

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

J.C.M No.01 of 2020

Johnson Controls Pakistan (Pvt) Ltd

Versus

Securities & Exchange Commission of Pakistan

Date of Hearing: 19.09.2022

Petitioner: Through Mr. Basil Nabi Malik, Advocate

Respondent: Through Mr. Saad-ur-Rasheed Abbasi,
Law Officer

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Through this JCM petitioner seeks winding-up of company under section 304 read with Section 301(A) of the Companies Act, 2017 with the following prayers:-

- a) *Winding up, liquidation, and dissolution of the petitioner.*
- b) *Appointment of the Official Liquidator/Provisional Manager of the Petitioner for the purpose of winding up of the Petitioner; and*
- c) *Repatriation of any funds available with the Petitioners, after payment of all liabilities during the winding-up process, to the shareholders of the petitioner.*

Any other order or relief that may be deemed fit and proper in the circumstances of the case may also kindly be granted.

2. Per learned counsel for the petitioner, the petitioner is a private limited company incorporated under the laws of Pakistan having its CUIN 0070675. Its registered office is located at The Forum, Suite 110, Khayaban-e-Jami, Clifton, Block 9, Karachi [currently defunct].

3. As per articles of Association of the company (Petitioner), at the time of its incorporation on 15.10.2009, petitioner`s authorized share capital was Rs.16,000,000 (Rupees sixteen Million only) divided into 79,584 Class A Preference shares of Rs.100/- each, 79,584 Class B Preference shares of Rs.100/- each, and 832 Ordinary shares of Rs. 83,000 divided into 832 shares of Rs.100/- per share. The paid up capital of the petitioner is Rs.83,200 divided into 832

shares of Rs.100/- per share. The shareholders of the petitioner, at that time, were as follows:

SHAREHOLDER'S NAME	NO OF SHARES
Johnson Controls Holding Company, Inc	415
Johnson Controls International, Inc	415
Saroop Ijaz	1
Mohammad Wajeehullah Khan Sumbal	1

4. Johnson Controls Holding Company, Inc. and Johnson Controls International, Inc., registered in Delaware, United States of America, are the parent companies and the main shareholders of the petitioner. Mr. Saroop Ijaz and Mr. Mohammad Wajeehullah Khan Sumbal were provided with the qualification shares of the petitioner for their appointment as the directors of the petitioner. As of 25 November 2019, Mr. Saroop Ijaz and Mr. Mohammad Wajeehullah Khan Sumbal have resigned from the Board of Directors of the petitioner.

5. The petitioner is a defunct company, which has ceased its operations and not carrying any business whatsoever in Pakistan. The petitioner does not have any employees, offices, or major assets in Pakistan. The auditors of the petitioner are also of the opinion that the petitioner cannot be considered to be a going concern. According to the Audited Annual Financial Statement of the Petitioner for the year ended 30 June 2018, the petitioner's total assets are Rs.39,965,883/- whereas its current liabilities are Rs.43,037,471/-. The petitioner has been running into a loss every year.

6. Through the Special Resolution dated 22.10.2019, the shareholders of the petitioner, Johnson Controls Holding Company, Inc. and Johnson Controls International, Inc., resolved to file the application for the liquidation, winding-up, and dissolution of the petitioner through an application before this court under Section 304 read with Section 301(a) of the Companies Act, 2017.

7. At present following proceedings are pending in relation to the petitioner:

a. Appeal No.733/2018 against the Order passed under Section 122(1) of the Income Tax Ordinance, 2011 before the Commissioner Appeal on 20.2.2018 and

b. Appeal No.171/2018 against the order passed u/s 11(2) of the Sales Tax Act, 1990 has been filed before the Commissioner Appeal on 22.6.2018

8. The petitioner filed this JCM for liquidation, winding-up and dissolution on the following grounds:

A. The petitioner has ceased to have any operations and/or any significant business or operations in Pakistan. The petitioner does not have any employees in Pakistan. The petitioner's directors have resigned from the Board of Directors of the company. The company also does not have any operational office in Pakistan and has lost its substratum in Pakistan.

B. The Petitioner, at present, since it has no employees or business in Pakistan, is only existing as a shell company in Pakistan, as such, it is in the public interest that the petitioner be wound-up and dissolved. The petitioner does not have any plans to re-start its business in Pakistan.

C. The shareholders of the Petitioner has duly resolved, through a special resolution, that the petitioner be wound up in terms of Section 301(a) of the Companies Act, 2017.

9. It appears that the averments of the petition and/or claim of the petitioner have gone un-rebutted and unchallenged. The SECP filed their comments in which they accepted contents of the petition, but for sake of knowledge submitted that petitioner (company) has not submitted Form-26. Which was also submitted in compliance of short order dated 19.09.2022. Hence, the same went unrebutted. In view of above facts the petitioner company is liable to be wound up.

10. In view of the above, it is abundantly clear that the petitioner company is liable to be wound up in terms of the law laid down by the superior Courts and hence this JCM is allowed to the extent of prayer clause (a) to (c) and Mr. Asghar Inam Khalid is appointed as Official Liquidator who shall assume the charge of the company and proceed with the winding up affairs of the respondent company. The petitioner is directed to deposit a sum of Rs.100,000/- with the Official Liquidator to enable him to take steps for the liquidation of the company which may be adjusted, subject to satisfaction of claims, if any.

These are the reasons of short order dated 19.09.2022.

"Mr. Basil Nabi Malik, advocate for petitioner undertakes to file Form 26 with SECP within one day, on this submission Mr. Saad raised no objection. Hence for Reasons to follow this petition is allowed to the extent of prayer clause (a) to (c)."

J U D G E

Karachi

Dated: 21.09.2022