

IN THE SUPREME COURT OF PAKISTAN
(ORIGINAL JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MUNIB AKHTAR

S.M.C. NO. 26 OF 2007, H.R.C. NOs. 2698/2006, 133/2009, 778-P/2009, 13933/2009, 14072-P/2009, C.M.A. NOs. 4662/2011, 302/2010, 4249/2018 & CONSTITUTION PETITION NO. 64/2009
(Deadbeats got loans 54 billions written off)

In Attendance:

For the Petitioner:	Nemo. (In Const.P.64/2009)
For Federation:	Mr. Khalid Jawed Khan, Attorney Gen Syed Nayyar Abbas Rizvi, Addl. AGP.
For NAB	Syed Asghar Haider, P.G. NAB.
For PIDB:	Raja Abdul Ghafoor, AOR
For IDBL	Mr. Zarghoon Shah, Chief Manager, IDBL.
For ZTBL, SME, Pak Libya Holding Co	Mr. Muhammad Rasheed Qamar, ASC
For HBL, Kraf Kit Ltd For Utility Store Saudi Pak, Industrial & Agricultural Investment Co.	Mr. Arshad Tayably, ASC Mr. Kashif Farooq, GM+ Mr. Masood Alam Niazi, Sr.G.M.HR., Mr. Liaqat Hussain, G.M. Accounts and Mr. Iftikhar Ahmed, Manager Law
For State Bank	Raja Abdul Ghafoor, AOR. a/w Mr. Asad Ahmad Gani, Advocate on behalf of Dr. Pervez Hassan Sr. ASC.
On Court's notice	Mr. Farooq H. Naek, Sr. ASC For Orient Rice Mills, Rizek Industries, Abbas Steel, Misto Industries, Petro Commodities, Abbas Engineering (CMA 5048-5053/18) Mr. M. S. Khattak, AOR. For Ahmed Food Industries Mr. Nadeem Ahmed Sheikh, ASC for Afghan Gheen industrieis, Hakim Textile Mills Mr. Zafrullah Khan Cheema, ASC for SCHON Industries. Mr. Farhat Nawaz Lodhi, ASC. For Paksitan National Textile Mills, Kurdistan Trading Co.

Agha Muhammad Ali, ASC.
Mr. Nawaz Khan, CEO, A-IAbas Fabrico.

Mr. Tariq Aziz, AOR. For Tutripax Foods Ltd. ,
Taha Spinning Mills, Alaji Ismail Mills. Ltd.

Syed Qalb-e-Hassan, ASC in CMA 5409/2018

Sardar M. Aslam, ASC for Langar Sulemani
Food Ltd.

Mr. Fazal ur Rehman, in person for Latif
Shakil Textile Mills

Mr. Umar Alvi, ASC for Prodential Textile Mills
Ltd, M/s Rubicon Industries. (CMA 5033-
5034/18)

Sh. Muhammad Akram, ASC for Footcare Pvt.
Ltd. And its directors. (CMA 5035-5039/18

Nemo for Jam Jafees Ali s/o Jam Sher Ali

Mr. Mehr Khan Malik, AOR for Irum Textile
Mills

Mr. Shahid Ikram Siddiqi, ASC for Kashif Steel
Mills
Ch. Akhtar Ali, AOR. (CMA 5195/18)

Mr. Munawar ul Islam, ASC (CMA 5014/18)
(For Mubarik Textile Mills, Shafiq Textile Mills, Aziz
Spinning Mills, Chaudhry Electrodes Ltd, Siraj Steel Ltd,
Techno Agriculture Ltd, Al-Asif Sugar Mills, National Bulbs
Pvt Ltd, Icepack Ltd)

Kh. Ahmed Tariq Rahim, Sr. ASC (CMA
5040/18)
Syed Moazzam Ali Shah, ASC
(For Choti Textile Mills Ltd)

Malik Muhammad Ahmad Qayyum, Sr. ASC
(CMA 5290/18) for Sheikho Oil Mills

Mr. Abbas Mirza, ASC
(For Chohan Vegetable Mills)

Mr. Fauzi Zafar, ASC (CMA 5362/18)
(For Farooq Habib Textile Mills Ltd)

Maj. Gen. (R) Mian Abdul Qayyum for Qurel
Cassettes Ltd.

Mr. Ahmed Qayyum, ASC for Ibex Textile

Mian Tariq Manzoor, ASC.
Mr. Abdul Haleem Paracha, for Zamir Textile
Mills

Mr. Shah Khawar, ASC for Sooraj Mukh Co.

Mr. Hamid Ali Shah, ASC.

Mr. Ayaz Aslam Ch. For Salar Textile Mills and Munarak Netwear Ltd.

Mr. Rab Nawaz Khichhi, Trantice Ltd.

