

**ORDER SHEET
HIGH COURT OF SINDH AT KARACHI**

J.C.M. No.19 of 2016

DATE ORDER WITH SIGNATURE OF JUDGE

Present:-

Mr.Justice Muhammad Ali Mazhar

Securities & Exchange

Commission of Pakistan.....Petitioner

Versus

M/s.Dadabhoy Insurance

Company Limited.....Respondent

Date of hearing: 14.12.2017 and 11.5.2018

Mr.Khalid Mahmood Siddiqui, Advocate for the Petitioner.

Nemo for the Respondent.

Muhammad Ali Mazhar, J: This petition has been brought under Section 305 and 309 of the Companies Ordinance 1984 for entreating following reliefs:

- (1) **Order winding up of the respondent company under the provisions of the Companies Ordinance, 1984.**
- (2) **Direct immediate freezing of all accounts of the respondent in banks and other financial institutions, Central Depository Company (CDC) and restrain the Respondent from carrying out any transaction against any property belonging to the respondent.**
- (3) **Charge cost of the petition to the Respondent**
- (4) **Pass any other order as this court may deem fit in the circumstances of the case.**

2. The petitioner is established under the Securities and Exchange Commission of Pakistan Act, 1997. The officer In charge of the Company's Registration Department has

instituted this winding up petition against the respondent which is a Public Insurance Company incorporated on 16.11.1982 to undertake non-life insurance business.

3. The learned counsel for the petitioner argued that vide order dated 10.6.2008, the Commission issued a direction under Section 63 (1) of the Insurance Ordinance, 2000 to the respondent not to move into new contracts of insurance from 10.7.2008 for the reasons that the company had failed to meet the minimum paid up capital requirements as prescribed under Section 28 read with 11(1)(a) of the Ordinance of 2000. They also failed to submit the requirements of Section 11(1)(b) read with Section 29 of the Ordinance of 2000, relating to the minimum statutory deposit to be kept with the State Bank of Pakistan. It was further contended that the company failed to submit the reinsurance treaty arrangements for the years 2006, 2007 and 2008 thereby violated the provisions of Section 11(1) (d) read with Section 41(1) of the Ordinance 2000 and failed to pay to SECP annual supervision fee for the years 2001, 2003 and 2004 which is violation of Section 11 (3) of the Ordinance, 2000.

4. It was further contended that on failure of the compliance, show cause notices were issued by the Commission to the respondent company under Section 309 (b) read with Section 305 of the Ordinance on 24.12.2012, 19.6.2014 and 24.3.2015. The Commission vide its letter dated 12.5.2015, scheduled a hearing on 22.5.2015 but no one appeared for the respondent however in order to meet the ends of justice, the matter

was again fixed for final hearing on 24.6.2015 but again no one appeared. Due to non-submission of replies and the non-appearance for the hearings, the Joint Registrar of Companies Registration Office approached the Commission for grant of sanction in terms of Clause (b) of Section 309 of the Ordinance of 1984 for filing this winding up petition.

5. It was further avowed that despite affording evenhanded opportunities to defend the charges mentioned in the show cause notices, the respondent company and its directors failed to respond even they deliberately failed to appear on the date of hearings for placing their point of view to the charges set out in the show cause notices. Keeping in mind their demeanor, it can be safely concluded that the respondent has nothing to say rather it amounts the admission of various defaults pointed out in show cause notices therefore, while exercising the powers conferred under Section 309 (b) of the Ordinance, the Commissioner (Insurance) had passed an order for winding up the company on 10.8.2015. The respondent has failed to file its annual accounts with SECP since 31.12.2006. The company has been delisted from the Karachi Stock Exchange since 1.8.2012. The respondent has not preferred any review application or appeal against the orders dated 10.8.2015 passed by the Commission.

6. Heard the arguments. Despite notice, nobody appeared for the respondent nor any reply has been filed. Indeed this winding up petition has been preferred by the Regulatory Authority on the following grounds:-

(i) The respondent has failed to hold its annual general meeting since 2007.

(ii) The respondent has suspended its business for more than a year.

(iii) The respondent company has failed to appoint its auditor for the year 2002 onwards, as required under Section 252 of the Companies Ordinance, 1984.

(iv) The respondent was afforded full opportunity of making representation and of being heard by the commission. However, the respondent chose not to submit any reply to the SCN or to appear before the commission to defend and/or explain the case or challenge the order dated 10.8.2015 passed by the Commission.

(v) The financial situation of the respondent is very bleak as reflected from its financial statement.

(vi) The continuance of the operations of the company would be prejudicial to the interest of its members existing and potential policyholders.

(v) The company has been delisted from the Karachi Stock Exchange since 1.08.2012.

