

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**J.C.M No.15 of 2000**

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DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For Arguments on Official Assignee Reference No.483/2008.
2. For Arguments on Official Assignee Reference No.485/2008.
3. For hearing of Official Assignee Reference No.693/2015.
4. For Arguments on Official Assignee Reference No.335/2006.
5. For arguments on CMA No.276/2013.
6. For arguments on Commissioner's Report dated 23.01.2010.
7. For hearing of Official Assignee Reference No.709/2016.
8. For hearing of Official Assignee Reference No.725/2017.
9. For Order of Official Assignee Reference No.735/2018.
10. For order on CMA No.213/2018 (U/S 151 CPC)
11. For Order on Official Assignee Reference No.746/2018.
12. For hearing of Official Assignee Reference No.747/2018.
13. For hearing of Official Assignee Reference No.754/2018.
14. For hearing of CMA No. 364/18 (U/S 151 CPC)
15. For Order of CMA No. 33 of 2019 (U/S 151 CPC)
16. For hearing of CMA No. 82/19 (U/S 151 CPC)
17. For hearing of CMA No. 83/19 (U/S 5 of L.A. R/w 151)
18. For Order on Official Assignee Reference No.762/19.
19. For hearing of Official Assignee Reference No.767/19.
20. For Orders on Official Assignee Reference No.769/19.
21. For Orders on Official Assignee Reference No.770/19.
22. For Orders on Official Assignee Reference No.771/2019.
23. For hearing of CMA No. 259/2019 (U/S 151 CPC)
24. For hearing of CMA No.312/2019.

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**12.12.2019.**

Dr. Ch. Waseem Iqbal, Official Assignee/Official Liquidator.  
Mr. Mehmood Tahir Chaudhry for Applicant in CMA No. 312/2019.  
Mr. Zameer Ahmed Siddiqui, Advocate for Applicant/Claimant.  
Mr. Ali Ahmed Turabi, Advocate for Applicant in CMA No.259/2019.  
Ms. Shaheena Zia, Applicant in CMA No. 33/2019.

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**(CMA No.33/2019)**

15. Applicant Ms. Shahina Zia, present in Court, is directed to supply copy of this application to the learned Official Liquidator, who shall file his response.

**(Reference No.762/2019)**

18. Learned Official Liquidator does not press this Reference, which is accordingly dismissed.

**(Reference No.767/2019)**

19. Learned Official Liquidator submits that this Reference already stands disposed of vide Order dated 11.10.2019. Office is directed not to list this Reference.

**(Reference No.769/2019)**

20. I have gone through the contents of this Reference, the same stands allowed as per Para-3 thereof. Reference stands disposed of.

**(CMA No. 259/2019)**

23. This application has been filed by the Applicant namely Abdul Samad, through which he has shown his interest in participating the bidding process in respect of some property conducted by the Official Liquidator. However, it appears that the bidding process already stands completed on 30.09.2019, whereas, according to the Applicant's own case, it came into his knowledge on 15.11.2019 that some auction has been conducted by the learned Official Liquidator. In the circumstances, the applicant has no case on merits, and therefore, this application stands dismissed.

**(CMA No.312/2019)**

24. This is an application filed by M/s. Bentonite (Pakistan) Limited under Section 310 of the Companies Act, 2017, seeking leave of this Court to proceed further in Suit No. 95/2000 pending before

the Learned Lahore High Court. Notice was ordered and the Official Liquidator of the Company under liquidation has filed his objections, wherein, it has been submitted that the application has been filed after delay of 17 years and is an attempt to delay and frustrate the execution proceedings initiated against the Applicant pursuant to passing of Judgment and Decree in Suit No. 44/2000 filed by the Company under liquidation. In response to these objections, learned Counsel for the Applicant submits that there is no limitation provided under Section 310 *ibid*, whereas, it is the case of the Applicant that the Chief Executive Officer was unwell and has now expired; hence the delay was beyond the control, whereas, the matter has been adjourned *sine-die* by the learned Lahore High Court for want of permission by the Company Judge. He has also argued that the delay was also for the reason that some settlement / negotiation was being entered into; hence, the Applicant may be permitted to pursue the Suit in question.

I have heard the learned Counsel for the Applicant as well as the Official Liquidator. It appears to be an admitted position that in the Suit of the Applicant on 01.07.2002, an application was filed on behalf of the Company under liquidation and the objection was raised to the effect that the Suit cannot proceed any further for want of permission by the Company Judge as an Official Liquidator has been appointed on 18.4.2001. The learned Lahore High Court was pleased to pass Order on 11.07.2002, which reads as under:-

“.....this suit cannot proceed without leave of the learned Company Judge passing the winding up order. Further-more, it will not be proper to keep the case pending to await grant of leave by the learned Company Judge. The suit alongwith all pending applications thereto are thus consigned to record. The plaintiff or any of the parties may seek revival of the suit on obtaining leave under Section 316 of the Companies Ordinance.....”

From perusal of the aforesaid order, it clearly reflects that the Applicant was asked to seek necessary permission under Section 316 of the then Companies Ordinance (now s.310 under the Companies Act, 2017), whereas, instant application has been filed on 06.12.2019. In the application in Para-5, it is stated that Chief Executive of the Company, who was pursuing the case before learned Lahore High Court has expired on 15.10.2017, which reflects that even in the last 15 years before his expiry, no effort whatsoever was made by the Applicant-Company to seek leave of the Court. Notwithstanding this, even the application has been made after two years of such expiry of the Chief Executive. Section 310 *ibid* provides *that when a winding up order has been made or a provisional manager has been appointed no Suit or other legal proceedings shall be proceeded with or commenced against the Company except by leave of the Court, and subject to such terms as the Court may impose.* This clearly reflects that it was incumbent upon the Applicant to either immediately approach this Court for seeking permission; or in the alternative abandon its case. The Applicant has chosen to abandon it; therefore, in the facts and circumstances of this case, such permission cannot be granted merely for the fact that this Court could do so.

It is also pertinent to note that the Applicant is a Private Limited Company, and therefore, it is not of much importance that the Chief Executive was unwell and could not pursue such an application. Though no limitation has been provided for making such application; however, it was well within the knowledge of the Applicant since 2002 and the delay, which has occurred, has not been satisfactorily responded to. In fact by conduct of the Applicant certain rights have been created in favor of the Company, as the

Applicant had abandoned its case insofar as the Company in liquidation is concerned. In fact the Suit of the Applicant was also against some other parties which are not under liquidation and for which no permission was needed from this Court; however, the Applicant for reasons best known, has not even proceeded against such other parties, which I believe could have been done, by either deleting the Company under liquidation or by withdrawing its claim against it.

Moreover, it is not that if limitation has not been provided, such an application must always be granted by the Court at any point of time without any lawful and a justifiable cause being shown to the Court. In fact even where a limitation period is provided; and a party seeks condonation of the delay, it has to explain such delay with sufficient cause, and only thereafter, if the Court is satisfied, such delay is condoned. In this matter, the delay is of more than 17 years, whereas, no justifiable cause has been shown to allow and entertain this application. The Court has to see the conduct of the Applicant and on perusal of the record, it appears that such effort has been made to frustrate the proceedings of execution initiated by the Company under liquidation, pursuant to passing of a judgment and decree, whereas, valuable rights have accrued in favor of the Company which should not be disturbed.

In view of such position, the application appears to be misconceived and is accordingly dismissed.

Official Assignee's References and Applications listed at Serial Nos. 1 to 14, 16, 17, 21 & 22 are adjourned.

J U D G E

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