

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE FAISAL ARAB
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR

CIVIL APPEAL NO.1563 OF 2014 AND CIVIL PETITIONS NO.2215-L OF 2017 AND 471-L OF 2018

(Against the impugned judgments dated 15.09.2014, 19.06.2017 and 22.02.2018 passed by the Lahore High Court, Lahore in C.O. No.51/2013, C.M. No.37/2016 in C.O. No.51/2013 and C.M. No.16/2018 in C.O. No.51/2013, respectively)

Shoaib Ullah Cheema	(in C.A. No.1563/2014)
S. Zafar Ali Shah	(in C.P. No.2215-L/2017)
Shoaib Ullah Cheema	(in C.P. No.471-L/2018)
	... Petitioner(s)

VERSUS

Additional Registrar of Companies, S.E.C.P. etc.	(in all cases)
	... Respondent(s)

For the appellant/ petitioner(s):	Mr. Shoaib Ullah Cheema, in person (in C.A. No.1563/2014 and C.P. No.471-L/2018)
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Nemo
(in C.P. No.2215-L/2017)

For the respondent(s) SECP:	Mr. Muqtadir Akhtar Shabbir, ASC Mr. Nasrullah Khan Babar, ASC
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Date of hearing:	08.01.2019
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JUDGMENT

MIAN SAQIB NISAR, CJ:- On 18.08.2003, the Additional Registrar of Companies, Securities and Exchange Commission of Pakistan (*SECP; the respondent*) moved a petition (*C.O. No.51/2003*) before the Lahore High Court, Lahore for the winding up of Forex Services International (Private) Limited (*the Company*) alleging that it was involved in the illegal business of receiving deposits from the public. On 27.04.2005, the learned High Court appointed Mr. Fakhar Hayat and Syed Zafar Ali Shah as the official liquidators. Subsequently on 21.05.2007, Syed Zafar Ali Shah joined government service leaving behind Mr. Fakhar Hayat as the only liquidator (*the Liquidator*). On 31.05.2013, Mr. Shoaib Ullah Cheema (*the*

instant appellant) filed an application before the learned High Court for removal of the Liquidator (*the Application*) on the ground that the Liquidator had failed to complete the winding up process within the period stipulated in Section 326 of the Companies Ordinance, 1984 (*the Ordinance*). This Application was dismissed by the learned High Court *vide* order dated 15.09.2014 (*Dismissal Order*) against which the instant appellant filed an appeal (*C.A. No.1563/2014*) before this Court under Section 10(1) of the Ordinance. Leave was granted *vide* order dated 21.11.2014 in the following terms:-

“In order to consider whether the official liquidator having not completed liquidation process within time contemplated by Section 326 of the Companies Ordinance, 1984 was liable to be removed and the audit of the company under liquidation was expedient and imperative; the true import and spirit of Section 326(3) of the Ordinance ibid, leave is granted...”

Be that as it may, on 23.02.2015, the respondent raised an objection regarding the maintainability of the appeal stating that a direct appeal to the Supreme Court under Section 10(1) of the Ordinance lies only against a winding up order of the Company Judge, and that any order passed in the winding proceedings other than the winding up order, such as the Dismissal Order, is to be assailed through an intra-court appeal before a Division Bench of the High Court in terms of Section 10(2) of the Ordinance. On 23.02.2015, this Court appointed Mr. Khalid Anwar, Sr. ASC and Dr. Parvez Hassan, Sr. ASC as *amici curiae* in to assist this Court on the key preliminary question that arises from the instant proceedings, i.e. what is the scope of a direct appeal to this Court under Section 10(1) of the Ordinance. In the meantime, the learned High Court passed an order dated 19.06.2017 which directed (*in C.M. No.37/2016*) Syed Zafar Ali Shah (*ex-Official Liquidator*) to refund to the respondents certain amounts in the liquidation account. This order has been challenged by Syed Zafar Ali Shah before this

Court through an appeal under Section 6(1) of the Companies Act, 2017 (*the Act*). The learned High Court passed another order dated 22.02.2018 dismissed the objection petition (*C.M. No.16/2018*) filed against the auction conducted that was approved *vide* order dated 04.12.2017. This order has been challenged by the appellant again through an appeal under Section 6(1) of the Act.