7. The record reflects that the respondent company was communicated that in terms of Section 11 of the Insurance Ordinance, 2000, an insurance company shall at all times ensure compliance with the provisions of this Ordinance relating to minimum paid up share capital statutory deposit, solvency requirements, obtaining reinsurance arrangements and such other provisions of this Ordinance as are applicable to it but the respondent company failed to meet the minimum paid capital requirement by 31st December, 2007. The company also failed to submit reinsurance treaty arrangements for the years 2006, 2007 and 2008 in violation of Section 41 and Section 11 of 2000 Ordinance. The company also failed to submit the annual audited accounts/returns and quarterly returns since 2001

8. The winding up is a course of an action for culminating or disintegrating/dispelling a business

enterprise which activity encompasses vending all assets, recompensing creditors and mete out remaining assets to the shareholders. Winding up a business can be compulsory or voluntary which is a legally recognized process regulated by the corporate laws in tandem with the articles of association. The compulsory winding up ensues as soon as laws or court orders appoint official liquidator, he puts up for sale the assets and distributes the proceeds to creditors. A company's creditors may also activate the process. Voluntary liquidation is ordinarily commanded through a Board Resolution. If the stakeholders resolve that the company will face undefeatable and unbeatable risks and challenges, they may also call for a resolution to dissolve.

9. In the judgment authored by me in the case of **Syma Mahnaz Vayani versus Molasses Export Company Pvt. Ltd**, reported in **2013 CLD 1229**, I have discussed the perception of winding up of a company and expressed that object of winding up of a company is to release the assets of the company and pay its debts in accordance with law. In winding up cases, utmost endeavor should be made for survival of the corporate sector rather than to dismantle it. A company may be wound up on any of the grounds mentioned in section 305 of the Companies Ordinance, 1984. The conjoint effect of sections 305 and 306 of the Companies Ordinance, 1984 made it clear that the court had discretion to order or not to order the winding up of a company after taking into consideration relevant facts. At the same time, the winding up proceedings cannot be used as a lever for pressurizing a company to pay its disputed debts. For winding up a company, the court has to consider whether the

substratum of the company is gone, the object for which it was incorporated to carry on the business except at loss and no reasonable hope that the object of trading at profit can be attained and the existing or probable assets are insufficient to meet liabilities. Jurisdiction to wind up a company was circumscribed by limitation laid down by S.314 of the Companies Ordinance, 1984 and usually the discretion to wind up was to be exercised in extreme cases and the court in the first instance was to find ways and means to remedy the wrong and pass orders which were appropriate to regulate the conduct and affairs of the company. Substratum of a company was deemed to be gone when the subject matter of the company was gone or the object for which the company was established had substantially failed or there was no reasonable hope that the object of trading at profit could be attained or that existing and probable assets were insufficient to meet the existing liabilities. Court would lean in favour of the company to be a going concern. Increase and decrease or ups and downs was a common phenomenon, which could not be considered to be an indication of whether the company had lost its substratum and that it had become commercially insolvent. Conversely what I perceived in this case is altogether different situation where various violations have been alleged that the respondent failed to hold annual general meetings; suspended its business; failed to appoint its auditor; failed to reply show cause notices and failed to attend hearing; the financial situation of the respondent is bleak as reflected from its financial statement; the continuance of the operations would be prejudicial to the interest of policyholders; company has been delisted from the Karachi Stock Exchange since 01.08.2012 in such

situation chances of survival are remote and incredible.

10. A comprehensive survey to a book “**Guide to the Companies Act**”, 17th Edition 2010 authored by **A Ramaiya** give rise to innumerable instances through distinct pronouncements wherein courts lean to winding up of a company and orders were passed on the following grounds:

- (1) where the mine for which a company was formed to work could not be found. *Haven Gold Mining Co.*, (1882) 20 Ch D 151;
- (2) where the patent it was to work was not granted. *German Date Coffee Co., Re*, (1882) 20 Ch D 169;
- (3) where the bulk of the property had been sold and its liquidity and capital exhausted; *Diamond Fuel Co. (No. 2)*, (1879) 13 Ch D 400 (CA);
- (4) where there was no reasonable chance of the grant of a contract or concession which the company was supposed to undertake, *Bleriot Mfg. Aircraft Co.*, (1916) 32 TLR 253;
- (5) where on account of a deadlock in management the company could not carry on business for several years, nor there was any evidence of plans and prospects of revival, *Ramesh G. Bhatia v. Gopala Gases P. Ltd.*, (1994) 3 Comp LJ 435 (Del);
- (6) where there was suspension of business for over a year, the number of members was reduced to less than two, all directors but one were absconding and assets were taken over by the lending institution, the petition by the sole remaining director for winding up was admitted. The argument of the lending institution that the winding up was being resorted to, to escape the remaining liability to the institution was not accepted. *Surendra Kumar Pareek v. Shree Guru Nanak Oils P. Ltd.* (1995) 82 Com Cases 642 (Raj).
- (7) where various banks and financial institutions refused to advance term loans on account of the antecedents of the managing director, and by change of management also, the position of the company could not be revived. *Kerala State Industrial Development Corporation v. Poonmudi Tea Pack Ltd.* (1988) 63 Com Cases 575 (1987) 3 Comp LJ 180 (Ker).
- (8) The directors of a company which had cheated investors, banks and financial institutions were also involved in the respondent company. Statutory notice was simultaneously given to it also with no reply. Advertisement also made without any objection. No business was done by the company since incorporation. *Registrar of Companies v. Amit Inter Chemicals P. Ltd.*, (2003) 42 SCL 743 (All).

