

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Suit No.15 of 1975

| Date | Order with Signature of Judge |
|-----------------|--|
| | Present: Mr. Justice Nazar Akbar |
| Plaintiff | : Pakistan Industrial Development Corporation (Pvt.) Ltd., through Mr. Anwar Muhammad Siddiqui, Advocate. |
| Defendant No.1 | : Bebojee Services Limited. |
| Defendant No.2 | : Lt. General (Retd) M. Habibullah Khan Khattak (since deceased) through LRs. Begum Tehmina Habibullah and others. |
| Defendant No.3 | : Chaudhry Mohammad Nawaz, Deputy Managing Director, Bebojee Services Ltd. |
| Defendant No.4 | : Mushtaq Ahmed Khan, Finance Manager Bebojee Services Ltd. |
| Defendant No.5 | : Bannu Woolen Mills Ltd., Bannu (NWFP). |
| Defendant No.6 | : Jannana-de-Molucho Textile Mills Ltd. All through Ms. Naheed Naz, Advocate. |
| Defendant No.7 | : Sutlej Cotton Mills Ltd. Okara. (Nemo). |
| Defendant No.8 | : Sutlej Textile Mills Ltd. Now known as Ghandhara Corporation Ltd. Defendants No.1 to 6 and 8 Through Ms. Naheed Naz, Advocate. |
| Defendant No.9 | : The Federal Government. (Nemo). |
| Defendant No.10 | : The Custodian of Enemy Property. (Nemo). |
| Defendant No.11 | : National Police Foundation, Islamabad. (Nemo). |
| Date of hearing | : 30.11.2017, 14.12.2017, 18.12.2017, and 22.12.2017. |
| Decided on | : 05.03.2018 |

JUDGMENT

NAZAR AKBAR, J. The Plaintiff had filed this suit on **11.1.1975** against the defendants for Recovery for Rs.89,60,406.00 -.

2. Brief facts of the case are that the plaintiff, a statutory corporation was established under the West Pakistan Industrial Development Corporation Ordinance, 1962 and subsequently converted into PIDC (Pvt.) Ltd. under Companies Ordinance, 1984. The plaintiff alleged to have owned and possessed an industrial concern known as Bannu Sugar Mills, (hereinafter **BSM**) at Serai Naurang, District Bannu, NWFP and the plaintiff wanted to sale it by public auction through advertisement in newspaper. However, defendant No.1 showed his interest in it and after his final offer was accepted by the plaintiff, an agreement of sale between the plaintiff and defendant No.1 was executed at Karachi on **27.10.1971**. The total sale consideration was **Rs.333.23 lacs**. Defendant No.1 paid only **Rs.14.03 lacs** to the plaintiff at Karachi and on **01.11.1971** took over and assumed all the existing liabilities of the Mills including a loan of **Rs.235.00 lacs** of Habib Bank Limited, Karachi and also a loan of **Rs.39.41 lacs** advanced by Kreditanstalt Fur Wioderanthan West Germany (K.F.W) as well as their current liabilities including the leave, salary, gratuity payable to the staff amounting to **Rs.44.79 lac**. Defendant No.1 has also agreed to convert **BSM** into public limited company by offering at least 20% share to the local sugar cane growers. The **BSM** remained in the control and management of defendant Nos.1 to 4 for a period of about 5 months and during this period, they misapplied the funds of **BSM** and utilized them for rehabilitating their other Associated Companies. Several amounts were transferred by way of a loan and advance from the accounts of BSM to the accounts of Defendants No.1, 5, 6, 7 and 8 under the authorization to the Banks on instructions issued by Defendants No.4 in his capacity as Finance Manager of Defendant No.1 purporting to act on the instructions of Defendants No.2 and 3.

It was averred that on revocation of the sale and the reversion of **BSM** to the plaintiff, the defendants have become jointly and severally liable to refund/credit back the said amounts which they unlawfully transferred to their other companies together with interest. The Sutlej Cotton Mills Ltd., Okara (defendant No.7) was declared as the Enemy Property after the 1965 Indo-Pakistan war. The custodian of Enemy Property invited tenders for the sale of the Sutlej Cotton Mills Ltd., and it was also sold to defendant No.1 and its control and management was taken over by them on **29.12.1970**. Defendant No.1 renamed the Mills as Sutlej Textile Mills Ltd., Okara. Thereafter the Chief Martial Law Administrator issued Martial Law Regulations No.119 and the Government of Pakistan under **sub-paragraph (1) of paragraph 3** of the said M.L.R through the Ministry of Communications issued Notification dated **6.4.1972** and revoked the sale of the Sutlej Cotton Mills. The said Mill was thereafter transferred by the Government of Pakistan and later on to the Government of Punjab by Notification issued by the Government of Pakistan in the Ministry of Political Affairs & Communications dated **19.2.1973** and control of the Sutlej Mills was taken over by the Punjab Industrial Development Board.