2. The appellant in person simply relied upon the arguments of the learned *amicus* Dr. Pervaiz Hassan, Sr. ASC and supported the stance that a winding up order as well as any other order passed by the Company Judge in the winding up proceedings after a company has been ordered to be wound up can be appealed against before the Supreme Court pursuant to Section 10(1) of the Ordinance. On the other hand, the learned counsel for the respondent submitted refuted this position and stated that this was not the correct position law – the appeal before this Court is not maintainable as the impugned order had to be challenged before a Division Bench of the learned High Court as per the law.

3. Before proceeding further, it is worthy to note Section 10 of the Ordinance which reads as under:-

“10. Appeals against Court orders.- (1) Notwithstanding anything contained in any other law, an appeal against any order, decision or judgment of the Court under this Ordinance shall lie to the Supreme Court where the company ordered to be wound up has a paid-up share capital of not less than one million rupees; and, where the company ordered to be wound up has paid-up capital of less than one million rupees, or has no share capital, such appeal shall lie only if the Supreme Court grants leave to appeal.

(2) Save as provided in sub-section (1), an appeal from any order made or decision given by the Court shall lie in the same, manner in which and subject to the same conditions under which appeals lie from any order or decision of the Court.

(3) An appeal preferred under sub-section (2) shall be finally disposed of by the Court hearing the appeal within ninety days of the submission of the appeal.”

4. We also find it expedient to mention the cases considered by this Court for resolution of the question involved in the instant matter. The relevant cases of this Court are: (1) Kamaluddin Qureshi Vs. Ali International Company (PLD 2009 SC 367); (2) Ibrahim Shamsi Vs. Bashir Ahmed Memon (2005 SCMR 1450); (3) Diamond Industries Vs. M. Zafar-ul-Haq Hijazi (PLD 2003 SC 124); (4) Fiala Spinning Mills Limited Vs. International Finance Corporation (2002 SCMR 450); (5) United Rank Limited Vs. Pakistan Industrial Credit and Investment Corporation Limited (PLD 2002 SC 1100); (6) Glorex Textile Limited, Karachi Vs. Investment Corporation of Pakistan (1999 SCMR 1850); (7) Sindh Tech. Industries Limited Vs. Investment Corporation of Pakistan (1998 SCMR 1533); (8) Brother Steel Mills Limited Vs. Mian Ilyas Miraj (PLD 1996 SC 543); and (9) Muhammad Din and Sons Private Limited Vs. Allied Bank of Pakistan (1993 SCMR 80). The germane cases of the High Court of Sindh are: (10) Zulfiqar Hussain Vs. Bambino (Private) Limited (2011 CLD 1737); (11) Syed Wajahat Hussain Zaidi Vs. T. J. Ibrahim & Company (2009 CLD 1225); (12) Additional Registrar of Companies Vs. Noorie Textile Mills Limited (2008 CLD 277); (13) Agha Fakhruddin Khan Vs. Ruby Rice and General Mills Limited and others (2001 YLR 1797); (14) Muhammad Faroog Vs. T. J. Ebrahim & Company and Alliance Motors (Private) Limited (PLD 1999 Karachi 246) and (15) Mehboob Industries Limited Vs. Pakistan Industrial Credit and Investment Corporation Limited (1988 CLC 866). The relevant cases from the Lahore High Court are reported as: (16) Asghar Ali Vs. Official Liquidator (2007 CLD 888); (17) M. Suleman & Company Vs. Joint Official Liquidators (1997 CLC 260); (18) M. Sunrise Textiles Limited Vs. Mashreq Bank PSC and others (PLD 1996 Lahore 1); (19) Chaudhry

Jamil Ahmad Vs. Nippon Bobbin Company (Pakistan) Limited (PLD 1991 Lahore 467); and (20) Lahore Development Authority, Lahore Vs. Investment Corporation of Pakistan, Karachi (2003 CLD 1764). Finally, the related case of the High Court of Balochistan is (21) **Industrial Development Bank of Pakistan Vs. Kamal Enterprises Limited (PLD 1995 Quetta 41)**.

