IN THE HIGH COURT OF SINDH, AT KARACHI

Suit No.1721 of 2022

Plaintiff	:	Shehzad Arshad through Abdullah Azzam Naqvi, Advocate.
Defendant No.1	:	Pervez Arshad through Khalid Mehmood Siddiqui, Advocate.
Defendants Nos.2	:	Rauf Textiles & Printing Mills (Pvt.) Ltd, Nemo.
Alleged Contemnors Nos. 2 & 3	:	Haji Shoaib & Muhammad Shafiq Afridi, through Muhammad Hanif Faisal Alam, Advocate.
Date of hearing	:	13.03.2024, 21.03.2024, 28.03.2024 and 16.04.2024.

ORDER

YOUSUF ALI SAYEED, J. - The Suit represents yet another chapter in a fraternal feud between the Plaintiff and Defendant No.1 regarding the affairs of Rauf Textiles & Printing Mills (Private) Limited (the "**Company**"), and stems from a Settlement Agreement executed between them on 22.09.2021 (the "**Agreement**") in the wake of several litigations involving the Company, including JCM No.29 of 2016 (the "**JCM 29**") filed by the Defendant No.1 under Section 305 of the erstwhile Companies Ordinance 1984, seeking that it be wound up. The Company has been impleaded as the Defendant No.2, and is described as a family concern, with its shareholders and directors all said to be either the children or grandchildren of one G. R. Arshad and the aforementioned protagonists being his sons, who as between them and/or their immediate family members are said to hold 3/4th of its shares.

2. A perusal of the Agreement reflects that it was executed between the contracting parties for resolving their differences *inter se,* by devising a mechanism for the disposal of the Company's assets and distribution of the proceeds following the settlement of its liabilities, with its essential features being:

a. That the Defendant No.1 would take over the affairs of the Company so as to dispose of its assets at the best possible price within a period of 18 months, subject to mutual consultation and the approval of the directors and shareholders, with the proceeds to be deposited in a dedicated bank account to be opened for such purpose, to be operated by the Defendant No.1 under his signature.

b. The proceeds received from the sale of any or all the assets of the Company would be distributed amongst the shareholders on a pro rata basis after settling all of its liabilities, including liabilities owed towards the National Bank of Pakistan ("**NBP**"), so as to secure release of the charge and title documents being held by NBP, including certain personal guarantees.

c. That the parties would take all requisite steps to facilitate and achieve the envisaged purpose of the Agreement, including acting so as to ensure the requisite approvals/resolutions of the shareholders and directors.

3. The subject of the litigation pending as between the parties to the Agreement was addressed in terms of Clause 3.2 thereof, which reads as follows:

> "3.2 It is agreed between the parties that SA and PA both shall withdraw all Litigation, complaints, applications, suits, JCM's, petitions filed by any one Party against the other Immediately upon the execution of this Agreement particularly but not limited to, JCM 40 of 2016, Suit 635 of 2017. Suit 750 of 2017. B-46 of 2016 and Suit 204 of 2017 currently pending before the Hon'ble High Court of Sindh and Cr Case No. 615/2020 before the Sessions Court at Karachi (Malir). It is agreed and acknowledged by PA and SA that all obligations under this Agreement shall initiate after the withdrawal of Litigation under this clause has been completed. Any change in position of CEO of the Company shall be by mutual consent of the Parties. This settlement agreement shall be filed

in JM 20 of 3016 along with an application moved jointly by the parties for the case to be sine die adjourned for the duration of the settlement agreement, In the event PA is not able to sell the assets and pay of the liabilities in the stipulated lime period of 18 months. then the Parties ie. PA and SA shall file a fresh joint petition for winding up of the Company in the High Court of Sindh at Karachi or jointly seek the disposal of JCM 29/2016 in the terns that the Company be wound up. In such latter event, the contempt applications earlier filed in any proceedings by PA will not be pursued."