11. In the case of *Registrar of Companies v. Bihar Wire and Wire Products (P.) Ltd.*, (1975) 45 Com Cases 194 (Pat), the court pointed out a long line of decisions on the

question of winding up which establish among others, the following propositions of law:

1. That the mere fact that business has not been commenced within a year or that business has been suspended for a whole year or more by itself is not a ground for a court to order winding up, although they give the jurisdiction to the court to do so.
2. That it has to be found out whether the non-commencement or suspension of business was for some good reason accounting for it.
3. That the fact of non-commencement or suspension of business is an evidence which indicates that the company has no intention of carrying on business or that it is not likely to do so.
4. That the decisive question is whether there is a reasonable hope of the company commencing or resuming business and doing it at a profit, and whether the substratum of the company has disappeared.
5. It has to be clearly established that the company was incorporated for the sole purpose that could no longer be achieved. Winding up is not appropriate where the directors in the exercise of their managerial powers decide to dispose of the main but not the sole business of the company. *Strong v. J. Brough & Son (Stratsfield) Pty. Ltd.*, (1991) 5 ACSR 296 (SC of New South Wales).
6. Winding up order was passed: Where the substratum of the company was gone or its only business had become impossible; *Re, Haven Gold Mining Co.*, (1882) 20 Ch D 151; *Re, German Date Coffee Co.*, (1881-5) All ER Rep 372 : (1882) 20 Ch D 169; *Amalgamated Syndicate, Re*, (1897) 2 Ch 600 : (1895-9) All ER Rep 340; *Re, Taldua Rubber Co. Ltd.*, (1946) 2 All ER 763; *Cf. Re, Kiston & Co. Ltd.*, (1946) 1 All ER 435; *Re, Perfectair Holdings Ltd.*, 1990 BCLC 423 (Ch D); *In Re, H.C. Insurance Society Ltd.*, (1960) 65 CWN 68. See *Kumarpuram Gopalakrishnan Ananthakrishnan v. Burdwan-Cutwa Rly. Co. Ltd.*, (1978) 48 Com Cases 211 (Cal) and on appeal at page 611 followed in *Bombay Gas Company Ltd. v. Hindustan Mercantile Bank Ltd.*, (1980) 50 Com Cases 202 (Cal); *Akola Electric Supply Co. Ltd., In Re*, (1962) 32 Com Cases 215 : AIR 1962 Bom 133; *Davco Products Ltd. v. Rameswarlal Sadhani*, AIR 1954 Cal 195 (There was no reasonable chance of the company starting business again). But not where the substratum had not completely gone and the majority shareholders opposed. See *Mohanlal Dhanjibhai Mehta v. Chunilal B. Mehta*, (1962) 32 Com Cases 970 : AIR 1962 Guj 269; *Janbazar Manna Estates Ltd., Re*, (1931) 1 Com Cases 243 : AIR 1931 Cal 692; *George v. Athimattam Rubber Co. Ltd.*, (1965) 35 Com Cases 17 (Ker).

12. So far as other crucial and pivotal factors required significant consideration is with regard to the substratum of a company that seems to have gone when (a) the subject-matter of the company is disappeared, or (b) the object for which it was incorporated has substantially collapsed, or (c) it is impossible to carry on the business

of the company except at a loss and there is no reasonable hope of trading at a profit. But, where a company sold its undertaking, if there is still some business which it can carry on, it cannot be said that the substratum had disappeared. **Ref: George v. Athimattam Rubber Co. Ltd., (1965) 35 Com Cases 17.** Where the company in question had totally disappeared with nobody attending its office and high officials were absconding and the company's office being under lock, no one received notice and even to newspaper announcement there was no response from any quarter, naturally it was a fit case for an order of winding up. **Ref: Bhartiya Gramin Vikas Vitta Nigam Ltd. Re, (2000) 27 SCL 249 (All).**

13. As a result of above discussion, it is ordered that the respondent company be wound up. Official Assignee is appointed Official Liquidator. The company shall submit the statement of affairs to the Official Liquidator in accordance with law. The Official Liquidator after complying with all requisite formalities shall submit the report.

Karachi:
Dated.31.5.2018

Judge