5. The superior courts of Pakistan while interpreting the scope of Section 10(1) of the Ordinance in the aforementioned case law have laid down the following principles:-

- i. An appeal against an order of winding up only lies before the Supreme Court under Section 10(1) of the Ordinance while all other orders in a winding up proceedings are appealable before the Division Bench of a High Court under Section 10(2) of the Ordinance [*Cases (1); (11), (13) and (15)*];
- ii. An appeal against an order of winding up and any order or decision passed subsequent to the winding up order of a company shall lie before the Supreme Court in terms of Section 10(1) of the Ordinance [*Cases (2), (9), (10), (14), (16), (17), (18), (19), (20) and (21)*];
- iii. Orders passed under Section 10(2) of the Ordinance in exercise of the original civil jurisdiction of a High Court are appealable before a Division Bench of the High Court [*Case (3)*]; and
- iv. Section 10(1) of the Ordinance does not debar a company from making an application before the Company Judge for setting aside an ex-parte winding up order passed against it [*Case (12)*].

It is pertinent to note that in some cases, appeals were filed before the Supreme Court under Section 10(1) of the Ordinance against post-winding up orders. Similarly, appeals were also filed before the Division Bench of the High Court under Section 10(2) of the Ordinance against orders passed subsequent to the winding up order. But in these cases, the Supreme Court

or the Division Bench of the High Court did not address the issue of maintainability of the appeals [Cases (4), (5), (6), (7), (8) and (11)].

6. Be that as it may, we find it expedient to discuss in detail the judgment passed by this Court regarding the issue at hand. The case of **Kamaluddin Qureshi** (*supra*), dealt with the scope of Sections 10(1) and 10(2) of the Ordinance. A three-Member Bench of this Court declared that an appeal under Section 10(1) can only be made to the Supreme Court against a winding up order and appeals against all other orders can be made under Section 10(2). The relevant paragraphs read as under:-

*“8. At this juncture before proceeding further, it may be appropriate to consider the scope, consequences and effect of an order of winding up of a Company. An order of winding up of a Company encompasses activities in different spheres of economic activity and effects interests of divergent nature. The investment of shareholders and investors are at stake. The various contracts with those supplying or providing services to the company and their economic activities are affected. In case, the Company is engaged in providing goods or services, of essential or of daily requirements of the community, such order may cause abrupt withdrawal of all such products or services being provided by the Company under liquidation. The various works undertaken by the Company or under different contracts are brought to a standstill. The recovery of taxes, duties and levies resulting from the activities is discontinued, last but not the least. The entire range of creditors, suppliers, Bankers, financiers and employees entitled to their respective dues are also exposed to difficulties and uncertainties. No order passed under the Company law has consequences of such diversity and magnitude. Thus, the order of winding-up being entirely distinguishable stands out on a different pedestal than any other order relating to any specific subject matter or dispute. No order passed either before the order of winding up or afterwards can, therefore, be equated with an order of winding up with respect to its consequence. It has been repeatedly held the right to appeal is a substantial right. **The remedy of an***

appeal is available only where expressly provided and in the manner it is provided. Subsection (1) of section 10 of the said Ordinance starts with the non-obstante clause and this has an overriding effect over any other law it confers a right to appeal against an order of winding up. The intent of the legislature to provide the remedy of an appeal against an order of winding up of a Company, directly to the Supreme Court is reflected in unambiguous terms irrespective of the fact and nature of the proceedings that may lead to an order of winding up of a Company. The scope of an appeal has therefore, been widened to provide remedy irrespective of the source or basis of such order by use of the words "an order decision or judgment of the Court" which if not challenged in appeal would otherwise attain finality as an order of winding up as is apparent by the use of the words "where the Company ordered to be wound up."

