

Form No: HCJD/C-121

ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.M.No.02 of 2018
IN
C.O.No.39619 of 2017

Deputy Registrar of Companies **V/S** *Mukhtar Textiles Mills Limited and 8 others*

<i>S.No.of order / Proceedings</i>	<i>Date of order /Proceedings</i>	<i>Order with signatures of Judge, and that of parties or counsel, where necessary.</i>
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12.01.2023 Mr. M. Asad Buttar, Advocate for Applicant.
M/s Adil Umar Bandial and Hashim Rathore,
Advocates for the Petitioner-SECP.

By this application under Section 414 of the Companies Act, 2017 (the “*Act*”), Umer Saleem Director/Chief Executive of Mukhtar Textile Mills Limited (the “*Company*”) has prayed for recalling of winding up order dated 27.02.2018.

Context

2. The “*Company*” was wound up vide judgment dated 27.02.2018 on the grounds of suspension of its business operation since 2011, laying off entire staff in order to avoid incurring expenditure. While passing the winding up order, the Court appointed official liquidator with direction to submit preliminary report in respect of matters as envisaged under Section 321 of the “*Act*”. During winding up proceedings, the application in hand was filed.

Proceedings in the Court.

3. After passing of winding up order, the application in hand was filed by the Applicant for recalling of winding up order. On 18.12.2018, the official liquidator submitted

that the Respondents are not cooperating with him however, the Court directed the Respondents to provide required information but restrained the official liquidator to proceed with disposal of the “Company” as the captioned application had been filed which came up for hearing first time before this Court on 17.11.2021. Since then, objection to the maintainability of the petition was raised which is being decided through this order.

Applicant’s Arguments

4. Mr. Muhammad Asad Buttar, Advocate *inter alia* argues that the “Company” has now formulated a revival plan as the management/shareholders intend to induct further capital in the “Company” for its operation in future; that presently the assets of the “Company” are more than that of its liabilities and total liability of the “Company” stands at Rs.14.241 million while minimum written down value of assets is Rs.42.00 million; that the “Company” is regularly filing its statutory reports to the SECP, therefore, it may be revived and winding up order may be recalled. He relied on the judgments passed by this Court in “SAUDI PAK INDUSTRIAL & AGRICULTURAL INVESTMENT COMPANY LTD Versus CHENAB LIMITED” (2020 CLD 339) and “THE ADDITIONAL REGISTRAR COMPANY Versus AL-QAIM SUGAR MILLS LIMITED” (2021 CLD 931).

Petitioner-SECP Arguments

5. Mr. Adil Umar Bandial, Advocate objected to the maintainability of the application on the grounds *inter alia* that Section 414 of the “Act” is not applicable to the facts and circumstances of the case; that the applicant has no locus-standi to file this petition being not permitted person in terms of Section 313 of the “Act”; that the application

is not permissible under the law as it should have been filed by the official liquidator in terms of Section 337(e) of the “Act”; that the “Company” is still under liquidation and the cause underlying in terms of its winding up has not been disappeared and as such it has lost its substratum.

Determination by the Court

6. The contents of the application alongwith documents viz. Schedule-I, 26th Annual Report (Annex-A) and Interim Financial Information (Un-Audited) (Annex-B) have been perused. Apparently, the application was filed under Section 414 of the “Act” with the prayer to recall the winding up order. The said section reads as:

“414. Power of Court to declare dissolution of company void.- (1) Where a company has been dissolved, the Court may at any time within two years of the date of the dissolution, on an application being made for the purpose by the liquidator of the company or by any other person who appears to the Court to be interested, make an order, upon such terms as the Court thinks fit, declaring the dissolution to have been void, and thereupon such proceedings may be taken as might have been taken if the company had not been dissolved.
(2) It shall be the duty of the person on whose application the order was made, within fifteen days after the making of the order, to file with the registrar a certified copy of the order, and if that person fails so to do he shall be punishable a daily penalty specified in level 1 on the standard scale”.

Emphasis added

7. Plain reading of above said section reveals that it empowers the Court to declare dissolution of a company void in case it was filed either by the liquidator or any person who appears to the Court to be interested, within two years of the date of dissolution of the Company but in the case in hand, no dissolution order has so far been passed by this Court rather the winding up proceedings are under way. Notably, the application in hand was filed by Umer Saleem, Director/Chief Executive of the “Company” therefore, Section 414 of the “Act” has no relevancy to the relief claimed for.

