

DATED:20-01-2020

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Hafiz Maqsood Munshi,
Manager,
Companies & Securities Compliance–RAD,
Pakistan Stock Exchange Limited,
Stock Exchange Building,
Stock Exchange Road,
Karachi.

Dear Sir,

SUBJECT: PROPOSED DELISTING OF M/S. CHENAB LIMITED (ORDINARY &
PREFERENCE SHARES)

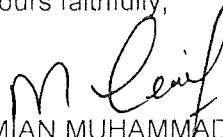
This is with reference to your letter No.PSX/Gen-160 dated January 14, 2020 asking for supply of documents as mentioned therein alongwith outstanding payment of Annual Listing Fee and Listed Company Supervisory Fee of SECP.

In this regard, it is submitted as under in seriatim:-

- (i) Copy of C.M. No.30-C of 2019 filed before the Honourable Lahore High Court, Lahore is attached.
- (ii) Copy of complete Order of the Court dated 05-12-2019 is also attached.
- (iii) Since, the possession of the fixed assets of the company has not been handed over so far by the joint official liquidators to the Ex-Management due to the reasons best know to them, the operation could not be resumed. Therefore, monthly statement regarding developments in operation of the company is not attracted at this stage
- (iv) As regards, update holding overdue Annual General Meetings alongwith submission of overdue Annual and Quarterly Accounts, please find a letter No.EMD/233/670/2005-465-467 dated January 8, 2020 issued by SECP to joint official liquidators. You are requested to please ask for updation in this matter from them.
- (v) The payment of outstanding Annual Listing Fee etc could be made in piecemeal manner upon resuming operation in full swing.

Thanking you.

Yours faithfully,


(MIAN MUHAMMAD LATIF)
EX-CHIEF EXECUTIVE OFFICER
CHENAB HOUSE, CHAK NO.204/R.B.
EAST CANAL ROAD, FAISALABAD

Enclosures: As above.

CC TO:-

- (i) The Director (CSD) – SECP.
- (ii) The Additional Director (AD-SMD) – SECP.
- (iii) Mr. Aurangzeb Mirza, Advocate & Mr. Jalal Ahsan, Chartered Accountant, Joint Official Liquidators Chenab Limited.

BEFORE THE HONOURABLE LAHORE HIGH COURT, LAHORE

CM No. ____ of 2019

In

CO No. 43 of 2011

Saudi Pak Industrial and Agricultural Investment Company Limited

Vs.

Chenab Limited

**APPLICATION UNDER SECTION 313 AND 314 OF THE COMPANIES ACT,
2017 READ WITH ALL ENABLING PROVISIONS OF LAW ON BEHALF OF
(1) MIAN MUHAMMAD LATIF; AND MIAN MUHAMMAD NAEEM,
SHAREHOLDERS/CONTRIBUTORIES OF CHENAB LIMITED**

Respectfully Sheweth;

1. That the above titled matter is pending adjudication before this Honorable Court and is fixed for hearing on 02-12-2019.
2. That the Applicants are shareholders/contributories of Chenab Limited (the "Company") and alongwith their family members hold approximately 61% shares in the paid-up capital of the Company.
3. That, for the purposes of instant application, it is essential to give brief background and profile of the Company:

Brief Background and Profile of the Company

- a. *Chenab Group started its business in 1975 under the name of "Chenab Textiles Industries, Faisalabad" as a fabrics processing unit. Its sponsors belonged to a well-respected family of Faisalabad. Since the inception of*

Pakistan, the family was involved in the cotton growing and ginning business;

b. Over the years, the Group diversified its activities and in April 1985, it created its first corporate entity called the "Chenab Fabrics and Processing Mills Private Limited". In March 1991, the said company was converted into an unquoted Public limited company. Thereafter, in 2000, the Company's name was changed to its present name Chenab Limited;

c. The Company has, before being wound-up, worked as one of the leading manufacturers and exporters of quality home textile products and woven/knitted fashion apparel worldwide. It is a vertically integrated unit, equipped with the latest and sophisticated machinery;

d. The Company houses one of the largest textile processing facilities in the country. These include in-house facilities of spinning, weaving, fabric dyeing, printing, finishing, stitching and exporting top quality made ups and garments. It is, hence, fully equipped to cater to the varied requirements of its customers based in any part of the world;

e. At present, the Company is capable to process and convert more than 90 million meters of fabric into made ups and garments, on yearly basis. The Company has the capacity to earn foreign exchange of US\$ 250 M to US\$ 300 M annually. Before being wound-up, the Company directly employed almost 5000 people with 15000 people being indirectly linked and benefited from the Company operations;

f. Over the years, the Company expanded its facilities and to streamline its operations and create synergies within the conglomerate, various entities were merged with and into the Company. The Company emerged as a consolidated producer of world-class home textiles and woven / knitted fashion apparel;

g. A brief history of the Company operations and financial results, primarily comprising of export sales, is as under:

(Rs. "000")

Year	Sale	Year	Sale	Year	Sale
2003	3,984,978	2004	4,750,847	2005	5,863,108
2006	6,957,562	2007	8,161,233	2008	8,506,911
2009	9,091,379	2010	8,857,796	2011	4,374,335
2012	2,606,632	2013	2,171,725	2014	2,265,551
2015	2,213,846	2016	2,007,632	2017	1,764,452

In this regard, it is pointed out that the major reasons for decline in the business/sales of the Company during the period of years 2012-2017 was, inter alia, (a) on account of non-availability of electricity and gas, which are the main sources of fuel required for the operations of the Company; and (b) social-economic conditions of the Country having an adverse effect on the business sector across Pakistan.