Mr. Khurram Raza, ASC. For SS Oil Mills Ltd.

Mr. Asif Jabbar Khan, for Spectrum Chemicals

Mr. Habib ur Rehman, Advocate a/w Ashaar Khurram on behalf of Frontier Dextrose Ltd.

Mr. Asim Hafeez, ASC (CMA 5556, 5557/18) for Ayaz Textile Mills (HBL), Dascon Pvt. Ltd. (HBL), Pak Pattan Dairies Ltd (ZTBL), Punjab Propylene Industries Ltd Service Fabrics & Monnoo Dairies

Mr. Asad Aalam, Ms. Lubna Asad, Ms. Bushra Naeem for Fatima Food Industries

Mr. Azid Nafees, ASC. For Sinsas Pvt. Ltd., Azeem Foods Industries, Electronic Information & Energy System (CMA 5396/18)

Mr. Jahangir Jadoon, ASC for Kashmir Poultry Mills.

Mr. Haq Nawaz Chatha, ASC for Compact Particle Board Ltd., Expo International Pvt. Ltd. And Continental Rice Mills Ltd.

Syed Mudassar Ameer ASC for mala Ghee Pvt. Ltd.

Mr. Zaheer Abbas for Tabaco Mills Ltd.

Mr. Zulfiqar Chohan, Director Chohan Ghee Mills Ltd

Agha Muhammad Ali, ASC for Al-Abbas Fabrics Ltd.

Mr. Hasan Akbar, ASC. For Taha Spinning Mills Ltd. & Haji M. Ismail Mills

Syed Raza Ali Bukhari, s/o Syed Iftikhar Ali Bokhari for Mubarik Dairies

Mr. Irfan Bannu for Bannu Dairies

Mr. Zafarullah Cheema, for Shan Knite Wear Ltd.

Mr. Mudasir Khalid Abbasi, ASC for Pak Green Fertilizers Co & Multan Edible Oil Ltd.

Mr. Wajid Jawad, Associated Industries Ltd.
(CMA 5406/2018)

Mr. Shehryar Kasuri, ASC for Lion Steel
Industries Pvt Ltd.

Mr. Shabbir Hussain Dir. Batala Ghee Mills

Mr. Habib ur Rehman Advocate, Mr. Ashar
Khurram for Frontier Dextrase Ltd.

Raja Qasit Nawaz, Advcoate for Ghulam
Muhammad & Co.

Mr. Saalim Saleem Khan, ASC for Ahmad
Foods Pvt. Ltd. (CMA 5047/2018)

Mr. Ayaz Aslam Ch. For Salaar Textile Mills ,
Munareh Knitwear

Mr. Muhammad Arshad s/o Khusi
Muhammad for M/s Ink Chemicals Pvt. Ltd.

Barrister Haris Azmat, ASC for Kotri Textile
Mills Ltd.

Syed Nazim Hussain Shah on behalf of Sidra
Rice Mills Pvt. Ltd.

Mr. Shakil Jamil Anjum for Continental
Beverages Ltd.

Mr. Ikramullah Chaudhry, CEO Gadoon
Synthetic Mills Ltd. & Attock Textile Mills Ltd.

Syed Rifaqat Hussain Shah, AOR for Mian
Muhammad Sugar Mills, Oberio Textile Mills
Ltd.

Mr. Abid S. Zuberi, ASC (CMA 5403/18)
Mr. Tariq Aziz, AOR for Kiran Sugar Mills Ltd,
Pak Land Cement, Saudi Cement, Sarbaz
Traders, Kiran Enterprises Ltd. Dewan
Cement

Mr. Zulfiqar Ali Abbas, brother of deceased
Iftikhar Ali Abbas for Afghar Gheen Industries
Ltd.

Mr. Shaukat Hussain Malik, Bosan Road
Multan

Mr. Zafrullah Cheema, for Shan Knitwears
Ltd.

Mr. Zohaib Khaliq for Jadeed Textile Mills.

Mr. Zahid Minhas, ASC for Haye Sons

Raja Muhammad Shafqat Abbasi, ASC for Mehr Dastagir Spinning Mills, Dastagir Leather & Foot wear industries Ltd (CMA 5394-5395/18)

Mr. Shahid Anwar Bajwa, ASC for Kakashian Oil & Kakashian Feed Mills Ltd

Malik Qamar Afzal, ASC for Spectrum Pvt Ltd Chemicals (CMA 5411/18)

Mr. Abdul Rauf, Director Shariq International Ltd

Mr. Imtiaz Ahmed, Director Jaiguar Mating Pvt Ltd

Mr. Aleem Baig Chughtai, ASC for Novalty Fabrics Pvt Ltd

Mr. Khalid Mehmood Khan, ASC for Frontier Dextroz Ltd (CMA 5408/18)