8. A pivotal objection with regard to *locus-standi* of the Applicant has been raised by learned counsel for the Petitioner-SECP on the touchstone of Section 313 of the “Act” by relying on [*Nilkanta Kolay, Petitioner v. The Official Liquidator, Respondent*] **AIR 1996 Calcutta 171** whereby it was held that “*the company, however, independently of the Liquidator does not appear to me to have any locus standi in such application*”. Admittedly, winding up order was passed vide judgment dated 27.02.2018 under Section 305 of the “Act” in the following manners:

“9. *The above letter has not been denied by Mukhtar Textile. It is clear from a reading of the letter above that the company has suspended its operation since 2011 and the entire staff has been laid-off in order to avoid incurring expenditures. Also Mukhtar Textile informed SECP that the entire record of the company is packed in gunny bags in haphazard manner and dumped in a store and thus reluctance was shown by the Chief Executive of Mukhtar Textile to arrange or inspecting the record. It has further been admitted that Mukhtar Textile has no regular*

employee so as to assist the inspection team for the purpose of inspection”.

9. Under the law, procedure for staying of winding up has been provided under Section 313 of the “Act” which reads as:

313. Power of Court to stay winding up.-(1) *The Court may at any time not later than three years after an order for winding up, on the application of any creditor or contributory or of the registrar or the Commission or a person authorised by it, and on proof to the satisfaction of the Court that all proceedings in relation to the winding up ought to be stayed, withdrawn, cancelled or revoked, make an order accordingly, on such terms and conditions as the Court thinks fit.*

(2) On any application under sub-section (1), the Court may, before making an order, require the official liquidator to furnish to the Court a report with respect to any facts or matters which are in his opinion relevant to the application.

(3) A copy of every order made under sub-section (1) shall forthwith be forwarded by the Court to the registrar, who shall make a minute of the order in his books relating to the company.

10. A bare reading of the said Section reveals that two conditions are required to be satisfied for bringing an order of stay of winding up in existence (i) filing of an application either of the Official Liquidator or of any creditor or contributory or of the registrar or the Commission or a person authorized by it for stay of winding up proceedings; (ii) proof to the satisfaction of the Court that all proceedings in relation to the winding up

ought to be stayed. If the above two conditions are satisfied, the Court has the discretion to stay the winding up proceedings, either altogether or for a limited time by imposing appropriate terms and conditions. Pertinently, consequence of winding up order was that all the assets of the company would come under the control of the Court and management of the company would vest with liquidator instead of Directors and the Chief Executive of the company. Thus, the ground raised by Mr. Adil Umar Bandial, Advocate regarding locus standi of the Applicant is a valid. Moreover, under Section 337 (e) of the “Act”, only the official liquidator is empowered to institute or defend any suit, prosecution or other legal proceedings in the name and on behalf of the Company under liquidation but the instant application has not been filed as per requirement of Section 313 of the “Act” rather the same was filed by Umar Saleem, Director/Chief Executive and that too without any authorization.

Furthermore, by perusing 26th Annual Report (Annex-A) it reveals that the “Company” was given on lease to M/s Fazal Awais Textiles from April, 2011. During the course of arguments, learned counsel for the Applicant stated that the “Company” has terminated the lease with M/s Fazal Awais Textile since 2021 but no proof whatsoever has been brought on record. It is also admitted in the aforesaid report that three of the Directors are not registered taxpayers; Directors have not gone through mandatory training and company’s internal audit function remained inoperative during the year. Besides this, the Directors and the management of the “Company” have breached various obligations under the provisions of various applicable laws as is evident from the judgment dated 27.02.2018. More so, minute examination of revival

plan transpires that it is neither verified, signed or even endorsed by all members of the management/shareholders nor the contents thereof are affirmed from independent verified auditors. Learned counsel for the Applicant has failed to satisfy the Court that the “*Company*” has removed the underlying causes which became basis for its winding up, which as per record, still subsist. It has held by this Court in the case of “SAUDI PAK INDUSTRIAL & AGRICULTURAL INVESTMENT COMPANY LTD Versus CHENAB LIMITED (2020 CLD 339)” that “*unless the cause underlying the winding up has disappeared, no order under Section 313 of the “Act” could be passed*”. Admittedly, the winding up proceedings are still underway and staying of these proceedings at this stage will cause delay in liquidation process and prejudice to the rights of other creditors, if any, as protected under Section 314 of the “*Act*”. In this view of the matter, this application being not maintainable is **dismissed**.

(JAWAD HASSAN)
JUDGE

Approved for Reporting

JUDGE