- h. The Company has 04 units i.e.; (a) 01 Dyeing/Printing and Stitching Unit; (b) 02 Air Jet Weaving Units; and (03) 01 Spinning Unit. In addition, the Company has also set-up a natural gas-based power generation facility of 14 MW, with heat exchanger and waste heat steam boilers;
- i. The Company has a record of corporate dealings with reputable business houses in the world. It has a capacity to manage products and brands in foreign markets with a variety of consumption patterns and cultural backgrounds as well as different technical requirements or legal provisions. The Company has proven its commitment to quality by achieving the following certifications:

- ISO 9001

- ISO 14001
- SA 8000 & WRAP
- C-TPAT
- OHSAS 18001
- OEKO TEX STANDARD 100

Furthermore, the Company, being engaged in the export of high value-added textile goods, had a diversified customer base across the globe. The key customers of the Company included:

JC Penney USA

Macy's, USA

Newman, USA

Williams-Sonoma, USA

Kohl's Departmental USA,

Otto Group, Germany,

IKEA, Sweden

Home Centre UAE.

- j. The Company's production facilities have been sourced from world-renowned textile machinery manufacturers and are of diversified make and origin, including Germany, Japan, Italy, Switzerland, Austria and UK. The Company has the following production capacities:

Production	Capacity
Spinning	19,200 spindles/ 36,000 Lbs. per day
Weaving	240 air jet looms/ 90,000 Mtrs per day
Bleaching	4 Plants/ 400,000 Mtrs per day
Dyeing	3 Plants/ 90,000 Mtrs per day
Printing	4 Rotary machines/ 160,000 Mtrs per day
Finishing	27 Machines/250,000 Mtrs per day
Stitching	1800 Machines/225,000 Mtrs per day
Quilting	17 Machines/3000 Comforter Sets per day
Embroidery	15 Machines/142,000,000 Stitches per day
Polyester Wadding	1 Plant/15,000 Mtrs per day
Power Generation	14 MW gas-based & 7 MW diesel operated

The installed production capacity of processed fabric is 250,000 Mtrs. Per day, however we have used 50% of the installed capacity i.e. 125,000 Mtrs per day in the future projections of the company.

4. That the Company is currently undergoing compulsory winding up proceedings pursuant to a winding-up order dated 13-07-2017 (the "Winding Up Order"); passed by the Honorable Lahore High Court. The petition of winding up, Company Original No.43 of 2011, resulting in passing of the Winding Up Order, had been filed by one of the secured creditors of the Company, namely, Saudi Pak Industrial and Agricultural Investment Limited, having approximately 4% share in the overall secured debt of the Company.

5. That, in the above background, the instant application is being filed by the applicants for stay, withdrawal, cancellation and revocation of the Winding Up Order, *inter alia*, on the following basis:

a. there is a strong case for bona fide revival of the Company as well as rescheduling/restructuring for payment of all debts to the Secured Creditors of the Company, based on the restructuring/rescheduling plan (the "Plan") appended herewith as Annexure-A;

b. the Plan has already been shared with and presented to the major lenders/secured creditors of the Company who are considering the same;

c. the Plan will ensure revival of the Company's business operations, which is worth more alive than dead. In this regard, it is submitted that the Plan includes sale of various non-core assets of the Company for payment of its debts as well as meeting the working capital requirements of the Company. In addition, the Plan also includes induction of investors for reviving the business operations of the Company. Furthermore, the Plan, if accepted and implemented, will cure/diminish the grounds for passing of the Winding Up Order;

d. the Company has more than 30 years of experience in the export of high value added textile products to leading brands of the world like JC Penney, Macy's,

Williams-Sonoma, Kohl's Departmental Stores, in the USA, Otto Group in Germany, IKEA in Sweden and Home Centre in UAE. Since, the Company is fully compliant unit equipped with European & Japanese machinery and all ancillary facilities as detailed above, which is prerequisite to business with the reputed brands/stores of the world; the foreign buyers are still in contact with the sponsors of the Company and willing to restart the business with the Company as soon as the production operations of the Company resume.