Mr. Muhammad Khalid, Director Polysex Pvt Ltd

Mr. Arif Khan, ASC in CMA 5005, 5207, 5208, 3210/2018

Mian Javed Iqbal Arain, ASC for Ali Knitwear

Mr. Hasan Nawaz Makhdoom, ASC for Taimoor Spinning Mills

Mr. Hafeez ur Rehman, ASC for Ravi Dairy Products Ltd

Mr. Nawab Khan for Al-Abbas Fabrics Pvt Ltd

Mr. Tariq Aziz, AOR for AM Pak Dairies Pvt Ltd

Raja Inaam Minhas, ASC (CMA 5168, 5172/2018)

Mr. Tariq Aziz, AOR for Aslam ginning & Press Factory Pvt Ltd

Mr. Zahid Ibrahim, ASC in CMA 5205, 5208, 5209, 5210/2018

Mian Abdul Rauf, ASC
Ch. Muhammad Akram Nat, in person for Rani Agro Dairy Products Ltd.

Mr. Haider Waheed, ASC (Shan Foods CMA 5361/18)

Sardar Abdus Sami, ASC (CMA 5397-5399/18).

Mr. Umar Aslam, ASC (CMA 5404-5405/18)

Mr. Khalid Mahmood Khan, ASC. (5408/18)

Syed Mudassar Amir, ASC (CMA 5559/18)

Mian Abdul Rauf, ASC.

Mr. Ahmad Qayyum, ASC (CMA 5044/18).

Mr. Arif Khan, ASC. (CMA.5005, 5007 to 5010, 5190/18).

Mr. Abdur Rauf rohala, ASC. (Salala Industries)

Mr. Shahzada Mazhar, ASC Harrpa Textile Mills.

Date of hearing: 30.06.2018

ORDER

This matter has been proceeding for the last several dates and we have had the assistance of the learned counsel for the respective parties (being the borrowers) to whom notices were issued by way of publication as well as the learned Attorney General for Pakistan.

2. Very briefly by way of background this is a matter taken up by the Court exercising suo moto jurisdiction, regarding loans that were written off or waived by various financial institutions including banking companies, as to whether such write-offs were *bonafide* and done only for proper and lawful business and commercial reasons and considerations and not for any ulterior motive or in bad faith or in abuse of law or power in order to give undue favour and/or to benefit the chosen few. In order to assist the Court, a high powered commission chaired by Mr. Justice (Ret'd) Syed Jamshed Ali, a former Judge of this Court, was appointed to undertake an in-depth and detailed analysis of such loans. Certain terms of reference were settled for the Commission. After a detailed inquiry and numerous hearings the Commission presented its report to this Court and for the last several dates its recommendations and the implementation of the same have been under consideration.

3. The learned Attorney General and learned counsel appearing for the respective parties have taken us to Volume 1 of the Commission's

report, which sets out the detailed exercise that was undertaken and the recommendations that have been made. Several paragraphs from this volume were read out before us and we would like to acknowledge the assistance that has been provided by learned counsel in this regard.

4. We may note that after having considered several hundred cases, the Commission ultimately recommended that 222 cases ought to be taken up for further proceedings. The summary of these cases is given in Table 5.9 at page 107 of Volume-I. We are only concerned with these 222 cases.

5. Having considered the respective submissions and the recommendations we have concluded that the interests of justice will best be served in the following manner. Firstly, we accept the recommendation of the Commission, as contained in para 5.28(iii) of Volume-I (page 108) that a uniform formula ought to be applied across the board while dealing with the 222 cases. The Commission has given its rationale and nothing has been said before us that would dissuade us from taking the same approach. The rationale is sound, reasonable and practical. This aspect may be regarded as fundamental to these proceedings. Secondly, at page 109 the Commission has made four recommendations, serialized as (I) to (IV) and being, from the perspective of the borrowers, in descending order of "severity". Having considered the matter, in our view it is recommendation (IV) that ought to be adopted, i.e., the one that is most favorable to the borrowers, and which the Commission itself has recommended as a "moderate option". The Commission has of course quite rightly emphasized that it is ultimately for the Court itself to decide the appropriate course of action.

6. In the several volumes of the report following Volume-I, the Commission has considered the case of each borrower individually and has applied a standardized formula with regard to the position of finances/loans/advances obtained by all the borrowers. This is of course in line with the Commission's recommended approach of applying a uniform across the board formula. In each case, a standardized table has been prepared for the borrower, the first two columns of which relate to "amount sanctioned" and "amount recovered" respectively. In our view recommendation (IV) as referred to above and which has been accepted by this Court is to apply in relation to these two figures.

