Navin S. Merchant, learned Advocate for all the private Flour Mills [**Establishments**], and contended that the Correspondences referred above by the Appellant's Counsel, is basically an attempt to re-agitate the time barred claims. Referred to her Counter Affidavit. Contends that it is a common fact in all these appeals, that first Notices under Section 7 of the Relevant Law were

addressed to the Flour Mills / Establishments [***ibid***] way back in the year 1979 and 1981 after giving them back the management and control of these Flour Mills; that is, in HCA No.5 of 1995, the first notice, admittedly is of 11th November 1979 followed by the Second Notice dated 11th November 1990. ***Similarly,*** in HCA No.1996 of 2000, filed by the Establishment – ARFM against the impugned Order, only three Correspondences have been appended dated 12-6-1983, 18.01.1984 and 20.01.1993, calling upon the Appellant Establishment to pay an amount of Rs.611,761/- as outstanding dues, after making adjustment in the purported liability of Rs.11,95,264/-; payments were paid under protest till December 1993. The above J.M No. 17 of 1998 was filed on 12.03.1998 and was time barred, because recovery was to be made within six years in terms of Section 39-A of the IDBP Law. *Whereas,* in HCA No. 447 of 2003, the first Notice was of 26th October 1980 [appended as Annexure C-14 with the Counter Affidavit of Respondent Establishment], which was never accepted by the Establishment, thus, no payment was made, and again in this case also after a lapse of many years another round of notices for making payments were sent invoking above Section 7 of the Relevant Law, which was contested by the Respondent/ Flour Mills [Establishment]. Referred to other paragraphs of the Counter Affidavit to highlight that on account of inaction and negligence of the Corporation, for instance, withholding the shares of the shareholders of the Establishment [Good Luck Industries, in HCA No.447 of 2003], the Establishment suffered losses and was suspended by the then Karachi Stock Exchange Limited. Contends that in terms of Section 19 of the Limitation Act 1908, the acknowledgment which gives rise to a fresh period of limitation [as argued by the Counsel for the Corporation] will only come into effect if that acknowledgement is given

before the expiry of prescribed limitation, which in the present case is six years [as highlighted above]. In support of her arguments, placed reliance on the following Case Law_

1. **2025 SCMR 269**
   [Muslim Commercial Bank Limited and others versus The Punjab Labour Appellate Tribunal, Lahore and others]

2. **PLD 1993 Supreme Court 147**
   [Province of the Punjab through Member Board of Revenue, (Residual Properties), Lahore and others versus Muhammad Hussain through Legal Heirs and others]

3. **2023 CLD 165 [Lahore (Multan Bench)]**
   [Zarai Taraqiati Bank Limited through Manager versus Afzal Shah]

4. **1997 SCMR 536**
   [Behlol versus Quetta Municipal Corporation and another]

7. Arguments heard and record perused.

8. Interestingly, the **Bahlool Case** ***(supra)*** has been relied upon by both the learned Counsel. In this Judgment, the Apex Court has explained the scope of Section 19 of the Limitation Act and Section 25(3) of the Contract Act. Under Section 19, if a liability is acknowledged by a party before the expiry of the limitation period, then the limitation is revived and would be computed from the time of the acknowledgement, but if the period of limitation has expired, then such an acknowledgment would have no legal effect, as against provided in terms of Section 25(3) of the Contract Act **.** The requirement of this provision is that there should be a promise "*in respect of payment of debt or part thereof*". The Hon'ble Supreme Court has expounded the word 'debt' as judicially explained in precedents and has come to the conclusion that the 'debt' should be an ascertainable sum of money and "not merely a sum of money which may or may not become payable", dependent on contingencies.

9. Summary of the Case Law cited by Corporation's Counsel is that by invoking Section 25(3) of the Contract Act, even a time barred liability is enforceable if there is a written acknowledgment by a debtor to pay the liability, whole or in part.

It is necessary to clarify that in the above Judgment of Cantonment Board case, the liability was not denied, but shortage of funds was cited as reasons for non-payment. To invoke Section 25(3) of the Contract Act, in support of one's case, it is necessary that the acceptance of liability is specific, as ruled by the Hon'ble Supreme Court ***(supra).***

Whereas, précis of the Case Law cited by the Establishment's Counsel is, that after expiry of full available period of limitation, the same cannot be revived either from the date of knowledge, or the attornment of the tenants, or possession; the learned Division Bench of Lahore High Court in **Afzal Shah Case** ***(supra)*** has dismissed the appeal of the Bank and maintained the Judgment of the learned Banking Court, that the Suit filed by the Appellant Bank was time barred; while discussing Sections 19 and 20 of the Limitation Act, it is held that benefit could only be extended if the written acknowledgment of payment was made within the period of prescribed limitation.