4. Pursuant to the Agreement, the Defendant No.1 took over the management of the affairs of the Company, with certain no-objections admittedly being given and resolutions being passed with the concurrence and participation of the Plaintiff, including for the opening of a bank account to be operated by the Defendant No.1 and for the assets of the Company to be disposed of by him as per the Agreement, notwithstanding the fact that the Plaintiff remained the Chief Executive and, as it stands, continues to hold that post, with the Company nonetheless remaining unrepresented in these proceedings. Apparently, the litigations specified in Clause 3.2 also came to be disposed of, including JCM 29, wherein an inventory of the machinery of the Company is said to have been prepared by the Nazir pursuant to an Order dated 18.07.2016, with the parties having then been restrained vide subsequent orders dated 09.01.2017 and 08.01.2018 from removing the assets from the premises of the Company as well as restraining the sale of its immoveable properties, being Plot Nos. S-31, S-66 and S-113, admeasuring 3.86 acres, 0.5 acre, and 0.25 acre situated within the Sindh Industrial Trading Estate, Trans Lyari, Karachi (hereinafter referred to individually as "**Plot S-31**", "**Plot S-66**" and "**Plot S-113**" and collectively as the "**Subject Plots**").

5. Notwithstanding the cooperation and assistance said to have been extended, the Plaintiff alleges a breach of the Agreement on the part of the Defendant No.1, with it being said that the latter has engaged in malfeasance through the unilateral sale and transfer of the Company's assets without proper authorization and at a depressed value, which has resulted in a diminution in the value of the Plaintiffs investment in the Company. As such, the Plaintiff has sought that this Court be pleased to enter judgment so as to (a) declare the actions of the Defendant No.1, including the transfer of any immovable properties, as being in breach of the terms of the Agreement, unlawful and void; (b) direct the Defendant No.1 to deliver up the Assignment Deed dated 24.3.2002 executed in respect of one of the immovable properties of the Company for cancellation and annul all unauthorized asset transactions to revert the Company's asset portfolio to its pre-dispute state; (c) impose a permanent injunction against the Defendant No.1 and other Defendants (i.e. the Company, SITE and the concerned sub-registrar), prohibiting any future unauthorized asset transactions to safeguard the Company's assets from further dissipation; (d) direct the Defendant No.1 to render complete accounts of the assets sold and liabilities settled; and (e) to also award general damages in the sum of Rs.1,000,000,000/- in favour of the Plaintiff as against the Defendant No.1, in view of the loss to the valuation of his shareholding as well as the loss of expected income.

6. The miscellaneous applications pending for consideration in that backdrop are as follows:

(a) CMA No. 16885/22, under Order 39, Rules 1 and 2 CPC, seeking that the Defendants be restrained from alienating, transferring, selling or disposing of the assets of the Company, especially Plot S-113, or otherwise acting pursuant to the Agreement;

(b) CMA No.1443/23, seeking that a similar restraint be imposed in respect of Plot S-66;

(c) CMA No. 17931/22, being an Application under Sections 3 and 17 of the Contempt of Court Ordinance, 2003, alleging a violation of the Order dated 14.11.2022 to maintain the status quo, and seeking that the Defendant No.1 be punished while the assets and properties of the Company, including the Subject Plots, be attached;

(d) CMA No.4249/23, similarly, alleging a violation of the Order dated 14.11.2002 and a subsequent Order of 30.11.2022, through continued demolition on Plot S-31;

(e) CMA No.4250/23, seeking that a receiver be appointed to take possession of the Subject Plots; and

(f) CMA No.10924/23, being the sole Application from the side of the Defendant No.1, seeking that the Plaintiff be restrained from creating any third-party interest in a residential property standing in his name.

7. Having considered the nature of the claims, it merits consideration that the principle of reflective loss precludes a shareholder bringing a personal claim for loss said to have been suffered due to the directors breaching their fiduciary duties and defrauding the company so as result in a diminution in the value of the company and the value of the claimant's shares. The principle was laid down by the Court of Appeal in the case of *Prudential Assurance v Newman Industries Ltd (No 2)* [1982] Ch 204, with it being observed that:

> "What [a shareholder] cannot do is to recover damages merely because the company in which he is interested has suffered damage. He cannot recover a sum equal to the diminution in the market value of his shares, or equal to the likely diminution in dividend, because such a "loss" is merely a reflection of the loss suffered by the company. The shareholder does not suffer any personal loss. His only "loss" is through the company, in the diminution in the value of the net assets of the company, in which he has…a …shareholding."