7. In view of the above, it is decided that in the first instance all of the borrowers included in the 222 cases identified by the Commission, be given an option (herein after the "first option") to deposit with this Court an amount equal to 75% of the differential between the "amount sanctioned" and "amount recovered". If a borrower deposits this amount within a timeframe and in a manner to be fixed by the Court, then no further proceedings will be taken against it. In the case of all those borrowers that do not avail the first option, their cases will be referred to the Banking Court (herein after the "second option"). The Banking Court will then reconsider the entire case within such period as may be fixed by this Court, i.e., will consider whether the amount written off/waived (as identified by the Commission in relation to the said borrower in the subsequent columns of the table relating to it) was done in a lawful manner and not by way of any abuse of power or the law. For such purpose the Banking Court shall be entitled and bound to look behind the position as may have emerged in consequence of the application to Circular 29 that was issued by the State Bank of Pakistan in relation to written off loans. More particularly, this exercise shall be carried out within the parameters laid down in section 8(1) of the Financial Institutions (Recovery of Finances) Ordinance 2001. It is clarified that since this exercise will be carried out under the directions of this Court in exercise of suo moto jurisdiction, sub-section (2) of section 8 shall have no application, and the same shall likewise apply in respect of any question of limitation. (There is in any case a requisite power in the Banking Court under the 2001 Ordinance.) Furthermore, the onus shall lie on the borrower to establish affirmatively that the written off/waived loans/ finances/advances did not come within the parameters of section 8(1). The Banking Court will be at liberty to issue notice to the concerned financial institution and/or the State Bank (or any other person) if it so deems appropriate but it shall not be bound to do so. In case the borrower fails or refuses to appear before the Banking Court it shall proceed against it *ex parte* and in such a situation shall be entitled to assume that the waived off amount(s) come within the parameters of section 8(1). If the Banking Court concludes that any amount is recoverable, it shall make an appropriate order, which shall be deemed to be the decree of the court and shall be executable accordingly and also in terms as herein after stated.

8. In respect of any borrower that avails the second option, its properties and assets shall be deemed attached with immediate effect from such date as may be specified by this Court, as shall the properties and assets of all persons who are the directors or partners of the borrower and all persons having a majority or controlling interest therein (whether as shareholder or owner). In respect of any such borrower, if ultimately the Banking court concludes that any amount is recoverable, then in addition to such proceedings by way of execution that may be taken, any property or assets to which the order of attachment hereinabove may apply shall also be liable to be disposed off, and in such manner as the Banking Court may deem appropriate, in order to make full recovery. This is however subject to one condition. If a borrower that chooses to avail the second option (or to which the latter applies) deposits with this Court the differential amount referred to above in relation to the first option (i.e., 75% of the difference between the "amount sanctioned" and "amount recovered") within the stipulated period then such borrower may make an appropriate application to the Banking Court and on such application, if that Court is satisfied that the amount has been so deposited, it may make an order declaring that the order of attachment shall cease to operate in relation to such borrower and its directors/partners/controlling persons. The amount so deposited will be subject to adjustment or return, as the case may be, depending on the outcome of the proceedings before the Banking Court.

9. Learned counsel for some of the borrowers appearing before us have contended that their instructions are that the first option is not to be availed but the facts of their cases are such that the matter ought not to be regarded as falling within the second option. Such learned counsel shall be heard by this Court in relation to their respective cases but subject to following conditions. Firstly, the case ought to be made out by learned counsel must be so clear and obvious that it must be regarded as floating on the face of the record. No other case, which requires any deeper consideration of the record, will be entertained. Secondly, if in relation to any borrower learned counsel fails to make out a case in this regard, then the case of the said borrower shall be deemed referred to the Banking Court in terms of second option, but in such case the borrower shall not have an opportunity of making a deposit in terms as aforesaid i.e. the order of attachment in such cases shall apply immediately and in

full from the specified date and shall continue till the termination of the proceedings before the banking court.

10. It may be noted that any case to which the first option does not apply shall be deemed to fall within the second option (unless there is anything expressly to the contrary in this or any subsequent order of this Court.) Finally, it need hardly be pointed out that since the order of attachment will apply in terms of the orders of this Court, any disobedience or violation thereof shall also be tantamount to contempt of court and the concerned party/persons shall be liable accordingly.

11. Learned counsel may take instructions from the respective parties in terms of the above and proceed accordingly on the next date. We may note that on earlier dates some learned counsel had indicated that their instructions were that the concerned borrower wished to avail the first option. Such instructions may be reaffirmed on the next date. Finally, the learned Attorney General may also, if he so deems appropriate, make further submissions in light of the above for the assistance of the Court.

12. Re-list for 4th July, 2018.

Chief Justice

Judge

Islamabad,
the 30th June, 2018.
Not approved for reporting
Nisar/*