The remedy provided is subject to further conditions; that in case the Company ordered to be wound up has a paid up capital of not less than one million rupees an appeal would lie to this Court but where the Company ordered to be wound up has a paid, up capital of less than one million rupees the remedy is subject to an additional condition' of grant of leave to appeal. The subsection thus creates a distinction between cases involving the order of winding up of the Company and the remedy of a direct "appeal" or "after grant of leave to appeal" before the Supreme Court on the basis of the paid up share capital of the Company. It may not be out of place here to examine the consequences of interpretation of section 10(1) of the Ordinance differently so as to apply to appeals against any order, decision or judgment of the Court other than that the order of winding up of a Company. The right of appeal conferred under the said Ordinance which is a special enactment; adopting any other interpretation, would lead to an anomalous situation. An example of which may be case [sic] where an appeal involving a claim of a creditor for over a million rupees brought before the Court against order of a Company Judge in a case where the paid up capital of the limited Company is less than one million; a petition for leave to appeal would lie in spite of the fact that the amount over one million against a Company under liquidation merely because of the paid up capital

being less than one million rupees, A different remedy of a direct appeal to Supreme Court is provided to a creditor having a claim for a few thousand rupees against a Company with a paid up capital of over one million would have a right to file a direct appeal against a finding of a Company Judge pertaining to his claim involving a Company under liquidation although their claims may otherwise be similar except for the difference in amount of respective claims. This prima facie is obvious discrimination amongst the creditors. Secondly for the aforesaid reasons such interpretation would also be in direct conflict with the provisions of Article 185(d) (e) of the Constitution of Islamic Republic of Pakistan pertaining to appeals before the Supreme Court. There is no distinction regarding appeals prior to passing of an order of winding up of a Company. Such restriction can only be inferred by addition of words to this effect but in view of the plain meanings of the word no addition is required because the language of the statute is clear and unambiguous they are to be given their ordinary meaning as held in Pakistan through Secretary Finance and others v. Messrs Lucky Cement and another 2007 SCMR 1367. It appears that the learned Bench of this Court; for the legal acumen and learning of the Honourable members of which we have the highest regard and hold in high esteem; was not properly assisted in this case, while considering the case of Ibrahim Shamsi (supra), as a result of which this aspect escaped notice and the anomaly resulting in practical terms case a different interpretation is adopted escaped consideration. Both subsections (1) and (2) of section 10 of the said Ordinance deal with the remedy of appeal provided by the law.

Subsection (2) provides that an appeal from any order made or decision shall lie in the same manner and subject to the same conditions under which appeals lie from any order or decision of the Court. This subsection appearing after subsection (1) makes no distinction between orders prior to or subsequent to an order of winding up. It appears after subsection (1) and pertains to the same subject matter, therefore, subsection (2) is attracted to and further regulates all the cases of appeals including appeals against orders

passed after an order of winding up of a Company. **The scope of the subsection has been widened b use of the words "an appeal or decision" given to include and to a. to all appeals except those covered by subsection (1) of section 10.** The clear wording and sequence of the two subsections of section 10 of the Ordinance cannot be stretched as the same would amount to doing violence to the provisions of that section.

...
It shows that subsection (1) of section 10 deals only with appeals against order of winding up of a Company.

The above view finds further support from the provisions of the subsequent subsection (2) of section 10 of the Ordinance, which specifically [sic] worded "save as provided in subsection (1)". **The second subsection is unconditionally attracted to an appeal against "any order made or decision given by a Court" and is not restricted to an appeal preferred before or after passing of an order of winding up of a Corn an nor to the value of the subject matter.** The legislature has not intended to place any restriction or impediment to the appeals filed under this subsection. Yet another important and significant aspect is that winding up orders passed are to be examined as to the various aspects for revival of the Company to be determined on consideration of its further viability. Effort is made to continue the business particularly in cases of a running Company and any delay may lead to irreparable losses and drastic consequences as held by this Court in the case of *Hala Spinning Mills Ltd. v. International Finance Corporation* and another 2002 SCMR 450.