3. Defendant No.8 filed writ petition No.607 of 1972 in the Lahore High Court, Lahore against the Federation of Pakistan and others which was subsequently withdrawn on receipt of **Rs.2,17,24, 429/-** from the Government as compensation for having taken over the Sutlej Textile Mills Ltd., Okara. Thereafter the said Mill has gone into voluntary liquidation and Defendant No.2 was appointed as a Liquidator thereof. Defendant No.2 changed the name of the Sutlej Textile Mills Ltd., Okara to Ghandhara Corporation Ltd., while the liquidation proceedings of the Mills were pending. However,

defendants No.1, 2, 3, 4, 7 and 8 were jointly and severally liable to refund/credit back the amounts transferred from the accounts of **BSM** by way of a loan/advance to the account of Sutlej Textile Mills Ltd., Okara to the plaintiff alongwith interest at 12% per annum and cost thereon. However, instead of refunding the amounts to BSM, Defendant No.1 on **2.8.1974** in terms of paragraph **3(2) of MLR-124** filed its claim against revocation of Mills and admitted liability of an amount of **Rs.41,20,316/-** towards BSM. On plaintiff's enquiries, defendants No.6 and 8 in their written communications have also admitted the transfer of funds from the accounts of the **BSM** to their own accounts and promised to repay the same as and when they would be able to do so. It is alleged that in case the liability to the extent of **Rs.23,59,889.00** has since been taken over by the Federal Government and the Custodian of Enemy Property, of which the plaintiff is not aware, the plaintiff is entitled to this amount from defendants No.9 and 10. The plaintiff came to know that the custodial of Enemy Property for Pakistan has transferred Sutlej Cotton Mills, Okara to the National Police Foundation, Islamabad for administrating the said Mills under Notification No.108-H, G,6-3 dated **28.2.1976**. It was not within the knowledge of the plaintiff whether the said Mills have actually been sold to the National Police Foundation, Islamabad. In case the liability to the extent of **Rs.2,359,880/-** together with interest thereon has since been taken over by the National Police Foundation, Islamabad, of which the plaintiff has no knowledge, the plaintiff is entitled to this amount from defendant No.11. The Ministry of Production, Government of Pakistan in accordance with **paragraph 3(1) of MLR-124** constituted Compensation Committee. The said Committee on **8.6.1985** adjudged that M/s Bibojee Services Ltd., and its allied companies

were liable to pay to the plaintiff a sum of **Rs.27,48,811/-** on account of the drawings of funds during the period of its management. By the said Award, the compensation committee further adjudged that a sum of **Rs.17,11,663/-** is also payable to the plaintiff by Defendants No.7, 8, 9 and 10. Therefore, the plaintiff claimed a sum of **Rs.27,11,663/-** is jointly and severally payable by defendants No.1 to 6 and further sum of **Rs.17,11,663/-** is jointly and severally by defendants No.1 to 8 as the two amounts were transferred from BSM. However, it is pertinent to mention here that the plaintiff had initially filed the instant suit on **11.1.1975** for recovery of Rs.89,60,406.00 from different defendants and prayed for the following relief(s):-

- a) *That the suit be decreed in favour of the Plaintiff against the **Defendants Nos.1 to 4** jointly and/or severally for **Rs.44,82,070/-** with costs and interest to run at 12% from the date of the institution of the suit till its realization.*
- b) *That the suit be decreed in favour of the Plaintiff against the **Defendants Nos.1 to 5** jointly and/or severally for **Rs.4,44,405.00** with costs and interest at 12% per annum from date of institution of suit till its payment.*
- c) *That the suit be decreed in favour of the Plaintiff and against the **Defendants Nos.1, 2, 3, 4 and 6** jointly and/or severally for **Rs.16,74,042.00** with costs and interest at 12% per annum from the date of the institution of the suit till its payment;*
- d) *That the suit be further decreed in favour of the Plaintiff and against the **Defendants Nos.1,2,3,4,7 and 8** jointly and/or severally for **Rs.23,59,889.00** with costs and interest at 12% per annum from the date of institution of suit till payment thereof, and*
- e) *That this Hon'ble Court may grant any other/further/additional relief or reliefs that this Hon'ble Court may deem just, fit and proper in the circumstances of this case.*

4. On **18.3.1975** defendants No.1 to 6 and 8 filed their written statement wherein they admitted that defendant No.1 has purchased Bannu Sugar Mills from the plaintiff for a consideration of Rs.333.23 lacs by paying Rs.14.03 lacs in cash and taking over the liabilities of