e. the revival of the Company will ensure direct employment of more than 5000 people with 15000 people being indirectly linked and benefited from the Company operations;

f. industries play an important role in the economic development of a country, moreso, industries working in export oriented sectors. It is a well-known fact that economic progress, revival of sick units and new industrialization of a country are interrelated to each other. The revival of the Company and return into exports business will be a contributing factor for country's economy;

g. even otherwise, the revival of industry increases overall production in a country, which generates employment, and hence a higher per capita income. The same not only help in increasing the employment in a country but also increase the Gross Domestic Product (GDP) of that country. It also helps in making favorable the balance of payments due to which inflation decreases and economy becomes strong;

h. owing to the positive steps taken by the Government of Pakistan regarding business facilitation as well as better exchange rate for exports and better availability/supply of fuel (electricity and gas), the Company has high chances to reconnect to its past glory. Moreover, US-China trade war has positively impacted textile exports from Pakistan. The Global Value Chains (GVCs), especially in textile sector, are realigning in US market due to high tariff against Chinese imports. This realignment is providing immense opportunity to

Pakistan's textile industry to integrate it into GVCs which will contribute in enhancing exports of the country;

PRAYER

In view of the above, it is most respectfully prayed that:

- a. this Honourable Court may, in terms of section 314 (b) and (c) of the Companies Act, 2017, order holding of meetings of the Secured Creditors of the Company as well as the contributories of the Company to ascertain their wishes with respect to the Plan attached herewith as Annexure-A,*
- b. this Honorable Court may pass necessary orders and directions on such terms and conditions as the Court thinks fit, after ascertaining the wishes of the Secured Creditors and Contributories of the Company with respect to the Plan attached herewith as Annexure-A, for implementation and enforcement thereof;*
- c. this Honorable Court may pass necessary order for withdrawal, cancellation and revocation of the Winding Up Order dated 13-07-2017.*
- d. In the meantime, and during the pendency of the instant Application, this Honourable Court may be pleased to stay the operation of the Winding Up Order dated 13-07-2017; restrain the Joint Official Liquidators from proceeding any further in the matter and allow the management of the Company to take steps for rehabilitation of the Company's plant for operating purposes.*

Any other relief deem fit and appropriate under the facts and circumstances of the case may kindly also be granted by this Honourable Court in favour of the Applicants.

M. Farooq Hassan
Applicants

Through

Salman Aslam Butt
Senior Advocate Supreme Court of Pakistan

Mohammad Shoaib Rashid
Advocate High Court

Nawa-e-Waqt House
4 Shahrah-e-Fatima Jinnah
Lahore

BEFORE THE HONOURABLE LAHORE HIGH COURT, LAHORE

CM No. _____ of 2019

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Saudi Pak Industrial and Agricultural Investment Company Limited

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APPLICATION UNDER SECTION 313 AND 314 OF THE COMPANIES ACT, 2017 READ WITH ALL ENABLING PROVISIONS OF LAW ON BEHALF OF (1) MIAN MUHAMMAD LATIF; AND MIAN MUHAMMAD NAEEM, SHAREHOLDERS/CONTRIBUTORIES OF CHENAB LIMITED

AFFIDAVIT OF MIAN M. LATIF, EX-DIRECTOR, CHENAB LIMITED, SITUATED AT NISHATABAD, FAISALABAD.

I, above-named deponent do hereby solemnly, on oath, swear and affirm that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed therein.

M. Bay
Deponent

Verified on oath on this _____ day of _____, 2019, that the contents of the above affidavit are true and correct to the best of my knowledge and belief and that nothing has been concealed therein.

M. Bay
Deponent

BEFORE THE HONOURABLE LAHORE HIGH COURT, LAHORE

CM No. _____ of 2019

In

CO No. 43 of 2011

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**APPLICATION UNDER SECTION 313 AND 314 OF THE COMPANIES ACT,
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(1) MIAN MUHAMMAD LATIF; AND MIAN MUHAMMAD NAEEM,
SHAREHOLDERS/CONTRIBUTORIES OF CHENAB LIMITED**

**AFFIDAVIT OF MUHAMMAD NAEEM, EX-DIRECTOR, CHENAB LIMITED,
SITUATED AT NISHATABAD, FAISALABAD.**

I, above-named deponent do hereby solemnly, on oath, swear and affirm that the contents of the accompanying Application are true and correct to the best of my knowledge and belief and nothing has been concealed therein.


Deponent

Verified on oath on this _____ day of _____, 2019, that the contents of the above affidavit are true and correct to the best of my knowledge and belief and that nothing has been concealed therein.


Deponent

Annexure-A

PLAN FOR RESTRUCTURING/RESCHEDUYLING AND REVIVAL OF CHENAB LIMITED

Existing Bank / Financial Institutions wise long term and short term loans outstanding are as under. These are proposed to be converted into two equal fresh loans:

S.NO	BANK NAME	PKR in "000"		
		Principal Outstanding		
		Short Term	Long Term	Total
1	Habib Bank Limited	1,275,461	464,040	1,739,501
2	United Bank Limited	271,560	1,094,200	1,365,760
3	The Bank of Punjab	642,743	583,852	1,226,595
4	Askari Bank Limited	-	844,497	844,497
5	Allied Bank Limited	324,600	276,250	600,850
6	BankIslami Limited	-	531,089	531,089
7	National Bank of Pakistan	468,210	65,000	533,210
8	Albaraka Bank Pakistan Ltd.	148,550	-	148,550
9	Habib Metropolitan Bank Ltd	-	490,865	490,865
10	Silk Bank Limited	30,000	38,433	68,433
11	Standard Chartered Bank	440,416	-	440,416
12	MCB Bank Ltd. (Formerly NIB Bank Ltd)	273,255	-	273,255
13	Citibank N/A	234,886	-	234,886
14	Faysal Bank Limited	163,313	-	163,313
15	Saudi Pak Ind. and Agri. Invest. Co. Ltd.	-	356,836	356,836
16	Pak Oman Investment Co. Ltd.	-	160,556	160,556
17	First Punjab Modarba	72,000	-	72,000
18	Pak Libya Holding Co. Ltd.	-	60,717	60,717
19	Pak-Kuwait Investment Co. Ltd.	-	32,045	32,045
20	Orix Leasing /Orix Investment Bank	-	91,578	91,578
21	First Credit & Investment Bank Ltd.	-	14,978	14,978
22	First National Bank Modaraba	-	26,676	26,676
	Total	4,344,995	5,131,613	9,476,607

The total debt of the company shall be divided into equal two fresh loans, i.e. "Tier I Loan" and Tier II Loan.

Rs. in "000"

Demand Finance - Tier – I Loan 4,738,304

Demand Finance - Tier – II Loan 4,738,304

Total 9,476,608

Repayment of Loan

The Tier-I loan shall be paid in 30 quarterly installments (7-1/2 years) commencing from the date of sanction of the proposal. The Tier-II Loan shall be paid in 26 quarterly installments (6-1/2 years) commencing from when the payment of Tier I Loan will complete. *(Repayment Schedules Given Below)*

Introduction of a Strategic Investor

The Sponsors of the M/s. Chenab Limited jointly hold 69,128,158 shares (60.11%) in the issued capital of ordinary shares of 115,000,000 (100%) of the company. To raised funds to meet the working capital requirements, the Sponsors have decided to disinvest their 1/3rd shareholding i.e., 23042719 Shares to an investor at a price of Rs.15.20/- per share for a total consideration of Rs.350,249,329/-. The consideration received will be injected in the company to meet the working capital requirements. Such loan from sponsors will remain subordinated to Bank debt.

Sale of Non Core Assets

The Company will sell its certain non-core assets for approximate consideration of Rs. 1,355 million. 75% of sale proceeds, approximately Rs. 1,016 million, will be utilized towards the adjustment of debt and remaining 25%, approximately Rs. 339 million, will be used to meet the working capital requirements of the company.

The detail of non-core assets with their sales outlook is given below:-

S. No.	Particulars of Non-Core Assets	Remarks
1	Open land about 42 acres Khurrianwala, Faisalabad	The land is located on the main Sheikhupura road, Khurrianwala, Faisalabad. This land is suitable for the any housing society. Although, at present the real estate market is slow, but due to its good location there are bright chance of its sales at estimated price.
2	3 Houses, W- Block Madina Town, Faisalabad	These houses situated on Susan Road, Faisalabad which has become the main commercial hub of the city. These houses are best for a commercial plaza/apartment building and hopefully these will be sold out easily.
3	1 House, Y-Block, Madina Town, Faisalabad	This house is located in a residential area which has great potential to become commercial in the near future. The house is expected to fetch the estimated price.
4	Office at Park Tower, Clifton Karachi	Since, this office is situated in Icon building of the Karachi. There will be no difficulty in the sale of this office at a reasonable price.
5	Weaving Unit- Kharianwala- Sheikhupura	The unit is located in the thick industrial area and numbers of textile units are functioning in surrounding area. All utilities like Electricity, Gas, Water, Sewerage etc. are available. Two gas based generators of 1.4 MW each are also installed. Since, the weaving machinery of this unit is old, this will be suitable investor who wants to install additional weaving machinery in the same infrastructure.
6	Spinning Unit- Toba Tek Singh	It is situated 3 rd Kilometer Shorkot Road, Toba Tek Singh which is a rich cotton cultivation area. The unit consists of old Japanese/European machinery which is still in good working condition and feasible for the courser yarn counts. At present, the position of spinning industry is good.

Distribution of sale proceeds of non-core assets

Rs. in "000"

S. No	Detail of Assets	Estimated Sale Value	75% share for Banks	25% share for Company
1	Open Land about 42 acres, Khurianwala Faisalabad	400,000	300,000	100,000
2	Weaving Unit- Kharianwala, Shiekhpura	300,000	225,000	75,000
3	Spinning Unit- Toba Tek Singh	350,000	262,500	87,500
4	3 Houses, Madina Town, Faisalabad	200,000	150,000	50,000
5	1 House, Madina Town, Faisalabad	35,000	26,250	8,750
6	Office at Park Tower, Clifton Karachi	70,000		17,500

			52,500	
	Total	1,355,000	1,016,250	338,750

Working Capital

Initial working capital of Rs. 350 million will be injected by the strategic investor arranged by the Sponsors whereupon the Banks will also be requested to provide an equal amount of Rs. 350 million for Export Based Limits to meet the working capital requirements. An amount equal to 25% of the sale value of non-core assets approximately Rs. 339 million will also be used for working capital purposes to further improve the working capital situation.