8. In that case, the Court held that a shareholder could not bring a claim which is merely the result of a loss suffered by the company in consequence of a wrong done to it by the defendant, with the basis of the ruling being that a shareholder's loss in such cases is merely 'reflective' of that suffered by the company, hence the shareholder does not suffer a loss recognised in law as having a distinct existence, and any cause of action for injury to the company thus vests in the company itself as per the "proper plaintiff rule" laid down by the Court of Chancery in the case of *Foss v Harbottle* (1843) 2 Hare 461. The principle was restated by the House of Lords in Johnson v Gore Wood & Co. (No. 1) [2002] 2 AC 1 and by the Supreme court in *Marex Financial Limited v. Sevilleja* reported at 2020 SCMR 1867.

9. Responding on that score, learned counsel for the Plaintiff emphasised that the cause of action pivoted on the Agreement and the claims concerned the rights and obligations flowing therefrom. Furthermore, he asserted that the Plaintiff essentially sought to restore and preserve the assets of the Company and would be satisfied if any Orders as the Court may be inclined to make in the matter by way of restitution were directed for its benefit rather than the Plaintiff personally. As a matter of fact, certain English decisions have opened the door to such an argument, with the first of those being Peak Hotel and Resorts Ltd v Tarek Investments Ltd [2015] EWHC 3048 (Ch), a case where the parties had entered into a joint venture shareholders' agreement which was to govern the control of a hotel group. The relationship of the parties broke down, the claimants saying that the defendants had reduced the value of the joint venture company by transferring valuable assets out of it. The problem was that the shares in the joint venture company were split between the claimants and the defendants, and the board and the shareholders were

deadlocked, meaning that the company itself had not brought a claim. The claimants sought to get around the no reflective loss rule by seeking as the relief on their claim an injunction requiring the assets wrongfully transferred out of the company to be transferred back to it, rather than damages for the loss suffered. It was held that this legal solution to the reflective loss issue was arguable, as the rules on reflective loss were to prevent double recovery, and to protect the company, other shareholders and the company's creditors, whereas the claim for an injunction did not undermine those policies, but on the contrary served to advance them. That decision was relied upon, and taken further in Latin American Shipping Co. v Maroil Trading Inc. [2017] EWHC 1254 (Comm), where shareholders in a joint venture company had fallen out and the company was deadlocked, with the claimants having brought a claim on the shareholders agreement for loss suffered by the company. They sought to argue that the relief they were seeking was specific performance of the obligations in the shareholders agreement, which therefore did not fall foul of the reflective loss rule. Whilst the Court was not entirely persuaded that the relief sought was properly characterised as a claim for specific performance, it was said that:

> "If the remedy of specific performance is available, as arguably it is, where the Claimant has its own cause of action under the Shareholders Agreement I find it difficult to see why the remedy of damages should not also be available. Of course, if either remedy breached the reflective loss principle it would not be available but neither remedy appears to do so because in both cases the order is that payments be made to the Joint Venture Companies. Such orders are consistent with the principle of company autonomy (because they recognise that the payee is the company and not the shareholder), do not prejudice creditors of the company (because the sums are paid to the company) and do not enable a shareholder to recover compensation for a loss suffered by the company (because the compensation is payable to the company). At any rate there appears to be a good arguable case that these propositions are correct".

10. Suffice it to say for the time being that recourse to the Agreement may potentially afford the Plaintiff an arguable point in respect of some of the reliefs elicited, but the matter nonetheless being left open for decision at the time of final determination.