Rsd.319.20 lacs comprising of the loan of Rs.235.00 lacs Habib Bank Ltd., loan of Rs.39.41 lacs of K.F.W and the current liabilities amounting to Rs.44.79 lacs and defendant No.1 took over the control and management of the Mills on **01.11.1971** under an agreement of sale dated **27.10.1971**. They denied the allegation of plaintiff that defendant No.4 in his capacity as Finance Manager of defendant No.1 transferred various amounts to the account of defendant Nos.1, 5, 6, 7 and 8 purporting to act on instructions of defendants No.2 and 3. The defendants averred that subsequent to the revocation of the sale, the assets and properties of Sutlej Textile Mills Ltd., the Enemy Property Management Board/ custodian of Enemy Property to whom it had been reverted continued to use the name of defendant No.8 till an objection was raised by defendant No.8 in the compensation committee in this regard and compensation was Awarded by the committee, and the defendants are not liable to any commitment that might have been made in name of defendant No.8 during that period.

5. After the written statement filed by defendants No.1 to 8, the plaintiff on **12.4.1975** filed an application for impleading defendants No.9 and 10, which was allowed and the plaintiff on **23.4.1975** filed amended plaint with almost identical prayers reproduced above except that scope of prayer **clause (d)** against defendants No.1 to 8 was extended to newly added defendant Nos.9 & 10. The newly added defendants No.9 and 10 on **13.9.1975** filed their written statement alleging therein that the suit is bad for non-joinder of the necessary/proper parties i.e Government of Punjab and the Punjab Industrial Development Board. It is averred that the liability, if any, will be that of the Government of Punjab to whom the Mills has been transferred.

6. The plaintiff filed another application under **Order 1 Rule 10(2) CPC** (CMA No.146/1979) for adding National Police Foundation, Islamabad as defendants No.11, which was also allowed on **13.1.1979** and, therefore, on being impleaded as defendant No.11. Defendant No.11/National Police Foundation also filed their written statement/comments on **15.8.1979** wherein they admitted that Sutlej Cotton Mills Ltd., Okara was declared as enemy property in 1965 during the Indo-Pakistan War. They also admitted that it was sold to defendant No.1 and its control and management was taken over by defendant No.1. Defendant No.11 also admitted that only the management of Sutlej Cotton Mills Ltd., Okara has been entrusted to them but said Mill has not been transferred to defendant No.11, therefore, the plaintiff is not entitled to any amount from defendant No.11.

7. The court from pleadings of the parties on **11.4.1982** had adopted the issues proposed by defendants No.1,2, 6 & 8 which are reproduced below:-

1. *Whether the suit is maintainable?*
2. *Whether the defendants 1 to 4 mis-applied the funds of the Mills and utilized them for rehabilitating any of the associate companies?*
3. *Whether the defendant No.4 in his capacity as Finance Manager of defendant No.1 transferred any amount to the accounts of the defendants Nos.1, 5, 6, 7 & 8 acting under instructions of defendant No.2 and 3?*
4. *Whether defendants No.1 admitted their liability to pay Rs.41,20,516.00?*
5. *Whether after revocation of sale and reversion of Sugar Mills to the plaintiffs, defendants or any one of them became jointly and severally liable to refund/credit the sum of Rs.89,60,406/- as claimed in annexure 'B' to the plaint?*
6. *Whether the claim for recovery of Rs.64,97,195/- with interest is tenable?*

7. *Whether defendant No.1 purchased Sutlej Cotton Mills or its assets and properties alone?*
8. *Whether any amount has been paid back by Sutlej Cotton Mills Ltd?*
9. *Whether liability of Rs.17,11,663/- was taken over by the Enemy Property Management Board and/or Sutlej Cotton Mills Ltd?*
10. *Whether the amount of Rs.17,11,663/- is liable to be adjusted against the claim of defendant No.1?*
11. *Whether defendant No.2 mis-applied the funds of Sutlej Cotton Mills or he was motivated to defeat the claim of the plaintiff?*
12. *Whether defendant No.6 and 8 admitted the transfer of funds from accounts of the Mills to their own account and also promised to pay the same?*
13. *Whether the plaintiffs are entitled to the amounts claimed or any part thereof?*
14. *What should the decree be and against whom?*

8. Then subsequently on **10.4.1988** the plaintiff sought comprehensive amendment in the plaint by filing an application under **Order VI Rule 17 CPC** (CMA No.2260/1988). In the amended plaint the plaintiff has reduced its various claims against different defendants from **Rs.89,60,406.00** to **Rs.44,60,474.00** and thereby even the initial prayers reproduced in para-3 above were redrafted. In the amended plaint filed on **10.4.1991**, the plaintiffs has finally prayed for the following reliefs:-

- a) *That the suit be decreed in favour of the plaintiff against the **defendants Nos.1 to 6** jointly and/or severally for **Rs.27,48,811/-** with cost and interest at 12% per annum from the date of institution of suit till payment thereof.*
- b) *That the suit be further decreed in favour of the plaintiff against the **Defendants Nos.1 to 4** and **7 to 11** jointly and/ or severally for **Rs.17,11,663/-** with cost and interest at 12% per annum form date of institution of suit till payment thereof.*
- c) *That this Hon'ble Court may grant any other/further/ additional relief or reliefs that this Hon'ble Court may deem just, fit and proper in the circumstances of the case.*

Defendant No.1 filed amended written statement on **9.9.1991** and it was adopted by defendant No.1 to 6 and 8 on the same day. However, after the last amendment in the plaint and the amended written statement, no fresh issues were filed except the issue of maintainability was again proposed by the defendants.

