

**IN THE SUPREME COURT OF PAKISTAN**  
**(Appellate Jurisdiction)**

**PRESENT**

**Mr. Justice Faisal Arab**  
**Mr. Justice Ijaz ul Ahsan**  
**Mr. Justice Munib Akhtar**

**Civil Miscellaneous Application Nos.7923 & 7617 of 2019 in Civil Miscellaneous Application No. 8758 of 2018, Civil Miscellaneous Application No.1878 of 2020 in Civil Miscellaneous Application No. 7617 of 2019 in Civil Miscellaneous Application No. 8758 of 2018 and Civil Miscellaneous Application No.2012 of 2020 in Civil Miscellaneous Application No. 8758 of 2018 in Civil Miscellaneous Application No. 376-K of 2014 in Suo Moto Case No. 03 of 2009**

**Application for release of funds to be paid by Bahria Town to the Government of Sindh pursuant to order dated 21.3.2019** CMA No. 7923/19

**Application to deposit the entire money deposited by Bahria Town Pvt. Ltd in the public account of Federal Government** CMA No. 7617/19 & CMA 1878/2020

**Implementation of judgment dated 4.5.2018 in CMA 376-K/2014** CMA 2012/2020

**In attendance** : Mr. Khalid Javed Khan, Attorney General  
Mr. Salman Talibuddin, A.G. Sindh  
Syed Ali Zafar, ASC for BTPL  
Mr. Farooq H. Naek, Sr. ASC for MDA

Date of hearing 29.6.2020

**ORDER**

We have before us four applications, (i) CMA 7923/2019) moved by the learned Advocate General for Sindh, (ii) CMAs 7617/2019 & (iii) 2012/2020 filed by and on behalf of Attorney General for Pakistan, and CMA 1878/2020 filed by Malir Development Authority. We have been ably assisted by the learned Law Officers with regard to the said applications.

2. In terms of the order dated 21.03.2019 Bahria Town have started depositing installments, such that as of today i.e.

29.06.2019, an amount of Rs. 52,694,270,554/- has been deposited. By order dated 23.07.2019, it was directed that the installments being deposited be invested (through the National Bank of Pakistan) in T-Bills issued from time to time by the State Bank of Pakistan. We are informed that as of 29.06.2010 an amount of Rs.5,466,940,230/- has been earned by way of profit/markup.

3. The reason why the aforementioned CMAs came to be filed was that the question of how the installments being deposited by Bahria Town and the profit/ markup that has accrued thereon is to be utilized has now arisen. Valuable submissions have been made by the learned Law Officers in this regard. One point on which there is consensus of the Attorney General and Advocate General Sindh is that the disbursement and utilization of the funds be under the supervision of a high powered, "blue ribbon" commission headed by a retired Judge of the Supreme Court of Pakistan hailing from Sindh to be appointed by the Court. However, there is some disagreement as to who should be the other members of the commission. The learned Attorney General is of the view that inclusion of representatives of the Federation would be appropriate. The learned Advocate General Sindh strongly contests this, his view being that the matter is purely Provincial in nature and does not require any involvement by the Federation, which would be inappropriate in the circumstances.

4. We have carefully considered the CMAs and the rival submissions. We are in agreement with the Law Officers that the disbursement of the funds should be in the hands of a high powered commission to be headed by a Chairman and having five voting members permanently residing in Sindh with no political affiliation and six non-voting members taking such position by virtue of their office. The Chairman to be nominated by the Hon'ble Chief Justice of Pakistan on the recommendations of the Implementation Bench. All decisions of the Commission relating to selection of projects, the cost of such projects and all financial matters directly, indirectly or by implication relating to projects to be undertaken shall be subject to approval of the Implementation

Bench of this Court. Since, as envisaged, this commission would have to be in operation for a number of years to come, it would have to be established and function accordingly and guidelines for its scope, mandate and funds need to be given. In view of this, we have made detailed provisions regarding the commission and its functioning, as set out in the Annex to this order, which is to be read as an integral part hereof. All the CMAs are disposed of in the above terms.