11. That being said, turning to the pending Applications, it was argued on behalf of for Plaintiff that at the time that the reins were handed over by him, so to speak, the Company remained a going concern with its substratum intact and its assets, including the Subject Plots aand plant and machinery situated at the factory premises on Plot S-31. He pointed out that whilst JCM 29 was initially adjourned *sine die*, the same was then withdrawn on 29.08.2022. He argued that the withdrawal was engineered by the Defendant No.1 so as to remove the interim Orders operating in that matter and pave the way for disposal of the Company's assets. It was said that while the Defendant No.1 was authorized and empowered to take over the management of the Company, that was only for disposing of its assets with consultation and subject to necessary approvals for purpose of utilizing the proceeds for settling its liabilities and the remainder, if any, for distribution between the shareholders. However, he kept the Plaintiff in the dark on those matters and acted so as to siphon away assets for personal gain rather than paying off creditors, with the offending acts including the unsanctioned removal of the Company's plant and machinery from Plot S-31, the sale of that plot and demolition of the premises thereon, as well as the disposal of Plot S-66 through a Deed of Assignment dated 24.02.2022. It was argued that such conduct ran to the detriment of the shareholders as it caused a steep devaluation in the value of their shares, and had continued despite the interim Orders made in the Suit on 14.11.2022, 30.11.2022 and 30.01.2023, prompting CMA Nos. 17931/22 and 4249/23.

12. On the other hand, learned counsel for the Defendant No.1 categorially denied all allegations of impropriety and wrongdoing, while inviting attention to the written statement, which sets out a counter narrative of the Plaintiff having engaged in mismanagement and illegal activities so as to jeopardize the Company's financial stability, leading to the filing of JM 29 and eventually necessitating the Agreement, with the Defendant No.1 being designated with the responsibility of liquidating its assets for debt resolution. With reference to the pleadings of the Defendant No.1, it was submitted on his behalf that he had acted throughout in conformity with the Agreement, and all actions undertaken by him had been with full knowledge, consent, and at times, involvement of the Plaintiff himself. It was submitted that in pursuance of the Agreement, the Board of Directors of the Company, including the Plaintiff, had on 18.11.2021, unanimously authorized the Defendant No.1 to sell all assets of the Company and settle its liabilities towards National Bank of Pakistan ("**NBP**"). The Board had also authorized the Defendant No.1 to open and singly operate a new Bank Account for deposit of all proceeds, being Account No. 0105926102 opened and maintained at the Shaheed-e-Millat Road Branch of Meezan Bank Limited. The allegations of unauthorized asset disposal were rebutted while asserting that all actions taken by the Defendant No.1, including the sale of Plot S-31 and Plot S-66 as well as the plant and machinery were transparent and within the agreed terms, aimed at salvaging the Company from its dire financial situation. It was submitted that the Defendant No.1 had sold and handed over possession of those Plots and the plant and machinery along with certain other movable assets to clear off the debts owed to the NBP as well as other creditors, with the transactions having been undertaken at amounts in excess of independent valuations that had been conducted during the pendency of JM 29 and with all

funds received being promptly credited into the dedicated bank account established with the concurrence and participation of the Plaintiff, with the amounts so gathered being used to pay off Company's liabilities owed to NBP, as envisaged. Reference was made to a summary of accounts filed by the Defendant No.1 as Annexure D-17 to his written statement, with it being asserted by learned counsel appearing on his behalf that all of the transactions in respect of the Company's assets were made in good faith and had been duly accounted for. It was submitted that the Plaintiff had been kept abreast of all dealings and transactions that had ensued after the Agreement and had deliberately waited for pivotal steps to be taken thereunder prior to filing the Suit seeking its cancellation along with damages in order to pressure the Defendant No.1 in an endeavour to obtain an undue pecuniary advantage. As regards Plot S-66, it was said that the Plaintiff had earlier wrongly entered into more than one sale transactions in respect thereof and clandestinely received down payments, which created difficulties for purpose of the settlement process, hence, by mutual agreement, that plot was purchased by the Defendant No.1 and a sum of Rs.47,365,000/- was credited in the Company's account on 01.04.2022, whereafter the Defendant No.1 entered into a Sale Agreement in respect of the said plot on 14.11.2022. In response to CMA Nos.17931/22 and 4249/23, it was submitted that such actions predated the Suit and interim Orders made in the matter, whereafter the Defendant No.1 had stayed his hand in deference to such Orders. Lastly, it was submitted that the Defendant No.1 had no objection whatsoever to the appointment of a receiver in respect of the Company's bank accounts and subsisting properties.