9. In view of the fact that the plaintiff in amendment plaint has reduced his claim to only **Rs.44,60,474.00**, all the issues adopted on **11.4.1982** prior to amendment become redundant I, therefore, in exercise of the powers under **Order XIV Rule 5 CPC**, strike out all the issues and propose to decide the controversy between the plaintiff and the defendants on the following issues:-

- i. Whether the suit is maintainable?*
- ii. Whether in terms of Award dated **8.6.1985** defendants Nos.1 to 6 jointly and/or severally entitle to pay a sum of **Rs.27,48,811/-** with cost and interest at 12% per annum to the plaintiff from the date of institution of suit till payment thereof?*
- iii. Whether the amount of **Rs.17,11,663/-** as liability of defendant No.1 stand adjusted in compensation awarded in favour of defendant No.1 on revocation of sale of Sutlej Sugar Mills against defendants No.9 to 11, if yes, its effect?*
- iv. Whether plaintiff is entitled to recover a sum of **Rs.17,11,663/-** from defendants No.7 to 11 jointly and severally?*
- v. Whether the plaintiffs are entitled to the amounts claimed or any part thereof?*
- vi. What should the decree be and against whom?*

10. The plaintiff has examined one Muhammad Saeed, Manager (Cost & Budget) in Finance and Accounts Department of Plaintiff. He filed various documents in support of plaintiff's claim. He was cross examined by defence counsel and learned counsel for the plaintiffs closed their side for evidence. Defendant No.1 examined one Mushtaq

Ahmed, Group Director of Companies of defendant No.1. The plaintiffs' counsel cross examined him and their counsel closed the side of defendants for evidence. Defendants No.9 and 10 led evidence through one Maqbool Ahtar, Deputy Custodian of defendant No.10. He was cross examined by counsel for the plaintiff and defendants No.1 to 8.

11. I have heard learned counsel for the parties at length and perused the record. My findings on the above issues with reasons thereon are as under:-

Issue No.I

12. The counsel for the plaintiff has claimed that the compensation committee constituted under **paragraph 3(1)** of MLR No.124 but the said MLR had no mechanism for payment of compensation determined by the Committee and, therefore, only remedy available for the plaintiff was to file suit for recovery of the amount determined by the Committee as due and payable by the defendants to the plaintiff. Therefore, the suit was the only remedy. He further contended that the suit was filed for the recovery of misappropriation of funds by defendant No.1 through defendants No.2 to 4 and the said defendants also own defendants No.7 and 8. The claim of the plaintiff is that defendants No.2 to 4 who own defendant No.1 has purchased the Bannu Sugar Mills as well as Sutlej Textile Mills and the assets/accounts of M/S Bannu Sugar Mills were utilized by defendants No.2 to 4 in their sister concerns namely Defendants No.1, 5, 6 and 7. All this mismanagement of funds of Bannu Sugar Mills took place within a period of five months i.e from 01.11.1971 to 13.4.1972 when the said Bannu Sugar Mills was under the management of defendants No.1 to 4. The sale of Bannu Sugar Mills

was revoked under paragraphs **2(1)(2)** of MLR-124 and a Committee was constituted to determine compensation for the person from whom on revocation of sale the Mill is reverted to the plaintiff.

Paragraph **3(1) and (2)** of the said **MLR-124** are reproduced below:-

3.-(1) The person in whom any property in relation to which a notification under sub-paragraph (1) of paragraph (2) is issued vested immediately before the issue of such notification shall be entitled to such compensation as may be determined by a Committee consisting of such person and a representative each of the Ministry of Finance, the Industries Division and the transferor.

(2) In determining the compensation payable to any person under sub-paragraph (1), the Committee shall have regard to-

(a) the price paid by such person as the cost of the property to the transferor;

(b) the expenditure incurred by such person or, as the case may be, by such person and the previous owner of the property for making improvements in the property;

(c) the income derived by such person or, as the case may be, by such person and the previous owner of the property;

(d) the amount, if any, payable by such person to the transferor towards the cost of the property; and

(e) the amount, if any, payable by such person to any other person in relation to the property.