JUDGE

JUDGE

JUDGE

Islamabad,

Announced on **20<sup>th</sup> of October, 2020**

Not Approved For Reporting

**ANNEX**

1. The Commission shall consist of the following members:

To be appointed by the Court, being either (i) A retired Judge of the Supreme Court of Pakistan hailing from and permanently residing in the province of Sindh or if not available for any reason then (ii) a named individual, an eminent citizen residing in Sindh; or (iii) the holder for the time being of a public office of or relating to Sindh; or (iv) some combination of (ii) and (iii).	Chairman
One person to be nominated by the Governor of Sindh subject to confirmation by the Implementation Bench, being eminent citizen resident in Sindh, who does not hold any public office and does not have any known political affiliations.	Member
One person to be nominated by the Chief Minister of Sindh subject to confirmation by the Implementation Bench, being eminent citizen resident in Sindh, who does not hold any public office and does not have any known political affiliations.	Member
Attorney General for Pakistan	Member
Advocate General for Sindh	Member
One woman out of three to be recommended by the Commission in its first meeting who is an eminent and accomplished citizen of Sindh and who does not hold a public office and does not have political affiliation. One of three such recommendees shall be nominated by the Implementation Bench as a member of the Commission.	Member
NON-VOTING MEMBERS WHO WOULD ATTEND BY INVITATION OF THE CHAIRMAN	
Chief Secretary, Government of Sindh	Member

Finance Secretary, Government of Sindh	Member and Secretary to the Commission
Senior Member, Board of Revenue, Sindh	Member
Senior most officer assigned to Sindh in the office of the Auditor General of Pakistan	Member
Senior most officer assigned to Sindh in the office of the Accountant General of Pakistan	Member
Nominee of the Governor, State Bank of Pakistan, being not below the rank of Deputy Governor	Member

2. The Chairman and the first five nominated members shall be voting members of the Commission and are herein after so referred. The other members made by virtue of their office are referred to as the non-voting members.
3. The Chairman and the voting members shall have a term of four years from the date of its first meeting but the Court shall retain always the power at any time to direct and order the replacement of any of them prior to expiry of the tenure. The Chairman or voting member may resign at any time subject to the permission of the Implementation Bench. If the Governor or the Chief Minister fail or refuse to nominate a member (whether in the ordinary course or by way of replacement) within such time as may be granted by the Implementation Bench, then the Implementation Bench may make an appointment instead subject to the other conditions as stated above. No action or decision of the Commission shall stand vitiated by reason of any vacancy in relation to a voting member. The Chairman and voting members shall be entitled to be re-appointed for such period(s) as the Implementation Bench may determine.
4. A valid quorum for any meeting of the Commission shall be and require the attendance of the Chairman and at least other three voting members, of whom one must be

the member nominated by the Governor and one the member nominated by the Chief Minister. However, in case two members fail to attend any meeting, the same shall be adjourned for a period not less than seven days.

5. All decisions of the Commission shall be by majority of voting members. In case of equality of voting members the Chairman shall have a second/casting vote.
6. Non-voting members of the Commission must attend such meetings to which the Chairman invites them: provided that the Chairman may, in his discretion, allow at any specific meeting for a non-voting member to be represented by his nominee, who shall be an officer next in seniority to the non-voting member.
7. The Chairman or the Commission may at any time require at any specific meeting the attendance of any officer in the service of the Federation or the Province or the officer of any institution or public body or of the National Bank of Pakistan, and such officer shall be in attendance accordingly.
8. The Commission shall have an office at such location and such physical and other resources and facilities as the Chairman decides on the recommendation of the Commission. It shall, likewise, have officers and subordinate staff assigned to it by the Provincial Government as would be sufficient for the normal and effective functioning of the Commission. The requirements of the Commission shall be communicated by the Chairman to the Chief Secretary, Sindh who shall meet the same in the shortest possible time. All decisions and actions of the Commission must have the concurrence of the Chairman of the Commission. In case of any difference or dispute, the matter shall be resolved by the Implementation Bench. The administrative head of

the secretariat and the officers and staff assigned thereto shall be the Secretary to the Commission, to be appointed by the Chairman who shall be answerable and subject to the control of the Chairman.