13. For his part, responding to CMA No.4249/23, learned counsel appearing on behalf of the alleged Contemnors Nos. 2 and 3 denied any violation on their part of the Orders made on 14.11.22, 30.11.22 and 30.01.23. It was submitted that the Alleged Contemnor No.3 was not involved in demolition works on Plot S-31, and was merely the owner of a nearby factory who was known to the Plaintiff and Defendant No.1 and had been asked by them to help resolve their differences, and help in finding a buyer for that plot and the machinery. Hence, he had introduced them to the Alleged Contemnor No.2, who was a business acquaintance also running a factory nearby. Pursuant to that introduction, the Company had apparently entered into an agreement with 5 Star Enterprises on 11.04.2022, a partnership concern of the Alleged Contemnor No.2, which had contracted to undertake the demolition and purchase the machinery, equipment, etc, and scrap from the demolition works.

14. It was submitted that neither of the Alleged Contemnors Nos. 2 and 3 had knowledge of the Suit or interim orders made therein, with the former only coming to know thereof at the time of inspection by the Nazir on 25.11.2022, who informed the labour in charge of such developments, whereupon the Alleged Contemnor No.3 was apprised accordingly. It was submitted that the Plaintiff had failed to show how the alleged Contemnors could otherwise have had knowledge, and it was emphasised that the demolition being undertaken at Plot-31 had not happened over the course of a single evening but had obviously taken place over a prolonged period dating back to the execution of the agreement dated 11.04.2022, with it being argued that the Plaintiff had allowed the same to take place before crying foul through filing of the Suit on 11.11.2022. It was submitted after having knowledge of the Order dated 14.11.2022, the Alleged

Contemnor No.2 had informed the parties that he did not want to be involved in any litigation, and had therefore immediately ceased further demolition works and withdrawn his labour from the premises, and that such state of affairs remained unchanged up to and beyond the time of the subsequent Order dated 30.11.2022. He submitted that this was borne out by the Nazir's reports and that the alleged Contemnors Nos. 2 and 3 ought to thus be discharged.

15. Under the circumstances, it falls to be considered that there are a host of allegations that have been advanced by the Plaintiff, which the Defendant No.1 has sought to rebut by accounting for the steps taken by him in the matter while presenting the transactions for the sale of the Company's land and movable assets as bona fide and entered into at arm's length at values commensurate to what could fairly be attained. While advancing his own allegations of misappropriation and mismanagement against the Plaintiff, the Defendant No.1 has also alluded to the Plaintiff's knowledge, participation and/or acquiescence in such matters so as to argue that the allegations underpinning the Suit are false and the action is nothing more than a deliberate attempt to derail and frustrate the settlement process after certain key liabilities had already been cleared, with the Plaintiff's motive being that of extracting some additional gains for himself. However, as the Suit has been brought on the strength of the Agreement and the scope of the competing rights and obligations stand circumscribed accordingly, the matter is to be viewed through that lens and the considerations are different than what would be the case if an oppression petition were brought by an unrelated minority shareholder. It has to be borne in mind that a share is not a proportionate part of a company's assets, nor creates any legal or equitable interest in such assets, but as

stated in *Prudential (Supra)*, merely confers a right of participation in the company on the terms of the Articles of Association, including a right to vote on resolutions at general meetings, a right to participate in the distributions which the company makes out of its profits, and a right to share in its surplus assets in the event of its winding up.