Thereafter, the sponsor directors will inject the Directors loan whereupon and the Banks will also be requested to provide an equal amount of Export Based Limits to meet the working capital requirements as per detail given below

Rs. in "000"

S. No.	Year	Fresh Equity/Loan	Fresh Export Based Banks Limits
1	1 st	Rs.350,000	Rs.350,000
2	3 rd	Rs.150,000	Rs.150,000
3	4 th	Rs.100,000	Rs.100,000
4	5 th	Rs.150,000	Rs.150,000
5	6 th	Rs.100,000	Rs.100,000
	Total	Rs.850,000	Rs.850,000

Restart up cost

The restart cost of the fabric processing unit of the company necessary for production of 125,000 meter on daily basis is estimated at Rs.120 million. This cost is primarily based on the Technical Assessment Report issued by the National Textile University, Faisalabad

Rate of Mark-up

On account of the prevailing situation, the fact that the Company's operations are closed since 2017 and in order to make the project economically and financially viable, the rate of markup on the re-scheduled loan be reduced to 5% per annum.

The accrual of mark up on Tier I loan shall be started from the date of sanction of the plan whereas the markup to be charged @ 3% on Tier II loan for the first 7-1/2 years will be considered as contingencies in the future projections of the Company and thereafter it shall be accrued at 5% after the payment of Tier I loan. (*Repayment Schedule Given Below*)

Payment of Mark-up

The markup of Tier I and Tier II will be accrued @5% p.a. and shall be paid within 3 years after the payment of entire principal amount. However, markup calculated at 3% for Tier II and total existing outstanding markup be waived off on successful completion of repayment plan of fresh loans.

Note

This plan outlines the broad proposal for restructuring/rescheduling/revival of the Company. The sponsors of the Company are ready and willing to consider any amendments/additions in this plan, as may be suggested by the secured creditors of the Company and approved by the Honorable Lahore High Court, which are beneficial for the revival of the Company.

REPAYMENT SCHEDULE - TIER - I
Demand finance

Installment No.	Year	Repayment		Repayment of Principal	Mark-up	Balance
		Through sale proceed of assets	Through cash margin			
						4,738,304
1	I	375,000	-	375,000	59,229	4,363,304
2	I	75,000	-	75,000	54,541	4,288,304
3	I	75,000	-	75,000	53,604	4,213,304
4	I	225,000	-	225,000	52,666	3,988,304
5	II	66,563	50,000	116,563	49,854	3,871,742
6	II	66,563	50,000	116,563	48,397	3,755,179
7	II	66,563	50,000	116,563	46,940	3,638,617
8	II	66,563	50,000	116,563	45,483	3,522,054
9	III	-	50,000	50,000	44,026	3,472,054
10	III	-	50,000	50,000	43,401	3,422,054
11	III	-	50,000	50,000	42,776	3,372,054
12	III	-	50,000	50,000	42,151	3,322,054
13	IV	-	100,000	100,000	41,526	3,222,054
14	IV	-	100,000	100,000	40,276	3,122,054
15	IV	-	100,000	100,000	39,026	3,022,054
16	IV	-	100,000	100,000	37,776	2,922,054
17	V	-	175,000	175,000	36,526	2,747,054
18	V	-	175,000	175,000	34,338	2,572,054
19	V	-	175,000	175,000	32,151	2,397,054
20	V	-	175,000	175,000	29,963	2,222,054
21	VI	-	210,000	210,000	27,776	2,012,054
22	VI	-	200,000	200,000	25,151	1,812,054
23	VI	-	200,000	200,000	22,651	1,612,054
24	VI	-	200,000	200,000	20,151	1,412,054
25	VII	-	215,000	215,000	17,651	1,197,054
26	VII	-	215,000	215,000	14,963	982,054
27	VII	-	215,000	215,000	12,276	767,054
28	VII	-	215,000	215,000	9,588	552,054
29	VIII	-	250,000	250,000	6,901	302,054
30	VIII	-	302,054	302,054	3,776	0
		<u>1,016,250</u>	<u>3,722,054</u>	<u>4,738,304</u>	<u>1,035,528</u>	

Assumptions:

Principal Amount	4,738,304
Rate of Mark-up	5.00% per annum
Repayment	30 Quarterly installments

Note: Certain cash margins held by the banks shall be adjusted against repayments

