ORDER SHEET

THE HIGH COURT OF SINDH KARACHI

Admiralty Suit No.12 of 2018

DATE	ORDER WITH SIGNATURE(S) OF JUDGE(S)

1. For examination of parties / settlement of issues.
2. For hearing of CMA No.2350/2023.

12.05.2025

Mr. Mazhar Imtiaz Lari, Advocate for the plaintiffs
a/w Syed Zeeshan Ali Advocate.
Mr. Muhammad Shafiq Mughal, Advocate for
defendants No.1 and 2.

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2. Counsel for defendants No.1 and 2 has moved CMA No.2350 of 2023, challenging the authority of the two (2) plaintiffs to file Admiralty Suit No.12/2018, i.e. Eftert Agritrade (Pvt.) Ltd. (plaintiff no.1) and ENGRO Fertilisers Ltd. (plaintiff no. 2). Counsel for the defendant nos.1 and 2 contends that the letter of authority of the plaintiff no.1 dated 10.10.2018 issued by Ms. Sarah Farooq, Company Secretary of E.Fert. Agritrade (Pvt.) Ltd., marked as Annexure 'N/1' (available on page 149 of the suit file), and the Authority Letter dated 10.10.2018 of plaintiff no.2 issued by Ms. Sara Farooq, Company Secretary of Engro Fertilizers Ltd., marked as Annexure "O/1" (available on page 153), both the document authorize one Adnan Maqsood Siddiqui s/o Maqsood Hasan Siddiqui, *inter alia*, "to file suit(s), written statements, applications, appeals, execution applications, petitions, reviews, revisions and/or to testify on oath such pleadings. . ." on behalf of plaintiff nos.1 and 2, respectively. The authority of the Company Secretary was based on the Board of Directors' Resolutions dated 24.07.2017 and 10.10.2018, marked as Annexures "N/2" and "O/2", respectively, (available on pages 151 and 155, respectively) wherein the Board of Directors authorized, among others, the designated CEO, CFO, Director(s) and the Company Secretary to do the several deeds and things mentioned therein at Items Nos.(a) to (f) to such designated officers and none else. He contended that the Board Resolution articulated the initiation of these pleadings to the extent of "(a) institute, commence, prosecute, defend, compromise, refer to arbitration and withdraw all legal proceedings by or against the Company, including proceedings in the Civil, District, Sessions, High and Supreme Courts and the Trade mark, Copyright and other Intellectual Property Registries". He submitted that such authorisation was entirely different and distinguishable from that mentioned in the authority letter, which authorised Adnan Maqsood Siddiqui to file suit(s) only and not with power to institute a suit. He relied upon (i) AIR 1991 Delhi 25, (ii) PLD 1997 Karachi 276, and (iii) PLD 2020 S.C. 366.

Learned counsel for the plaintiffs contended that the application itself, at the outset, is not maintainable as it was filed by a person who was not authorised to file such application. Further, he contended that the Board Resolution, as available and filed with the plaint, duly authorised the attorney to file the said *lis* in the admiralty jurisdiction of the High Court.

Heard Counsel. At the outset, a plain reading of the Board Resolutions suggests that the Company Secretary has the power to sub-delegate the powers mentioned in the said Board Resolution from (a) to (f) to other employees of the company. Further, the issue concerning the institution of the suit is based on the interpretation of two documents, namely the Board Resolutions and the authority letter, which are signed by the Company Secretary. Additionally, the documents do not bear proper stamp duty, which may have its own consequences; however, the matter cannot be decided on a point of law alone. Indeed, a perusal of the plaint in the admiralty suit tentatively calls for the recording of evidence, including the challenge and counter-challenge raised by the parties against each other. Thus, it would be premature to reject the plaint at this stage on technicalities instead of deciding the fate on merits. Accordingly, the points raised by the defendant in the CMA require scrutiny of evidence before determination and cannot be decided at this stage. Accordingly, given the above, CMA No. 2350/2023 is dismissed, and the points in dispute are included in the issues settled by this Court today.

1. The following issues are settled by this Court:

(i) Whether the suit as filed is maintainable?

(ii) Whether the attorney was duly authorized to institute the said *lis*?

(iii) Whether the defendants No.1 and 2 are duly authorized to file written statement?

(iv) Whether there was any short landing / short delivery of the consignment at Karachi Port?

(v) Whether the plaintiffs suffered any loss and if so, whether the Defendants are liable to for the same? If so, to what extent?

(vi) What should the decree be?

To expedite the matter, Mr. Faisal Aziz, Advocate is appointed as Commissioner to record the evidence in the matter, who will have all the powers in this regard, including the following:

(i.) Affidavit-in-Evidence of the witnesses will be filed directly before the learned Commissioner;

(ii.) Six (6) months' time is granted to the Commissioner for completing the assignment;

(iii.) Fee of the Commissioner is fixed at Rs.25,000/- (Rupees twenty five thousand only) per witness, which shall be borne by the party who is producing the witness;

(iv.) In case of witnesses who may not be able to travel to Pakistan for recording evidence, the Commissioner has the power to record evidence by video conferencing. The Commissioner shall ensure that, at the time of recording evidence, there are at least two or more cameras in the room to ensure that the witness is not being assisted/prompted during evidence.

(v.) The Commissioner will also be empowered to impose costs, close the side and mark the cross-examination as "Nil" of a delinquent party who is trying to delay the proceedings;

(vi.) Learned Commissioner will also be empowered to call for the record from any other concerned Government Department(s) as well as from the concerned Branch of this Court and Nazir, but after adhering to the Rules, including Order XVI of the Civil Procedure Code.

(vii.) While recording evidence, relevant Rules, including Rules 251 to 255 of the Sindh Chief Court Rules (SCCR), of the original side will be adhered to.

List of witnesses and documents be filed within four weeks from today.

Office to issue intimation to the learned Commissioner to commence proceedings. To come up in December, 2025, according to Roster.

JUDGE

ASIF