

Order Sheet
IN THE HIGH COURT OF SINDH AT KARACHI
J. C. M. No. 19 of 2020

Date	Order with signature of Judge
------	-------------------------------

For hearing of main petition :

12.04.2022 :

Mr. Muhammad Shaiq Usmani, advocate for the petitioners.

Mr. Saad Abbasi, advocate for SECP.

.....

ORDER

NADEEM AKHTAR, J. – This petition has been filed by Mitsui O.S.K. Lines Pakistan (Pvt.) Limited (**‘the company’**) under Section 304 read with Section 301 of the Companies Act, 2017, for its winding-up. It is stated that the company is engaged in the business of shipping agents at Karachi since April 2007 and was a dedicated shipping agent handling containers of only its principal viz. Mitsui O.S.K. Lines, Japan. The company decided to hold a general meeting on 19.08.2020 at its registered office for passing a resolution to apply for its winding up. Accordingly, a general meeting of the company was held on the date and at the place mentioned above wherein it was resolved by three fourth members that the company be wound up by the Court. The special resolution to this effect has been filed in original along with the petition.

2. The grounds on which the winding-up of the company is sought are that (a) the company is no longer able to effectuate its main object viz. shipping and or handling of containers, and has virtually ceased to do business ; (b) the liabilities of the company have increased phenomenally and thus it can no longer carry on its business except at a loss ; (c) the business of the company cannot be carried on with any hope that such activity will provide a reasonable chance of commercial profit in the future ; (d) its existing and probable assets cannot meet its existing or prospective liabilities ; (e) the company has lost its substratum ; and, (f) it is just and equitable that the company be wound up.

3. In compliance of the order passed on 27.08.2021, the notice of the this petition was issued to the Securities and Exchange Commission of Pakistan (SECP), was published in two newspapers viz. Urdu daily ‘Jang’ on 12.09.2021 and English daily ‘The NEWS’ on 11.09.2021 and in the Gazette of Pakistan Part-VI on 29.09.2021. The notice was also affixed on the Court notice board. No objection whatsoever has been received from any quarter to

oppose this petition. Para-wise comments dated 21.09.2021 have been filed by the Additional Registrar of Companies, SECP, Karachi, wherein it is stated that the Court may pass such order in this matter as it may deem fit.

4. I have examined the Financial Statements of the company available on record for the years ended 30 June 2020 and 30 June 2021, wherein the Auditors have certified that proper books of accounts have been kept by the company as required by the Companies Act, 2017. The last Balance Sheet of the company for the year ended 30 June 2021 reflects Rs.16,258,306.00 towards the current liabilities of the company and Rs.7,764,630.00 as the loss incurred by the company after taxation. In the 'Notes to the Financial Statements for the year ended 30 June 2021', it is stated, *inter alia*, that MOL Japan intends to liquidate and wind-up the company ; the operations of the company are lying ceased with effect from 30.06.2018 ; the company is not considered to be a going concern ; and, it may not be able to realize its assets or discharge its liabilities in the normal course of business.

5. In *Hala Spinning Mills Ltd. V/S International Finance Corporation and another, 2002 SCMR 450*, it was held *inter alia* by the Hon'ble Supreme Court that on the basis of statement of account and balance sheet duly audited by the auditor of the company an opinion can be formed that the company is financially solvent to clear its liability or otherwise, as a consequence whereof the winding-up petition can be disposed of accordingly ; and, if it is impossible to carry on the business of the company except at loss and there is no reasonable hope that the object of trading at profit can be achieved and probable assets are insufficient to meet the existing liability, then winding-up of the company becomes inevitable. In *Messrs Ali Woolen Mills V/S Industrial Development Bank of Pakistan and 3 others, PLD 1990 Supreme Court 762*, the Hon'ble Supreme Court was pleased to hold, *inter alia*, that what the Court is required to see is whether the company is commercially insolvent, that is, whether it is unable to pay its current demand, though its assets when realized might exceed its liabilities.

6. In the present case, the Financial Statements of the company for the year ended 30 June 2021 show an amount of Rs.16,258,306.00 towards the current liabilities of the company, which amount is nearly equal to its authorized capital of Rs.18,000,000.00. The said statements also reflect a huge amount of Rs.7,764,630.00 as the loss incurred by the company after taxation which amount is about 43% of its authorized capital. Moreover, the main grounds urged by the petitioner-company for its winding up viz. it is no longer able to effectuate its main object of shipping and or handling of containers and has virtually ceased to do business ; in view of its huge liabilities

it can no longer carry on its business except at a loss ; its existing and probable assets cannot meet its existing or prospective liabilities ; and it has lost its substratum, have not been disputed by SECP. In fact, such grounds for the winding-up of the company are substantiated by the report of its Auditors wherein they have confirmed that the operations of the company are lying ceased with effect from 30.06.2018, it is not considered to be a going concern and it may not be able to realize its assets or discharge its liabilities in the normal course of business.

7. The above disclosure made by the company and its Auditors in the latest financial statements regarding the financial position of the company is indeed alarming. From the material available on record, I am convinced that since 30.06.2018 the company has not been able to carry out its main object for which it was incorporated ; in view of its huge liabilities it can no longer carry on its business except at a loss ; the company has ceased to be a going concern ; there appears to be no possibility of its revival ; its further existence or continuance would only multiply its liabilities to the detriment of its creditors and shareholders ; it has lost its substratum ; and, its winding-up has become inevitable. As observed above, no objection to this petition has been received from any quarter and SECP has also not disputed the grounds urged in the petition for winding-up of the company. Therefore, the statutory presumption as to the commercial insolvency of the company has been created.

8. In the above circumstances, the petition is allowed as prayed, and the petitioner-company is hereby ordered to be wound-up. The Official Assignee is appointed as the official liquidator, who in the first instance, shall take over complete charge and control of the affairs and assets of the company. He shall perform all such duties and functions and shall exercise all such powers as required under the law for the expeditious winding-up of the company.

J U D G E