Learned counsel for the plaintiff has further contended that identical was the situation in the case of Sutlej Cotton Mills as the defendant No.1 has also purchased the Sutlej Cotton Mills from the custodian of Enemy Properties and took over its possession on **29.12.1970**. The sale of Sutlej Cotton Mills was also revoked through another Martial Law Regulation **No.119** also containing Identical paragraph from MLR-124 reproduced above as paragraph **No.4(1) in MLR-119**. In terms of the above paragraphs a committee was constituted on the request of defendant No.1 and the said committee passed a

consolidated Award of compensation covering the claim of losses sustained by Defendant No.1 on revocation of M/S Sutlej Cotton Mills and by Bannu Sugar Mills on its mismanagement by defendant No.1. He further contended that the suit was filed prior to the Award by the Compensation Committee under Martial Law Regulations, therefore, after the Award, in the amended plaint the plaintiff has sought relief only on the basis of Award.

13. The counsel for the defendants No.1 to 8 has vehemently contended that the suit was not maintainable since the Award has not been made Rule of the Court and also that according to Martial Law Regulation No.124, paragraph No.7 no proceedings can be initiated in civil Court. It has also been contended by the defendants' counsel that the suit also should have been filed through a resolution of the Board of Directors of the plaintiff since the plaintiff is a private limited company incorporated under the Companies Ordinance, 1984. The two contentions raised by the counsel for the defendants challenging maintainability of the suit appears to be misconceived, since the Award given by the compensation committee constituted under MLR No.119 and MLR No.124. The Award given by the compensation committee was not an Award under Arbitration Act, 1940 and, therefore, it was not required to be placed in Court by the compensation committee. In fact the compensation committee was not an Arbitration Panel appointed under the Arbitration Act, 1940 to settle a dispute between the two contestants. The Committee under the MLR was required to determine the claim lodged by defendant No.1 as consequence of revocation of sale. The plaintiffs in view of the barring provision of **paragraph-7** of MLR No.124 have not challenged the veracity and correctness of the Award, rather they have approached this Court only for the execution of the Award/findings of

the Committee. The execution of the findings of the compensation committee is not provided under MLR-124 or 129 and, therefore, they have rightly approached this Court. The other contention of the defendants counsel that the suit should have been filed through the authorized officer in terms of Companies Ordinance, 1984 also appears to be misconceived. In the given facts of the case the suit was filed in 1975 when the plaintiff was not registered under the Companies Act, 1913 which has subsequently been replaced by the Companies Ordinance, 1984. In fact the plaintiff at the time of filing of this suit was statutory body incorporated under the Ordinance XXXVIII of 1962 and the provisions of Companies Ordinance were not applicable to the plaintiff at the relevant time. However, witness of the plaintiff namely Mr. Mehmood Saeed (PW-1) was duly authorized and produced original of attorney as Ex.7/1. Therefore, the issue No.I is decided in the affirmative.

Issues No.II, III and IV

14. The plaintiff has filed suit on **11.01.1975** but the dispute between plaintiff and the defendant was the same, which was subject matter of the proceedings before the Compensation Committee constituted by the Central Government in terms of MLR No.124. The plaintiff's claim is in fact transfer of fund from Bannu Sugar Mills (**BSM**) to the sister concern of Bibojee Services Ltd. (**BSL**) during the period of 5 months and 12 days when it was under the control of defendants No.1 to 6 which ought to have been refunded to the plaintiff on reversion of **BSM** to the plaintiff. The Award dated **8.6.1985** also confirmed in para-6 that (**suit No.15 of 1975**) the instant suit has already been pending during the proceedings before the Committee. The Compensation Committee in para-5 has referred

to the claim of Bannu Sugar Mills (**BSM**) and Bibojee Services Ltd. (**BSL**). Para-5 of Award is reproduced below:-

5. *The Committee met on **22nd December, 1973**, 12th February, 1974 and 18th February, 1974 wherein it was decided that WPIDC would make available relevant records and other documents of Bannu Sugar Mills to Bibojee Services Limited for enabling the latter to submit their formal claim. Bibojee Services Limited submitted their claim amounting to Rs.84,31,774/- vide letter No.BSL/LHRBSM dated August 2, 1974. While this claim was being scrutinized by the Committee, **Bibojee Services Limited presented their revised claim for Rs.88,84,201 vide letter No.BSL/LHR/BSM/285-1 dated 2.6.1976 on the basis of position of assets and liabilities as on 31.10.1971 (the date on which the mill was handed over to BSL) and on 12.4.1972 (the date the mill was reverted back to PIDC). PIDC furnished comments on the claim of BSL in September 1974 and objected to various items of claim on financial principles. Besides, PIDC stated that according to audited accounts an amount of Rs.66,15,205/- was due from BSL which they transferred from BSM's account to other companies managed by them while BSM was under their control.***