12. **In view of the above discussion, we have no option but to hold that the provisions of subsection (2) of section 10 are attracted to appeals referred in cases except the appeals against an order of winding up,** which is distinct and has multi dimensional effects with far reaching consequences as already discussed above.”

[Emphasis supplied]

7. The brief background of the case of **Ibrahim Shamsi** (*supra*) is after the winding up order of Sindh Alkalies Limited Karachi was passed by

the Company Judge, an order was passed which declared that the Official Assignee had received improved bids and the two highest bidders should close the bid among themselves. This order was challenged by the petitioners. The counsel for the respondent contented that the appeal before the Supreme Court was not maintainable under Section 10(1) of the Ordinance and if the petitioners were aggrieved then they should have filed an Intra-Court appeal under Section 10(2) thereof. After referring to the case law, a two-Member Bench of this Court declared that an appeal against any order or decision in proceedings where the company has already been ordered to be wound up, including the winding up order, lies before the Supreme Court under Section 10(1) *supra*. The relevant extracts of the noted judgment are reproduced hereinbelow for ease of reference:-

“9. A casual reading of section 10(1) of Ordinance, 1984 gives an impression that it pertains to the order of winding up alone which is appealable before the Supreme Court. Had it been the intention of Legislature, it could have conveniently used singular term of winding up, to the effect that, any judgment whereby the Company is ordered to be wound up shall be appealable before the Supreme Court in the manner and under the conditions already described. Contrary to the use of single term, the use of multiples like “order”, “decisions” or “judgement” certainly covers a wider ambit and point to a scenario where different types of orders, not necessarily of winding up, might be challenged in appeal.

10. Another important characteristic of this subsection is the use of words “where the Company ordered to be wound up”. These terms visualize the passage of any “order” or “decision” passed or made at a time when the Company has already been wound up. Had the Legislature an intention to make a mere reference to an order or decision passed or made during the pendency of a winding up proceedings, it could have used the words “where the Company is sought to be wound up” instead of the words “where the Company

is ordered to be wound up". So it includes any order passed after the winding up order. The wisdom is apparent because after the winding of [sic] order, the Legislature did not seem to have intended to prolong the matters by allowing an intermediary remedy of Intra-Court Appeal.

11. We would, therefore, conclude and hold that **section 10(1) includes the winding up order as well as any order or decision in proceedings where the Company has already been ordered to be wound up. Any order passed or decision made by Company Judge after the winding up of Company, shall be appealable before the Supreme Court** in the manner and under the conditions described in the subsection itself. AS the impugned order is passed after winding up proceedings, the petition before this Court, [sic] is maintainable.

12. This Court in case of S. Muhammad Din and Sons case 1992 SCMR 1795 had held that appeal under section 10 is competent only where an order or decision has been made in proceedings when the Company has already been ordered to be wound up. The terms to be appreciated are any "proceedings" when the Company has already been ordered to be wound up. **It gives a clear indication that once a company has already been ordered to be wound up, any order passed or decision made in** proceedings thereafter can be challenged before the **Supreme Court under section 10(1) of Ordinance, 1984.** Though not referred to yet the principle aforesaid was followed by Sindh High Court in Muhammad Farooq's case PLD 1999 Kar. 246 holding a view that once a winding up order has been passed, all orders passed in proceedings thereafter shall fall under section 10(1) of the Ordinance and be appealable before the Supreme Court."

[Emphasis supplied]

8. In the case of **Diamond Industries** (*supra*) the petitioner company was issued a show cause notice by the Securities and Exchange Commission of Pakistan (SECP) as to why an Inspector should not be appointed to investigate the affairs of the Company as it showed losses.