16. The broad scheme of the Agreement had already been delineated above, and on the basis of the material placed on record, the actions of the Defendant No.1 appear *prima facie* to be consistent therewith. Indeed, when the various minutes and resolution said to bear the signature of the Plaintiff were pointed out during the course of arguments, no denial was forthcoming. Furthermore, the documents reflecting multiple transactions entered into by the Plaintiff in respect of Plot S-66 prior to the Agreement were also not disavowed. On the contrary, the Plaintiff's apparent inaction between the time of execution of the Agreement and filing of the Suit remains unexplained, especially in view of his continued role as the Chief Executive of the Company. Such inaction is all the more remarkable in view of the demolition that was obviously ongoing on Plot S-31 over some time, regarding which it was stated by the Plaintiff in Paragraph 14 of the plaint, as presented on 11.11.2022, that "It is stressed that Plaintiff has recently been informed that the Defendant No.1 has been demolishing the state-of-the-art building at the factory premises of the Defendant No.2", but with the Report dated 26.11.2022 submitted by the Nazir in respect of the inspection carried out the previous day reflecting that the demolition had been completed for all practical purposes.

17. Furthermore, per the Defendant No.1, the reality is that the Plaintiff had previously assumed control of the Company to the exclusion of other shareholders and embarked upon a course of oppression, mismanagement and misappropriation necessitating the filing of JM-29, despite which he had continued to drain the Company and siphon away its funds notwithstanding the interim Orders made in that matter, so as to effectively cripple its operations. As such, it was denied that the Company remained a going concern as on the date of the Agreement. As it stands, the scheme of the Agreement appears incongruous with the contention that the Company was a going concern as on that date, in as much as it begs the question as to why the parties then contracted to sell of all its assets as a precursor to settlement of liabilities and eventual winding-up.

18. Thus, no compelling case of contempt stands made out in terms of CMA Nos. 17931/22 and 4249/23, which stand dismissed accordingly. As the interlocutory relief elicited by the Defendant No.1 through CMA No.10924/23 also falls beyond the scope of the Suit, that Application also stands dismissed. As for the remaining applications, it cannot be said the transactions in respect of Plot S-31, Plot S-66 and the Company's plant and machinery run against the grain of the Agreement, and the main concern aired by the Plaintiff is that such transaction have taken place for sums less than their market value of those assets. However, the Plaintiff has not demonstrated any material discrepancy, and even if the Valuation Report cited by him is considered, the only diminution appears to be on account of plant and machinery, but that too is subject to the counter-allegation of improprieties imputed by the Defendant No.1 to the Plaintiff predating the Agreement. Needless to say, the question of diminution, if any, cannot be answered without a deeper assessment

based on evidence, following which any shortfall may be determined and made good. As for preservation of the remaining assets falling within the scope of the Agreement, learned counsel for the Defendant No.1 candidly stated that as the Company was admittedly no longer a going concern, the Defendant was not averse to the appointment of a receiver so as to obviate any further bone of contention. As such, pending final determination of the Suit, CMA Nos. 16885/22, 1443/23, and 4250/23 stand disposed of with the Nazir of this Court being appointed accordingly so as to take over Plot S-113 as well as the bank accounts of the Company in order to preserve that plot and also realise such sums as may be or become due in respect of the transactions undertaken on behalf of the Company to date in pursuance of the Agreement, with all necessary records and accounts to be furnished for such purpose by the Defendant No.1.

19. As for resolution of the overall dispute between the Plaintiff and Defendant No.1 in respect of the Agreement, it would be conducive for mediation to be explored as a viable option in that regard. In fact, Clause 7.1 of the Agreement itself contemplates and suggests that to be the way forward while stipulating that:

> "If on any provision of the agreement, there is any confusion on implementation thereof or any other dispute arises then the parties shall sit together and resolve the matter amicably. If the matter is not resolved amicably then the parties shall appoint a mediator of standing to resolve the matter with the consent of the parties."