9. All expenses, other than the cost of the projects, relating to or to be incurred by the Commission or relating to its work shall be met by the Government of Sindh provided that if there are any differences at any time regarding who is responsible to meet / fulfill such requirements the same shall be resolved by the Implementation Bench.
10. By or before 01.12.2020 the Governor and the Chief Minister shall, through the Registrar of the Court, make their nominations for the voting members, through the Advocate General, Sindh. If any nomination is not accepted by the Implementation Bench, then a fresh nomination shall be sought within such time as may be determined by the Implementation Bench. The Chairman and nominated members shall be appointed/confirmed (as the case may be) by an appropriate order of the Implementation Bench.
11. The Commission shall have its first meeting on or before 25.01.2021. The Chief Secretary, Sindh and the Secretary of the Commission shall at all times coordinate with the Chairman so that the establishment of the office and all matters as are or may be required for enabling the Commission to commence its work by 25.01.2021 are concluded in a timely manner.
12. The first meeting of the Commission shall be held at its duly notified office not later than 25.01.2021. The Commission shall establish such standard operating procedures (SOPs) rules/regulations for its internal working that shall be subject to the approval by the Implementation Bench, enable it to have access to the

funds and for the disbursement thereof in such terms as are herein after stated. The Commission shall propose and suggest projects for public utility including but not limited to health, education, infrastructure etc for the people of the province of Sindh. The Implementation Bench shall consider and approve the project(s) from time to time and shall allocate such funds from time to time as per requirements of the project as communicated by the Chairman.

13. Once approved by the Implementation Bench, the Commission shall then proceed to start the process for award of contracts and other related matters for implementation of the projects. The Commission shall have the power to approve and disburse periodical payments in accordance with the terms of the contract(s).
14. For each project awarded, the Commission shall establish an appropriate oversight committee which shall be headed by a voting member and shall include such persons as the Commission deems appropriate, being any member of the Commission and/or any officer in the service of the Federation or the Province or the officer of any institution or public body. Each oversight committee shall regularly report to the Commission regarding the projects being overseen by it, in terms of such SOPs as are established for this purpose. More than one project may be entrusted to an oversight committee. Each such committee shall (subject to the overall control of the Commission) be responsible for ensuring the due completion of the projects being overseen by it.
15. All projects undertaken, and being undertaken, by the Commission shall be subject to regular audit in terms of SOPs to be established by the Commission for such purpose. All audit reports shall be placed before the Implementation Bench. A yearly audit shall also be



conducted by the Auditor General of Pakistan who shall file his report before the Implementation Bench.

16. Once a project has been completed, it shall be handed over to the Provincial Government for its continuance and operation. For this purpose, the Provincial Government shall, before the handing over of the project, prepare and place before the Commission an appropriate annualized budget for operation and maintenance and all related and ancillary purposes (which shall also include the allocation and appointment of appropriate staff). If the Commission does not accept the budget (or any part thereof) then the matter shall be resolved by the Implementation Bench. For a period of not less than three years (or such longer period as the Commission may deem appropriate) any project handed over to the Provincial Government shall be liable to audit/inspection by the Commission in terms of SOPs to be established by it in this regard. The Provincial Government shall forthwith take all corrective measures as are suggested by the Commission. If corrective measures are not taken, or are taken inappropriately or inadequately, then the Commission shall report the matter to the Implementation Bench for such orders as are deemed appropriate. Each report relating to any audit/inspection carried out by the Commission shall in any case also be placed before the Implementation Bench for such consideration as is deemed appropriate.
17. Without prejudice to the inherent powers and jurisdiction of the Implementation Bench to at any time make such orders as it deems appropriate, the Commission may also at any time, for the removal of any difficulties in relation to anything covered (or that ought to be covered) by this Annex make an appropriate reference to the Implementation Bench, which shall, after notice to all concerned parties, make such orders as it deems fit,

whether by way of modification, omission, addition, supplementation or otherwise.

JUDGE

JUDGE

JUDGE

Islamabad,

Announced on **20<sup>th</sup> of October, 2020**

Not Approved For Reporting