The pleadings of the parties have confirmed that either side has relied on the Award Ex.5/4 to assert their claim and/or deny the claim of other side. The plaintiff's initial claim was a sum of **Rs.89,69,406/-** and after the Award by the Compensation Committee under MLR-124 the plaintiff reduced it to only **Rs.44,60,477/-**. The learned counsel has repeatedly referred to the figures of **Rs.27,48,811/-** and **17,11,663/-** shown in **item No.(ii) at page-5** of the Award and the same are reproduced as follows:-

| | <i>Net worth as on 31.10.1971</i> | <i>Net worth as on 12.4.1972</i> |
|---|--|---|
| (i) ----- ----- | ----- ----- | ----- ----- |
| ii) <u>Current Assets</u> ----- ----- | ----- ----- | ----- ----- |

| | | |
|---|-------------------------|---------------------------|
| ----- | ----- | ----- |
| ----- | ----- | ----- |
| ----- | ----- | ----- |
| Due from BSL & its Associate companies | 41,20,517 | 27,48,811 |
| |) |) |
| Less (Sugar Dealers Account to be settled By BSL) | 13,71,708) | |
| Due from Sutlej Textile Mills – (subject to settlement of the issues as mentioned in para-7 above. | | 17,11,663 |
| | <u>85,38,652</u> | <u>1,52,14,747</u> |

The figures quoted above have been discussed in para-7 of Ex-5/4 and, therefore, para-7 of the Award is also reproduced below for convenience and to understand implications of figures mentioned above and in the Award.

7. *The aforementioned revised claim of Bibojee Services Limited and counter claim of PIDC are scrutinized by the Committee in a series of meetings. Against the counter claim of PIDC amounting to Rs.66,15,205/- **Bibojee Services Limited accepted an amount of Rs.41,20,517/- being due to Bannu Sugar Mills from Bibojee Services Ltd itself and associate companies** except the dues owed by Sutlej Textile Mills. Bibojee Services Limited maintained that an amount of Rs.17,11,663 had been deducted by the Government from the compensation award given to them in case of Sutlej Textile Mills towards the dues of BSM and as such this amount was no more owed by Bibojee Services Ltd. In this context it may pointed out that Sutlej Textile Mills was also sold by the Govt. to Bibojee Service Limited. Later, the sale was revoked under MLR 119 and management of Sutlej Textile Mill vested in Custodian of Enemy Property. The matter was accordingly referred to the Custodian Enemy Property who confirmed that an amount of Rs.17,11,663 had been deducted from the net award on account of dues of BSM outstanding against Sutlej Textile Mill but could not be credited to Bannu Sugar Mills as Sutlej Textile Mills had to receive an amount of Rs.22,74,774 from Janana De Malucho (JDM) another unit of Bibojee Services Limited. The Custodian's Department maintained that this amount may be recovered from the compensation award in respect of Bannu Sugar Mills and the amount of*

*Rs.17,11,663 adjusted towards the liability owed by Sutlej Textile Mills while the balance of Rs.5,63,111 (Rs.22,74,774-17,11,663) remitted to the Custodian's Department. The Committee took note of this contention and was of the view that the financial problems relating to Janana De Malucho and Custodian's Department did not fall within its purview and should be settled by the latter directly and **the amount relating to advance made by Bannu Sugar Mills already recovered from Sutlej Textile Mills compensation should, in the opinion of the Committee, be paid to Bannu Sugar Mills.** (Emphasis is provided)*

15. Learned counsel for defendants No.1 to 6 has argued that Bannu Sugar Mills was established by WPIDC sometime in 1965-66. Sugar machinery was imported from Germany out of foreign currency loan sanctioned by KFW, a German financing agency and the local currency loan was given by Habib Bank Ltd. The plaintiff could not run the project successfully and within 4 years it incurred huge losses of Rs.3.33 crores. Its net worth was reduced to **Rs.12.44 lacs** only. In order to avoid further recurring losses, the plaintiff stopped its operations in 1971 and later on sold it through public auction to the highest bidder i.e defendant No.1 who paid **Rs.14.03 lacs** in cash and assumed the entire liability of the plaintiff relating to the Mills. The Bannu Sugar Mills remained with defendant No.1 for a period of 5 months and 12 days. In this short period, huge amount was invested to make the Mill operational. An amount of Rs.51 lacs was invested by associate companies of defendant No.1 to make it profitable. Misapplication of the funds would arise only when **BSM** had any cash at the time of sale. The counsel further contended that the Award does not hold that defendants No.1 to 6 were involved in misapplication of funds of **BSM**. Learned counsel for defendants contended that the amount of **Rs.17,11,663/-** is not liable to be adjusted against defendant No.1 as an amount of **Rs.17,11,663/-** has already been deducted from the compensation payable and due

to defendant No.1 on revocation of Sutlej Cotton Mills (defendant No.7). An amount **Rs.17,11,663/-** was withheld by Custodian (defendant No.10) as admitted in the Award. She lastly argued that the plaintiffs are not entitled to claim any amount from any of the defendants No.1 to 6 and 8 either on the basis of the original claim or on the amended plaint as per Award since plaintiff has not proved the claim against defendant No.1.