10. Undisputedly in all these Appeals, the possession of the Flour Mills-Establishments have been handed over back to the earlier owners/ management, as per the statutory scheme of the Relevant Law.

11. A significant question of law going to the foundation of these Appeals is to be decided first; viz. the limitation period for instituting the above Proceedings for recovery of the amounts, through the Judicial Miscellaneous Applications.

12. The second significant fact is that in earlier round, JM No. 157 of 1995 preferred against GI Establishment [***ibid***], was dismissed, which was appealed against by the Corporation. The learned Division Bench of this Court in High Court Appeal No.234 of 1998, agreed with the finding of the learned Single Bench, that the Establishment was not a "*debtor*" within the meaning of Section 7 of the Relevant Law, since the said expression has been accorded a special meaning under the definition clause in Section 2(c) of the Relevant Law, read with the definition clause in Section 2(e) of the repealed *Flour Milling Control and Development Act, 1976* [LVII of 1976]), yet the remedy for recovery of outstanding dues could still be initiated under Section 5 [3] of the Relevant Law. Consequently, the ***Lis*** was remanded for a fresh decision which was handed down through the impugned Judgment [*supra*]. Since the above Judgment handed down by the learned Division Bench was not further challenged, it has attained finality. The present controversy is now to be considered from the perspective of Section 5 [3] of the Relevant Law, which speaks about compensation. Section 5 is sub-divided into two categories; in the first one, a compensation was to be given to the acquired establishment [flour mill] as per prescribed statutory rate mentioned in the Schedule; whereas, in the second category compensation can be recovered from the establishment if the present value is higher than the net worth value. It means that in respect of the outstanding amounts as claimed by the Corporation, although the Establishment [Flour Mills] cannot be termed as **Debtor,** but the amounts are recoverable under Section 5 [3] ***ibid.***

13. The Cases at the trial level proceeded erroneously on the premise that limitation period is to be governed under Section 39A of the IDBP Law ***[supra],*** although Section 7 of the Relevant Law makes a reference only to

Sections 39, 40 and 41 of the IDBP Law. The limitation mentioned under Section 39-A is six years. However, Section 39-A was incorporated in the IDBP Law **through the Ordinance No. 4 of 1981, whereas,** the Relevant Law is of 1977. Since, the statutory language does not expressly enjoin that this new provision has a retrospective effect, thus, it is to be applied prospectively. Equally important is the fact that no corresponding amendment has been made to the Relevant Law, because Section 7(2) of the Relevant Law specifically refers to and confines itself to Sections 39, 40 and 41 of the IDBP Law. Similarly, Sections 39, 40 and 41 of the IDBP Law, provides an expeditious mechanism for recovery of loans from a defaulting customer, even to the extent it empowers the Bank [Industrial Development Bank of Pakistan] to take over the management of the defaulting entity, or sell the mortgaged property. The logic behind referring to these provisions was to provide an effective machinery to the Corporation for recovery of its outstanding amount. The above three provisions [39, 40 and 41] neither mentions the limitation period, which was introduced in the above IDBP Law, through Section 39-A [subsequently], nor, it is a procedural provision, that can apply retrospectively; rather, it is a substantive law, as, upon expiry of limitation, right and interest can accrue in favour of the opposite party. To this extent we agree with the arguments of Mr. Mustafa Hussain, that Section 39-A [*supra*] was incorrectly invoked by the respective learned Single Benches while passing the impugned Judgments in the subject HCAs.

14. Conclusion is, that looking at the nature of controversy pertaining to the recovery of 'Dues' upon finalization/reconciliation of accounts, Article 64 {Part VI} of the First Schedule [of the Limitation Act], would be

applicable to the facts of present Cases and Appeals, prescribing three years of limitation period (**PLD 1975 Supreme Court 197-***Karachi Gas Co. Ltd versus Dawood Cotton Mills Ltd*)**.** For a ready reference above Article is reproduced herein under_

> *"For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them"* .

15. In the above perspective of limitation period, we would now consider the applicability of the above two cited provisions, viz. Sections 19 of the Limitation Act and 25 [3] of the Contract Act.