20. The importance of mediation as an effective means of dispute resolution cannot be overstated, with the Supreme Court having observed in the Order dated 20.02.2024 made in C.P.L.A.2226-L/2021 (Re Province of Punjab through Secretary C&W, Lahore, etc versus M/s

Haroon Construction Company, Government Contractor, etc) and connected cases, that:

> "...we wish to underline that courts must encourage out of court settlements through Alternate Dispute Resolution ("ADR"), in particular mediation. The essence of mediation lies in its voluntary and confidential process, where a neutral third party, the mediator, assists disputants in reaching a consensus. Unlike in litigation, where the outcome is often a zero-sum game, mediation thrives on the principle of win-win solutions, preserving relationships and allowing for creative resolutions that legal parameters might not accommodate. "The notion that ordinary people want black-robed judges, well-dressed lawyers, and fine paneled courtrooms as settings to resolve their disputes is incorrect. People with problems, like people with pains, want relief, and they want it as quickly and inexpensively as possible."
>
> 11. Mediation, as a form of alternative dispute resolution (ADR), has garnered widespread acclaim for its efficiency, cost-effectiveness, and ability to facilitate amicable settlements. In contrast to the adversarial nature of litigation, mediation embodies a collaborative approach, encouraging parties to find mutually beneficial solutions. The courts should not only encourage mediation but also exhibit a pro-settlement bias and a pro-mediation bias. By Pro-mediation bias or pro-settlement we mean a predisposition or preference within the legal system for resolving disputes through mediation rather than through litigation or other forms of dispute resolution. This bias is not about favoring one party over another but rather about favoring the process of mediation itself as a preferred method of dispute resolution. This bias is grounded in the belief that settlements are generally more efficient and satisfactory for all parties involved compared to outcomes determined by a court.
>
> 12. Prominent legal scholars and jurists, including the likes of Roger Fisher and William Ury, authors of the seminal work "Getting to Yes," advocate for mediation. They emphasize its potential to produce outcomes that are more satisfactory to all parties involved, compared to the often rigid and polarizing verdicts of court proceedings. Their work underscores the importance of interests over positions, encouraging parties to seek common ground rather than entrenching themselves in adversarial stances. For instance, in "Judging Civil Justice," legal scholar Hazel Genn discusses the encouragement of settlement as a way to reduce court caseloads and promote the efficient use of judicial resources. Courts may exhibit a pro-settlement bias by encouraging parties to settle even before the case goes to trial or during the litigation process.

> 13. By fostering a pro-settlement bias, courts can contribute to a more harmonious and efficient dispute resolution landscape, where parties are empowered to resolve conflicts collaboratively and constructively. Encouraging mediation aligns with the broader goals of justice systems worldwide: to resolve disputes in a manner that is fair, efficient, and conducive to the long-term well-being of all involved parties. "In the future, it is likely that the traditional trial will be the exception rather than the rule."

21. Earlier, in the case of Faisal Zafar & another v. Siraj-Ud-Din & 4 others 2024 CLD 1 as well as an as yet unreported Order in the case titled Netherlands Financierings Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.) v. Morgah Valley Limited & SECP, a learned Single Judge of the Lahore High Court had similarly emphasised the role of mediation in corporate disputes, with it being observed in the latter case as follows:

> "19. Unlike court proceedings, mediation is a more informal and flexible approach, fostering open communication and creative problem solving. The mediator's role is not to make decisions but to guide the parties in finding common ground and exploring potential solutions. One of the key advantages of mediation is its cost-effectiveness compared to court proceedings. It also tends to be a faster method of resolution, putting more control in the hands of the parties involved. The informality of mediation contributes to a quicker resolution compared to the often time-consuming nature of court proceedings. Additionally, the process preserves relationships, as parties actively engage in finding mutually agreeable
> solutions. The flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved. The mediation, in particular, can be a potent tool, offering parties the chance to make substantial cost savings if a settlement can be reached. Even in cases where a resolution is not reached, mediation often helps parties to identify aspects of the dispute that may not warrant litigation, fostering potential future settlements. Mediation's flexibility also allows for the exploration of creative solutions to disputes."