REPAYMENT SCHEDULE - TIER - II

Demand finance

Installment No.	Year	Repayment		Repayment of Principal	Mark-up	Balance
		Through sale proceed of assets	Through cash margin			
						4,738,304
31	VIII	-	150,000	150,000	59,229	4,588,304
32	VIII	-	150,000	150,000	57,354	4,438,304
33	IX	-	200,000	200,000	55,479	4,238,304
34	IX	-	200,000	200,000	52,979	4,038,304
35	IX	-	200,000	200,000	50,479	3,838,304
36	IX	-	200,000	200,000	47,979	3,638,304
37	X	-	200,000	200,000	45,479	3,438,304
38	X	-	200,000	200,000	42,979	3,238,304
39	X	-	200,000	200,000	40,479	3,038,304
40	X	-	200,000	200,000	37,979	2,838,304
41	XI	-	200,000	200,000	35,479	2,638,304
42	XI	-	200,000	200,000	32,979	2,438,304
43	XI	-	200,000	200,000	30,479	2,238,304
44	XI	-	200,000	200,000	27,979	2,038,304
45	XII	-	175,000	175,000	25,479	1,863,304
46	XII	-	175,000	175,000	23,291	1,688,304
47	XII	-	175,000	175,000	21,104	1,513,304
48	XII	-	175,000	175,000	18,916	1,338,304
49	XIII	-	175,000	175,000	16,729	1,163,304
50	XIII	-	175,000	175,000	14,541	988,304
51	XIII	-	175,000	175,000	12,354	813,304
52	XIII	-	175,000	175,000	10,166	638,304
53	XIV	-	175,000	175,000	7,979	463,304
54	XIV	-	175,000	175,000	5,791	288,304
55	XIV	-	175,000	175,000	3,604	113,304
56	XIV	-	113,304	113,304	1,416	0
		0	4,738,304	4,738,304	778,699	

Assumptions

Principal Amount	4,738,304
Rate of Mark-up	5.00% per annum
Repayment	26 Quarterly installments

For Private Use

LAHORE HIGH COURT LAHORE
(COMMERCIAL BRANCH)

Examiner
Copy Supply Section
Lahore High Court, Lahore

CIVIL ORIGINAL NO. 43-241

PRESENT:-

MR. JUSTICE. Tawad Hassan

Parties name & pray attached herewith

Malik Khizar

[Signature]
EXAMINAR
COMPANY CASES
COMMERCIAL BRANCH

Form No: HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Civil Original No.43 of 2011

*Saudi Pak Industrial &
Agricultural*

V/S

Chenab Limited

S.No.of order / Proceedings	Date of order /Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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05.12.2019

Mr. Salman Aslam Butt, Sr.ASC for the Contributors of Chenab Limited assisted by M/s Shoaib Rashid, Hafsa Ahmad, Manahil Khan and M. Ali Khan, Advocates.

Mian Sultan Tanvir Ahmad, ASC for the Shareholders assisted by Mr. Usman Ali Cheema, Advocate.

Mr. Abu Bakar, Advocate for Pak Libya.

Barrister Majid Ali Wajid, ASC for MCB Bank.

Mr. Muhammad Irfan Hanjra, ASC Advocate.

Mr. Aurangzeb Mirza, Advocate/JOL alongwith Jalal Ahsan, FCA/JOL.

Hafiz Talha, Advocate for SECP.

Vide my separate judgment of even date, C.M.No.30-C of 2019 filed by the Applicants for grant of interim relief is allowed.

C.M.No.31 of 2019


2. This is an application under Section 151 CPC on behalf of the applicants to place on record certain documents. Subject to all just and legal exception, this application is allowed and documents are placed on record.

C.M.No.32 of 2019

3. Dispensation sought for is allowed subject to all just and legal exceptions. C.M. stands disposed of.

MAIN CASE

To come up for arguments on 14.01.2020.


(JAWAD HASSAN)
JUDGE

For Private Use

By Section
Lawyer High Court, Lahore

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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Civil Original No.43 of 2011

*Saudi Pak Industrial &
Agricultural Investment
Company Ltd*

V/S

Chenab Limited

JUDGMENT

Date of hearing	05.12.2019
Mr. Salman Aslam Butt, Sr.ASC for the Contributors of Chenab Limited assisted by M/s Shoaib Rashid, Hafsa Ahmad, Manahil Khan and M. Ali Khan, Advocates. Barrister Mian Sultan Tanvir Ahmad, ASC for the Shareholders assisted by Mr. Usman Ali Cheema, Advocate. Mr. Abu Bakar, Advocate for Pak Libya. Mr. Majid Ali Wajid, ASC for MCB Bank. Mr. Muhammad Irfan Hanjra, ASC Advocate. Mr. Aurangzeb Mirza, Advocate/JOL alongwith Jalal Ahsan FCA/JOL. Hafiz Talha, Advocate for SECP. Ms. Sadia Malik, Assistant Attorney General. Barrister Umair Khan Niazi, Additional Advocate-General. Mr. Muhammad Kashif Pasha and Mr. Hamid-ul-Rehman Nasir, Civil Judges/Research Officers of this Court.	

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Lahore High Court
Branch

JAWAD HASSAN,J. This judgment will dispose of the application, C.M. No.30-C of 2019, filed by the shareholders/contributors/ex-management (the "Applicants") of the Chenab Limited (the "*Company*") for grant of interim relief, under Section 313 of the Companies Act, 2017 (the "*Act*") read with Order XXXIX Rule 1 & 2 and Section 151 of the Code of Civil Procedure, 1908 ("*CPC*").