16. Adverting to the High Court Appeal No. 5 of 1995, it is mentioned in Paragraph 3 [by the Corporation] that on 5th September 1977, the Establishment was de-nationalized and possession was handed over, where after the inventory was prepared. On the basis of the **Audit Report prepared on 17.07.1976** [appended with the Appeal **at page 129**] a sum of Rs.12,22,545/- was found payable regarding which the Letter was issued on 11th November 1979, but the Establishment/Respondent of this Appeal, disagreed with the determined amount. Finally, after re-examination of accounts, a final figure of Rs.10,98,860/- was communicated vide Letter 13th November 1991. It means that this fresh demand was communicated to the Respondent/Establishment after twelve years from the above first demand. Upon non-payment of the demanded amount, the Corporation filed the above JM, which was contested by the Establishment and eventually dismissed. The case law cited on behalf of the Corporation's Counsel, is distinguishable from the facts of this Appeal, because in the interregnum period of first and last demand [***ibid***], admittedly no payment was made. However, it is clarified, that as decided in the forgoing

Paragraphs, the applicable limitation period was/is three years, although, the learned Single Bench, with respect, incorrectly decided the matter on the basis of Section 39-A of the IDBP Law. Since this error has no bearing on the end result, thus, no interference is required in the impugned Judgment and ***this Appeal is dismissed***.

17. Whereas, in HCA No. 196 of 2000, the first Letter is of 12th June 1983, in response to which no amount was paid. Averred that under protest a sum of Rs.210,000/- was paid in response to the missive dated 3.5.1989 [addressed by the Corporation], reducing the claim of the Corporation to Rs.611,761/-, but, **surreptitiously** these facts are not mentioned in the JM No. 17 of 1998 filed by the Corporation. It has only averred [in Paragraph 7 of the JM] that lastly the amount was paid till December 1993 and the outstanding amount is Rs.6,11,761/- and since the JM was filed on 12th March 1998, therefore, it is held to be within the prescribed period of six years [in view of the above provisions of IDBP Law].

The above specific fact that payment was made under protest in response to the Letter dated 03.05.1989 has not been controverted by the Corporation. In this matter, the limitation lapsed after three years from the first demand of 12.06.1983, as no payment was made. Even when payment was made under protest [on 3-5-1989], it does not improve the stance of the Corporation, justifying invoking Section 25(3) of Contract Act, because both the **parties were at variance about the outstanding amount** and there was no acknowledgement in this regard on the part of the Establishment. The impugned Judgment has erred in deciding that since the last payment was made in December 1993 and above JM was preferred on 12.03.1998, that is, after the period of four years and three months, hence, it is within time under Section 39-A. In fact, to these undisputed facts,

Section 19 of Limitation Act is applicable, as even making payment (although under protest) after the expiry of a time barred claim, will not revive the limitation period. Since Correspondences sent by the Corporation for the outstanding dues, were under Section 7 of the Relevant Law, prescribing adverse consequences in the event of default, including transfer of management, so is also decided in the impugned Judgment, therefore, it lends further support to the arguments on behalf of the Establishment, that payments were made under protest, in order to avoid any coercive measure. The above JM was hopelessly barred by time, but, these material fact and question of law were over looked in the impugned Judgment, which is not sustainable. Consequently, ***this Appeal is accepted*** and the impugned Judgment is set-aside.

HCA No.447 of 2003

18**.** In this Appeal also, there are two stages of demands for recovery of the outstanding dues; ***first one*** was sent to the Establishment **(GI)** vide a missive of 26.10.1980, and in ***second stage*** through a series of Correspondences of 1990's *(as already highlighted in the preceding paragraphs).* The stance of Corporation, was factually controverted in the Proceeding below through a Counter-Affidavit, *inter alia,* about the calculation of the outstanding dues and silence of a decade [Paragraph 7], which has not been refuted by way of an Affidavit-in-Rejoinder [by the Corporation], which goes against the latter.

19. The second phase of demand commenced through Letters of 1990's (starting from 07.05.1991), followed by Memos dated 27-6-1991, 28.09.1993, replied vide Correspondences of 14-1-1993, 31-1-1993, 28-9-1993, and lastly 7-07-1994 [by the Establishment- GI], whereunder

payments of Rs.670,000/- were made. These back and forth written communication show that accounts were never settled conclusively, therefore, Corporation cannot take benefit of Section 25(3) of Contract Act, rather Section 19 of Limitation Act as discussed above is applicable. Undisputedly, there is long gap of eleven years between the two stages of recovery demand. *Ex facie* monetary claim of the Corporation is time barred, in view of Article 64 ***(supra).*** The Case Law cited by the learned Advocate for the Corporation are distinguishable on facts and law. No interference is required in the impugned Judgment and ***this Appeal is dismissed***.

20. Consequently, HCA No. 5 of 1995 and 447 of 2003 are ***dismissed*** while HCA No. 196 of 2000 is ***accepted*** in the above terms. In this Appeal, restraining Order was given subject to furnishing security in respect of the decretal amount, which can be released to the Establishment along with accruals, if any, as per the Rules and Procedure.

Judge

Judge

Karachi.
Dated: 02.12.2025.
M.Javaid PA