

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No. D- 2902 of 2024 along with
C.P Nos. D- 2876, D-4074, D-6264 of 2023, D-1863 & D-764 of 2024

Date	Order with signature of Judge
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Priority.

- 1) For hearing of CMA No. 13098/24 (stay)
- 2) For hearing of main case.

05.05.2025.

Mr. Waseem Shaikh, Advocate for Petitioner in CP No. D-2902/2024.
Mr. Nabeel Kolachi Advocate for Petitioner in CP No. D-6264 of 2023.
Mr. Muhammad Kamran Iqbal Bhutta, Advocate for Petitioner in CP No. D- 764 of 2024.
Mr. Muhammad Mushtaq, Advocate for Petitioner in CP No. D-2876 of 2023.
M/s. Manzoor-ul-haq and Hassan Ali, Advocates for State Bank of Pakistan.
Ms. Mehreen Ibrahim, Assistant Attorney General.
Mr. Naeem Talpur, Additional Advocate General.

In all these Petitions, the Petitioners were aggrieved by a mandatory requirement so specified in Section 23C(4) of the Foreign Exchange Regulation Act, 1947; (“**1947 Act**”) whereby, while filing an Appeal before the Appellate Forum, the amount so adjudged, was required to be deposited with the Foreign Exchange Regulation Appellate Board before the appeal could be entertained. They have sought various reliefs, including a challenge to the vires of the said provision. It appears that this issue has already been decided by this Court¹ (***declaring the provision as intra vires***) as well as by the learned Lahore High Court² (***declaring the provision as ultra vires***). The judgment of the Lahore High Court ended up before the Supreme Court³ and the Honorable Supreme Court has maintained

¹ Order dated 21.06.2024 in CP No.D-3066 of 2024 (Pak Terry Mills (Pvt) Ltd v Federation of Pakistan & Others)
² Order dated 01.02.2023 in WP No.36748 of 2022
³ vide Order dated 20.03.2025 passed in Civil Petition No. 1477 of 2023 (Senior Joint Director Foreign Exchange Operations Division SBP vs. Federation of Pakistan and others

the view of learned Lahore High Court; whereby, this provision was declared ultra vires to the Constitution. It has been held by the Supreme Court that directing a party to deposit the total amount of the subject matter, before admission of his appeal would be unreasonable, resulting into preventing that party from exercising his right of appeal, which violates his fundamental right of fair trial and due process, guaranteed by Article 10A of the Constitution. Therefore, in the case of all the Petitioners, the Appeals are to be decided on its own merits, and they cannot be non-suited for want to deposit of the determined amount while filing the Appeal before the Appellate Board.

In view of such position, all these petitions are disposed of in the terms so recorded by the Honorable Supreme Court as above. Consequently, thereof, the Appeals of the Petitioners, if any, are to be entertained by the Appellate Forum in compliance of the order passed by the Honorable Supreme Court without asking for deposit of any adjudged amount. Let the said Appeals be decided in accordance with law on its own merits after affording opportunity of hearing to all concerned. Let copy of this order be issued to the Foreign Exchange Appellate Board, State Bank of Pakistan for compliance.

Office to place copy of this order in the connected cases.

Acting Chief Justice

Judge