2. At the outset, this High Court has already allowed an application under Section 305, 306 and 309 of the Act for winding up of the Company on 20.06.2017 (the “Winding Up Order”). The Winding Up Order was assailed by the Company through an Appeal before the Honorable Supreme Court of Pakistan, which was upheld vide order dated 08.01.2019 (the “Supreme Court Order”). The Honorable Supreme Court has held in its order that *“It was invariably reported by the auditors of the Company that ‘Company may not be able to realize its assets and discharge its liabilities in the normal course of business’. Thus from record it has become clear that Company is unable to pay its debt. Even no amount is shown to have been paid towards re-payment of the outstanding liability under various facilities extended by the Respondent and availed by the Petitioner-Company since the date of filing winding up petition on 24.08.2011”.*

3. After passing of the Winding Up Order, the liquidators appointed by this Court took charge of the assets of the Company and they were paid remuneration under the Act and the Companies (Court) Rules 1997 (the "*Rules*").

4. Now, the Applicants have filed an application, C.M. No. 29-C of 2019, attaching the restructuring/rescheduling plan of the Company, alongwith the instant application for grant of interim relief in the form of stay of operation of the Winding Up Order, to restrain the Joint Official Liquidators (the "Official Liquidators")

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from proceeding further in the matter, and to allow the management of the Company to take steps for rehabilitation of the Spinning, Stitching and Weaving Units of the Company (the "Production Units").

5. On 19.09.2019, the Applicants had sought permission of this Court to file Application under Section 313 of the Act for withdrawal of the Winding Up Order. On the same day, this Court directed the concerned parties to file their objections on the instant application, if so advised.

B. SUBMISSIONS OF THE APPLICANTS

6. During pendency of main application, CM No. 29-C of 2019, the counsel of the Applicants, Mr. Salman Aslam Butt, Sr. ASC submitted that the Applicants, as an interim measure, want to start spinning, waiving and processing units in order to proceed with the production of the Company, as per the provisions of Section 313(1) of the Act read with Rule 95 of the Rules.

7. The counsel has submitted that the Applicants have a *prima facie* strong case of withdrawal of the Winding Up Order. The Applicants has attached a letter dated 28.09.2019 (the "Bank Letter"), whereby the Habib Bank Limited (the "Bank") has confirmed Mian Muhammad Latif, Ex-Chief Executive Officer of the Company, that the restructuring of the debts of the Company is under process, and is being finalized, in following terms:

We, Habib Bank Limited, confirm that we are in the process of finalizing a term sheet for the restructuring of

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Counsel's Section
28.09.2019

Chenab Limited's debt and entering into a scheme of arrangement for the same. We have engaged legal and financial advisors for this purpose too. Up to now, Habib Bank Limited, Bank of Punjab, Habib Metropolitan Bank and Bank Islami have obtained internal approvals for the draft term sheet and Allied Bank Ltd has also conveyed its verbal consent however their formal approvals are in process. We are still awaiting the approvals of the banks set out in the schedule hereto. Once these approvals are received, we will execute the term sheet and proceed to finalize a scheme of arrangement in accordance with our counsel's advice. (emphasis added)

8. The learned counsel has specified that the Company was wound up on the ground of its inability to pay debts, and now possess a viable restructuring/rescheduling plan and proposals to satisfy this Court under Section 313(1) of the Act – which authorizes this Court to pass an order for interim relief. The reason for immediate production and revival of the Company is to increase the export of Pakistan and to revive the Production Units with the help of the Bank to increase business and employment opportunities in our country and to earn foreign exchange.

9. To strengthen his claim, he has emphasized that the Court must consider winding up of the company as a last resort because of its attached impact and consequences on the tax generation, economy and employment in the country and on general public. He identified that winding up shall certainly amount to heavy tax losses to the Government in the form of custom, excise duties,

Section 313(1) of the Act
Interim relief
Counsel's Affidavit

sales tax etc. and would also be detrimental to the concept of "commercial morality". In order to support his contentions, he has relied on "Consolidated Exports Ltd. Versus Messrs Dyer Textile and Printing Mills Ltd." (PLD 1984 Karachi 541) wherein doctrine of "commercial morality" was discussed.

10. He has presented following facts about financial and economic impacts of winding up of the Company:

(1) Economic Impact on Export

Before winding up, the Company was exporting textile goods from 1990 to 2019 with the total export over Rs.85 billion and had local sales of Rs.70 billion approximately. The learned counsel has attached a chart at page 10 of C.M.No.31/C/2019, which is verified by the Faisalabad Chambers of Commerce ("FCC") on 03.01.2019. He has emphasized on the export need of Pakistan as compared to Vietnam, Sri Lanka and India, in textile.

(2) Employment

The learned Counsel submitted that before winding up, the Company had approximately fifteen thousand skilled and unskilled employees, which contributed towards huge employment in the country.

(3) Tax Benefits

The learned counsel stated that before winding up of the Company, it was the largest taxpayer from the Faisalabad Region. He further stated that the Company has paid all applicable dues/taxes amounting to Rs.1.3 billion to the Government from 2000 to 2017 including (a) the Income Tax amounting to Rs.704,616,859/-, (b) the Sales Tax amounting to Rs.32,812,433/-, (c) Property Tax amounting to Rs.30,596,542/-, (d) PESSI amounting to Rs.234,694,939/-, (e) EOBI amounting to Rs.213,870,719/- and (f) other Government taxes/levies amounting to Rs.13,133,146/-.