16. Learned counsel for both the sides have relied on para-7 of the Award (reproduced in para-15 above) under MLR-124. The defendants have not claimed that an amount of **Rs.41,20,316/-** was adjustable against any claim or dues of Bibojee Services Limited (**BSL**) and its associates to Bannu Sugar Mills. However, it is clear from the Award that out of said amount payable by defendant No.1, an amount of **Rs.13,71,708/-** was payable to sugarcane dealers. The plaintiff in his evidence has produced the Award as Ex-5/4 and referred to item No.ii at page-5 of the Award wherein a sum of **Rs.41,20,517** were determined as dues from **BSL** (defendant No.1) and its associate companies. A suggestion contrary to this effect was clearly answered by the plaintiff's witness in cross-examination as follows:-

*“It is admitted that a sum of **Rs.41,20,517** was due from Bibojee Services Ltd. (BSL) and associate companies to the plaintiff corporation and that defendant No.1 was directly liable to pay **Rs.13,71,706/-** to the sugar dealers and settle the same with them. I have said so because it is mentioned in the award.”*

Therefore, in view of admission and clear language of Award only a sum of **Rs.27,48,811/-** was liability of defendant No.1 towards the plaintiff. The perusal of evidence and scrutiny of Award (Ex-5/4) reveals that plaintiff's claim appears to be consistent with the

evidence that certain amounts were transferred as loan or otherwise from the account of **BSM** to defendant No.1 (**BSL**) and its associate companies and the compensation committee under **MLR-124** after hearing both the plaintiff and defendants No.1, 2, 4 to 6 & 8 has confirmed it in the Award. The defendant's witness in cross-examination has admitted it in his evidence and I quote relevant evidence of defendant No.1, 2, 4 to 6 and 8 through their sole witness namely Mushtaq Ahmed Khan as below:-

*Q. I suggest it to you from **page No.5** of the award that the words "due from Bibojee Services Limited and its associate companies" was the amount of loan advanced by defendant No.1 to associate company.*

Ans. Suggestion is correct.

*Q. I suggest it to you that during this period of 5 months and 12 days loans were advanced to the associate companies by defendant No.1 **from the account of Bannu Sugar Mill.***

Ans. No fixed loan was given and, if any, the same was the result of normal transactions of receipts and payments between the group companies.

*Q: I put it to you that the amount shown at **page-5 of the Award Ex.5/4** with the words, "Less (Sugar Dealers account to be settled by BLS)" **was the liability of defendant No.1?***

Ans: This liability was transferred by the Compensation Committee to be settled by defendant No.1 on receipt of balance amount of Compensation of Rs.12,88,453/-.

Q: I put it to you that objections were filed by the PIDC and no counter claim was filed?

Ans: This suggestion is incorrect because they had filed counter claim in the form of Objections.

Q: Can you produce any document regarding this assertion?

*Ans: Yes, I refer Ex.5/4 i.e. the Award's page-2 and I rely upon its last paragraph and I also rely upon **paragraph-7 of page 3** of it in support of my assertion.*

Note: Court examined Ex.5/4 where the words, "comments" as well as the words "counter claim" have been used. The actual import of these words can be argued by the learned advocates at the time of arguments.

However, an attempt has been made by the witness to wrangle out by explaining that the liability was "transferred" and it was "to be settled on receipt of balance compensation of Rs.12,88,453/-". The burden was on the defendant but no explanation was offered that what actually transpired later on. Was it settled or not? It is pertinent to mention here that defendant No.1 has initiated the proceedings before the Compensation Committee after revocation of Bannu Sugar Mills under **MLR-124** which culminated in the Award dated **8.6.1985** and it has nothing to do with the claim of defendant No.1 arising out of any settlement with the Federation on revocation of Sutlej Textile Mills, Okara through **MLR No.119** and the Award dated **7.7.1973**. There are two different Awards, one under MLR No.119 and the other under MLR No.124. The Award under **MLR No.119** was given on **7.7.1973** whereas almost after 12 years Award under **MLR-124** was given on **8.6.1985**. The determination of compensation and its consequence in the Award dated **7.7.1973** in respect of Sutlej Textile Mills, Okara has nothing to do with the claim of plaintiff settled in the Award dated **8.6.1985** in respect of Bannu Sugar Mills for the simple reason that Sutlej Textile Mills, Okara even prior to its initial sale to defendant No.1 and even after its revocation under MLR-119 was not owned or controlled by the plaintiff (PIDC). Therefore, the contention of defendant No.1 that the liability of Rs.12,88,453/- was "transferred" or it was to be settled afterward