After hearing the Company, an order for appointing the Inspector was passed by the SECP. This order was challenged before the Appellate Bench of the SECP and was set aside. Later on, another show cause notice for the appointment of Inspector on grounds of deviation from memorandum of association, non-payment of return to shareholders, etc. was made which was rejected by the Appellate Bench of the SECP but maintained by the Company Judge of Peshawar High Court. A three-Member Bench of this Court dismissed the petition and declared as follows:-

“4. In the case of Brother Steel Mills Ltd. and others v. Mian Ilyas Miraj and 14 others (PLD 1996 SC 543) and an unreported judgment in the case of Ch. Muhammad Hussain v. Pakistan Industries and Credit Investment Corporation Ltd. and others C.M.A. No. 943 of 2002 in C.A. No. 648 of 2002, decided on 25-7-2002), this Court has held that all orders passed under subsection (2) of section 10 of the Ordinance in exercise of original civil jurisdiction of the High Court as per provisions of section 15 of the Code of Civil Procedure (Amendment) Ordinance (X of 1980) are appealable before a Division Bench of the High Court.

*5. In the case in hand identical questions of law and fact are involved. **The impugned order being an interlocutory in nature is governed by the aforesaid provisions of law against which an Intra-Court Appeal before a Division Bench is the only remedy.**”*

[Emphasis supplied]

9. In the case of **Hata Spinning Mills** (*supra*), an appeal was filed before this Court under Section 10(1) of the Ordinance against the winding up order passed by the Company Judge. The respondent had brought a winding up petition before the Company Judge contending that the appellant Company has failed to pay its debt and the petition was granted. The appellant Company appealed against this order which was dismissed by a two-Member Bench of this Court while holding that “*the*

opinion formed by learned Company Judge vide impugned judgment that it is just and equitable to wound up appellant company admits no interference in appeal by this Court.”

In **United Bank Limited**'s case (*supra*), the appellant had extended a credit facility to a company which was later ordered to be wound up by the Company Judge. An order for the encashment of the bank guarantee was also made against which the appellant filed an appeal under Section 10(2) of the Ordinance in Karachi High Court which was dismissed and the order of the Company Judge was maintained. The appellant filed an appeal before this Court which was also dismissed by a three-Member Bench. However, there was no discussion regarding the scope of either Section 10(1) *supra* or 10(2) *supra* in the judgment. In the case of **Glorex Textile Limited** (*supra*), the respondents had filed a winding up petition against the appellant on ground that the appellant had failed to pay the due amounts. The Company Judge allowed the petition and an appeal against the winding up order filed before this Court was dismissed by a three-Member Bench. The case of **Sindh Tech. Industries Limited** (*supra*) involved an appeal against the order of the Company Judge who had ordered the winding up of the appellant company on the ground that it had failed to repay the amount of the loan to the respondent. The appellant company contended that the winding up petition was not maintainable as the service of statutory notice under Section 306 of the Ordinance was not met. The High Court had repelled the contentions and the appellant company approached this Court. However, a two-Member Bench of this Court dismissed the appeal stating that the appellant company had failed to repay the loan and the winding up was just and equitable.

10. In the case of **Brother Steel Mills Limited** (*supra*), a dispute arose amongst various families in the Ittefaq Group set-up and a memo of understanding was concluded between some of the families concerned for dividing the corporate assets of the Ittefaq Group. In respect of this settlement, respondents filed a petition under Section 265(a)(ii) of

the Ordinance before the Lahore High Court praying for direction to the Corporate Law Authority to appoint Inspector to investigate the affairs of the petitioner-company and to submit a report. The appellants opposed but the Company Judge accepted the petition and ordered investigation in the affairs of the petitioner-company by Inspectors to be appointed by the Corporate Law Authority. This judgment was challenged in the Intra Court Appeal. The respondents had also filed a petition under Section 290 of the Ordinance before the Company Judge of the Lahore High Court. During the pendency of the main petition under Section 290 of the Ordinance, respondents filed an application under Section 292 of the Ordinance praying that the management of the Company may be replaced by an impartial board/administrator. This application was granted and the management of the petitioner company was suspended/removed and Inspector already appointed was appointed as Administrator to act as Chief Executive of the Company and perform functions of the management. A five-Member Bench of this Court, while discussing issues of jurisdiction, declared with regards to Section 10 of the Ordinance as follows:-