In the same judgment, the learned Single Judge then went on to observe that:

"23. The Company laws in our country were not short of ground as well. The preamble of the "Ordinance" set the prime object with words that "whereas it is expedient to consolidate and amend the law relating to the companies and certain other associations for the purpose of healthy growth of the corporate enterprises, protection of investors and creditors, promotion of investment and development of economy and matters arising out of or connected therewith". In Part IX of the "Ordinance", section 283 dealt with power for companies to refer matter to arbitration. Likewise, Preamble of the "Act" reads that "whereas the State is required to ensure inexpensive and expeditious justice and whereas an alternative dispute resolution system can facilitate settlement of disputes expeditiously without resort to formal litigation".

24. Over, above and ahead of former law in shape of the "Ordinance", the "Act" now prevalent in field comprehensively deals with subjects of reference to ADR, panel of Neutrals, appointment of Neutrals, referral to ADR Centre, reference to ADR before legal proceedings, ADR proceedings, settlement and award, execution of an order or a decree etc. Federal Government, in exercise of the powers conferred by section 25 read with section 4 of the Alternative Dispute Resolution Act, 2017 has also framed ADR Mediation Accreditation (Eligibility) Rules, 2023 featuring accreditation and Notification, accreditation committee, accreditation eligibility rules and notification, ADR Register and suspension or revocation of accreditation.

25. Undoubtedly, legislature sensed the need of the day and the "Act" is more specific, exhaustive and object oriented with regard to mediation, preamble whereof states that "WHEREAS it is expedient to reform company law with the objective of facilitating corporatization and promoting development of corporate sector, encouraging use of technology and electronic means in conduct of business and regulation thereof, regulating corporate entities for protecting interests of shareholders, creditors, other stakeholders and general public, inculcating principles of good governance and safeguarding minority interests in corporate entities and providing an alternate mechanism for expeditious resolution of corporate disputes and matters arising out of or connected therewith". The principles for the purpose of mediation making basis upon Sections 276 to 278 of the "Act" have already exhaustively discussed by this Court in "FAISAL ZAFAR and another versus SIRAJ-UD-DIN and 4 others, GENOME Pharmaceuticals and SECP" (2024 CLD 1) suggesting Early Neutral-Party Evaluation through mediation in terms of Preamble and Sections 6, 276 and 277 of the Companies Act, 2017 holding that "The flexibility of mediation allows for a more personalized and tailored resolution to the specific needs and concerns of the parties involved."

22. That pro-mediation bias is heightened by the overwhelming and ever-increasing pendency of cases before this Court on the Original Side due to the systemic bottleneck created by the Sindh Civil Courts Ordinance, 1962, as observed by a Division Bench of this Court in the case reported as Ghulam Asghar Pathan and others v. Federation of Pakistan and others PLD 2023 Sindh 187, making it all the more imperative to embrace alternate means of dispute resolution such as mediation.

23. While special statutes for ADR were enacted in the other Provinces as well as the Islamabad Capital Territory, the legal framework in Sindh exists under the Code of Civil Procedure, as amended by the Code of Civil Procedure (Sindh Amendment) Act, 2018, which envisages ADR in civil and commercial cases. Thereunder, this Court has presently granted recognition to two mediation centres in the private sector, one being the Legal Aid Society [LAS] founded by Mr. Justice ® Nasir Aslam Zahid, which has established a mediation centre by the name of 'Musaliha International Centre for Arbitration and Dispute Resolution' [MICADR], presently headed by Mr. Justice ® Arif Hussain Khilji; and the other being the IBA-Dispute Resolution Forum [IBA-DRF] headed by Ms. Navin Merchant, a practicing Advocate of high standing, with its mediation centre at the IBA City Campus, Karachi.

24. The parties have already expressed their desire for mediation through Clause 7.1, as reproduced above, and on query posed to learned counsel during the course of proceedings as to whether they had any preference as between the two aforementioned centres, they have jointly expressed familiarity with the workings of MICADR and concurred that a referral be made to that centre.

25. Under the circumstances, the parties stand referred to mediation accordingly. Let a copy of the Plaint as well as the written statement of the Defendant No.1 (along with the annexures), be scanned by the office and sent electronically to Mr. Justice ® Arif Hussain Khilji along with a copy of this Order, which may be treated as their joint application in the matter.

JUDGE