and another amount of **Rs.17,11,663/-** retained by the Federation in **1973** from compensation payable to defendant No.1 on revocation of Sutlej Textile Mills has nothing to do with the liability determined in **1985** under **MLR-124** on revocation of Bannu Sugar Mills. These contentions of learned counsel for defendants even otherwise do not find support from the contents of Award. The Compensation Committee has not declared that the amount of **Rs.17,11,663/-** is adjustable against any other dues. The Compensation Committee has only expressed its opinion in the last 4 lines of paragraph No.7 of the Award which I again reproduce below:-

-----the amount relating to advance made by Bannu Sugar Mills already recovered from Sutlej Textile Mills compensation should, **in the opinion of the Committee, be paid to Bannu Sugar Mills.**

This is not finding of the Compensation Committee that an amount of **Rs.17,11,663/-** payable to the plaintiff is adjustable or it is to be paid by any other defendant. However, it is clear from the Award that it was liability of defendant No.1. It is pertinent to mention here that even today, Sutlej Textile Mills with its new name Ghandhara Corporation Ltd. is one of the sister concern of defendant No.1 under the management of defendants No.2 to 4. It has been admitted by the witness of defendants No.1, 2, 4 to 6 and 8 in his cross-examination as follows:-

*It is correct that defendant No.1 purchased the properties of defendant No.7 in December 1970 from the Custodian of Enemy Properties and it was renamed as Sutlej Textile Mills under an agreement. Under M.L.R. 119/79 the sale was revoked. The Federal Government paid compensation to Sutlej Textile Mills. **The said Sutlej Textile Mills was renamed as Ghandhara Corporation Limited for liquidation purpose. Defendant No.2 was appointed as Liquidator. I have no knowledge that to whom the Sutlej Textile Mills Ltd., was transferred.***

It is also an admitted position from the record that defendant No.2 namely **Lt. Gen. (Retd.) M. Habibullah Khan Khattak** who was also Chairman and Managing Director of defendant No.1 was the owner of Sutlej Textile Mills since December, 1970 when it was initially purchased by defendant No.1. Later on, after its revocation and settlement of compensation, again the same defendant No.2 namely **Lt. Gen. (Retd.) M. Habibullah Khan Khattak** took over control of Sutlej Textile Mills, as **Liquidator** and converted it into Ghandhara Corporation Ltd. Defendant No.4 himself in the capacity of Group Director appeared as witness on behalf of six defendants namely Bibojee Services Ltd. (defendant No.1), Lt. Gen. (Retd.) M. Habibullah Khan Khattak (defendant No.2), himself (defendant No.4), Bannu Woolen Mills Ltd. (defendant No.5), Jannana-de-Moluchho Textile Mills Ltd. (defendant No.6) and Ghandhara Corporation Ltd. (defendant No.8) and he has very innocently stated that he has no knowledge to whom the said Sutlej Textile Mills Ltd. was transferred. The witness forgot that right from day one he himself was defendant No.4 and in the title of amended plaintiff defendant No.8 was described as Ghandhara Corporation Ltd. and this fact has not been disputed by the contesting defendants in their amended written statement to the plaintiff. The other defendants have not filed any amended written statement nor denied that Ghandhara Corporation Ltd. is not the same old Sutlej Textile Mills. Defendants No.1, 2, 4 to 6 and 8 were fully aware of the fact that nothing is due and payable to them under the Award passed in terms of **MLR-124** and that is why they have not raised any counter claim in their written statement nor in reply to the objection/claim raised by plaintiff before the Compensation Committee during the proceeding under MLR No.124. In cross-

examination a question was categorically put to the witness of the defendants to this effect who conceded and replied as follows:-

Defendant No.1 did not file any suit for recovery of amount shown in the award.

If at all the defendants were entitled to any compensation under Award dated **7.7.1973**, it cannot be adjusted after 12 years in a subsequent Award dated **8.6.1985** on different proposition and under different MLR. Even otherwise, all the defendants are jointly and severally liable. Issues No.II, III and IV are decided accordingly.

Issue No.V and VI

17. In view of the above discussion on issues No.II, III and IV, the plaintiff is entitled only to an amount of **Rs.27,48,811/-** from defendants No.1, 2, 4 to 6 and 8. The plaintiff's suit is partly decreed for recovery of a sum of **Rs.27,48,811/-** only with simple markup at the rate of 10% per annum from the date of Award (**8.6.1985**) against defendants No.1, 2, 4 to 6 and 8 jointly and severally till the date of realization.

JUDGE

Karachi,
Dated: 05.03.2018

Ayaz Gul/PA