“In the facts of the present case, section 10(1) of the Ordinance cannot be pressed in service because one of the preconditions for its applicability is that the company should have been ordered to be wound up. If no order for winding up of the company has been passed, section 10(1) of the Ordinance will not be attracted...The provisions of appeal under section 483 of the Companies Act, 1956 are completely different, which provide for appeals from any order made or decision given "in the matter of the winding up of a company". In the Ordinance, section 10(1) clearly provides that appeal can be filed against judgment or order where the company has been ordered to be wound up which is not as wide as under the Companies Act, 1956.

5. The main question about maintainability of the appeals can be resolved by interpreting the provisions of law

*quoted above. The present case will be governed by section 10(2) of the Ordinance according to which except the cases mentioned in subsection (1), the appeal will lie in the "same manner" and "subject to the same conditions" under which appeals lie from any order or decision of the Court. This provision does not specify the forum in which the appeal is to be filed nor does it clearly state the conditions which will be attracted while challenging the order in appeal. It however, in clear terms states that the appeal will lie in the same way as appeal lies against an order of the Court. **This provision confers a right of appeal against order and decision passed by the Company Judge in a case to which section 10(1) of the Ordinance does not apply.** The words "manner" and "conditions" are comprehensive in meaning and wide in connotation to include the procedure to be followed in filing and hearing appeals, the period of limitation to be applied and the forum to which appeal would lie. It is by reference that provisions providing for filing appeal against an order of a Judge of the High Court passed in exercise of original civil jurisdiction are attracted...The first part of section 10(2) of the Ordinance confers a right to file appeal against any order or decision of the Company Judge. The forum, procedure, hearing and period of limitation for filing appeal have not been stated and will be regulated by such laws which apply to appeals filed against the order passed or decision made by a Single Judge of the Court."*

[Emphasis supplied]

11. Finally the case of **Muhammad Din** (*supra*) involved reconstruction/reorganization of a company. The Company Judge had disallowed the company from rechecking the accounts with the bank and an appeal against that order was filed before this Court, a two-Member Bench of which found as follows:-

"7. Contention of the learned counsel for the respondent is valid as an appeal against an order of a learned company Judge is only competent where an order or decision has been made in proceedings when the company has already been

ordered to be wound up. In the case in hand there is no order of winding up of the company. The application out of which these proceedings arise was filed for reconstruction/re-organization. For such purpose provision is provided in Part IX whereas the provision for winding up is in the Part XI of the aforementioned Ordinance, 1984. The two sets of provisions are separate and distinct. Therefore, appeal against the impugned order is not competent. Hence, it is dismissed.”

12. There are various conflicting judgments on the interpretation of Sections 10(1) and (2) of the Ordinance, including judgments of this Court. At the risk of repetition, in **Ibrahim Shamsi**'s case (*supra*), a two-Member Bench of this Court held that Section 10(1) of the Ordinance applies to a winding up order as well as any order or decision made in the winding up proceedings after the Company has been ordered to be wound up. Thus, a winding up order as well as any order passed or decision made by the company judge after the winding up of a company shall be appealable before the Supreme Court instead of the Division Bench of the High Court. In **Kamaluddin Qureshi**'s case (*supra*), a three-Member Bench of this Court held that Section 10(1) of the Ordinance applies only to a winding up order. Thus, only an order passed by the company judge for the winding up of a company shall be appealable before the Supreme Court. All other orders passed in the winding up proceedings whether before or after the winding up order shall be appealable before the Division Bench of the High Court under Section 10(2) of the Ordinance read with Section 3 of the Law Reforms Ordinance, 1972 and Section 15 of the Code of Civil Procedure (Amendment) Ordinance, 1980. As **Kamaluddin Qureshi**'s case (*supra*) was decided by a bench larger than **Ibrahim Shamsi**'s case (*supra*) and is also later in time, the ratio of the former would have prevailed over the latter and accordingly, the instant appeal would not be maintainable before this Court and the proper forum for the adjudication of the appeal would be the Division Bench of the High Court. However, a larger Bench was created

in order to re-consider the law on the subject and conclusively resolve the question posed.

13. A plain and simple reading of Section 10(1) of the Ordinance reinforces the decision of this Court in Ibrahim Shamsi's case (*supra*). It is a settled principle of interpretation of statutes that the words of a statute are to be given their plain and ordinary meaning. The use of the words "where the company ordered to be wound up" in Section 10(1) visualizes the passage of any "order" or "decision" passed or made at a time when the company has already been wound up. Contrary to the use of single term, the use of multiples like "order", "decision" or "judgment" certainly covers a wider ambit and point to a scenario where different types of orders, not necessarily of winding up, might be challenged in appeal. The wisdom is apparent because after the winding up order, the Legislature did not seem to have intended to prolong the matters by allowing an intermediary remedy of intra-court appeal. Thus, a plain and ordinary meaning of Section 10(1) of the Ordinance provides that it applies to a winding up order as well as any order or decision made in the winding up proceedings after a company has been ordered to be wound up. Resultantly, a winding up order as well as any order passed or decision made by the Company Judge after the winding up of a company should be appealable before the Supreme Court instead of the Division Bench of the High Court. Section 10(1) *ibid* refers to an appeal against "**any**" order, decision or judgment of the Court "*where the company ordered to be wound up...*" Two essential elements of Section 10(1) *ibid* are the use of the broad word "any" as qualifying "order, decision or judgment" and that such order, decision or judgment must have a nexus with "the company ordered to be wound up".

14. Petitions for winding up were (*prior to the Act*) ordinarily filed under Section 305 of the Ordinance. Its opening line reads "A company may be wound up by the Court" and provides the several circumstances in

which a company may be wound up. Section 314(1) of the Ordinance provides:-

“314. Powers of Court on hearing petition.- (1) On hearing a winding up petition the Court may dismiss it with or without costs, or adjourn the hearing conditionally or unconditionally subject to the limitation imposed in section 9 or make any interim order, or an order for winding up the Company or any other order that it deems just; but the Court shall not refuse to make a winding up order on the ground only that the assets of the Company have been mortgaged to an amount equal to or in excess of those assets, or that the Company has no assets.”

[Emphasis supplied]

The emphasized portion indicates the making of “an order for winding up of the Company or any other order that it deems just”. Section 314(5) of the Ordinance is also relevant which read as follows:-

“(5) Where the Court makes an order for the winding up of a Company, it shall forthwith cause intimation thereof to be sent to the official liquidator appointed by it and to the registrar.”

[Emphasis supplied]

The result of the above provisions and discussion is that Section 10(1) *supra* enables appeals to the Supreme Court against a winding up order as well as any order or decision made in the winding up proceedings after a company has been ordered to be wound up. Resultantly, a winding up order as well as any order passed or decision made by a Company Judge after the winding up of a company shall be appealable before the Supreme Court instead of the Division Bench of the High Court. The fact that the word “any” is used as opposed to “an order” would point to a broader legislative intent. Also, the specific Sections of the Ordinance dealing with the winding up of a company, some quoted above, use the

language, without exception, "order" for the "winding up". For Section 10(1) *ibid* to include not only an "order" for the winding up of a company but "any order" and not only "any order" but also "any decision or judgment" of the High Court suggests that the intention may have been to reach not only a winding up order but also post-winding up orders.

15. In light of the foregoing, we find that the ratio of the **Ibrahim Shamsi**'s case (*supra*) is good law, whereas that of **Kamaluddin Qureshi**'s case (*supra*) is not, the latter of which is hereby overturned. Having decided the question of maintainability in favour of the appellant, all these matters are hereby referred to a regular Bench which shall decide the same on merit in accordance with law.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Announced in open Court
on **15.1.2019** at **Islamabad**
Approved for reporting
Waqas Naseer