C. SUBMISSIONS OF THE JOINT OFFICIAL LIQUIDATORS

11. The Official Liquidators appeared before this Court and stated that they have no objection on acceptance of the Scheme of Arrangement but have certain reservations qua interim relief and start of the Production Units keeping in view financial discipline. However, they assented to the following proposal submitted by the Applicants:

- (1) Take steps for rehabilitation and operations of the Production Units;
- (2) Engage/hire staff and labour for the said purposes;
- (3) Commence and undertake business operations of the Company; and

- (4) Maintain Books of Accounts of the Company, and operate its bank accounts, for meeting the expenses and running the affairs of the Company.

12. Mr. Jalal Ahsan, FCA, also appeared and stated that he has no objection on the issues of commercial morality if the Company will run the production in order to generate the revenue for foreign exchequer and pay taxes. He relies on Rule 275 of the Rules and Section 387 of the Act. He further submitted that he has no objection if the ex-management of the Company maintains the financial discipline with the proper procedure and accounting of the said commercial production. He stated that they have given various chances by the Court before the winding up order was made but with the new management including JOLs they will not do any measure/step without their consent.

13. It is joint submission of the Parties that direction be also issued that all above mentioned actions with respect to the affairs of the Company may be managed by the Ex-Management of the Company, including, Mian Muhammad Latif (Ex-Chief Executive Officer) and Mian Muhammad Naeem (Ex-Director), after consultation with the following:

- (1) Joint Official Liquidators appointed by this honorable Court, namely Mr. Aurangzeb Mirza (Advocate Supreme Court) and Mr. Jalal Ahsan (FCA); and
- (2) Nominee of the Habib Bank Limited (Lead Bank) today filed in the Court the joint statement.

Section 387 of the Act
Civil Original No. 43 of 2011
C.M.No. 30-C of 2019

D. APPLICABLE LAW

14. It is essential to note that the preamble to the Act highlights its purpose, *inter alia*, to regulate the corporate entities for protecting interest of shareholders, creditors, stake holders, and ensure general public principles of good governance

15. Section 2(23) of the Act defines the "Court" as the "Company Bench of a High Court having jurisdiction". Section 313(1) of the Act provides powers of the honorable High Court to stay the winding up proceedings, and to make an order on such terms and conditions as the Court thinks fit, subject to the following conditions: (a) within three (3) years after an order for winding up; (b) on application of any creditor, contributory, Registrar or the Commission; and (c) 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. During such application, this honorable Court is also authorized, under Section 313(2), to seek a report of the official liquidators on necessary facts or matters. Section 313 of the Act is reproduced hereunder for clarity:

Section 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.

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Examiner

(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. (emphasis added)

16. Section 314 of the Act, further, empowers the Court to “ascertain” as well as “have regard” to the wishes, value of each debt of the creditor, or voting power exercised by each contributor, of the company in all matters relating to the winding up of such company. Section 314 is reproduced hereunder:

314. Court may ascertain wishes of creditors or contributories. -

(1) In all matters relating to the winding up of a company, the Court may -

(a) have regard to the wishes of creditors or contributories of the company, as proved to it by any sufficient evidence in a manner as provided under this Act;

(b) if it thinks fit for the purpose of ascertaining their wishes, order meetings of the creditors or contributories to be called, held and conducted in such manner as may be directed; and

(c) appoint a person to act as chairman of any such meeting and to submit a report in this regard.

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By the Court
Section 314
Winding up of Company

(2) *While ascertaining the wishes of creditors or contributories under sub-section (1), regard shall be had to the value of each debt of the creditor or the voting power exercised by each contributory, as the case may be.* (emphasis added)

17. Moreover, Rule 95 of Rules requires an application for stay of winding up proceedings to be made upon notice to the parties to the winding up petition and other persons and the official liquidator. It further requires the Court to pass a direction to file a certified copy of the such order with the Registrar of Companies. Rule 95 of the Rules is produced hereunder:

95. Application for stay of winding up proceedings, -

(1) *An application under section 319 (now, 313 of the Act) for stay of proceedings in the winding up shall be made upon notice to the parties to the winding up petition and to such other persons as the Court may direct, and where the application is made by any person other than the official liquidator, notice shall be given to the official liquidator.*

(2) *Where an order is made for stay of the winding up proceedings, the order shall direct that the applicant shall forthwith file a certified copy thereof with the Registrar of Companies.* (emphasis added)

E. RELEVANT CASE LAW FROM PAKISTANI JURISDICTION

18. The august Supreme Court in Hala Spinning Mills Ltd (2002 SCMR 450) has held as follows:

"It is to be observed that whenever a case of winding up of a running company is placed before a

Company Judge or the Appellate Court they should examine such matter differently other than a company which is not in a running condition. In this behalf efforts should be made by the judicial forums to adopt such a device so the project may remain continue running commercially so its financial liabilities start reducing gradually. The business trend in the market is that if running concern is put to sale it fetches high price of its assets which can substantially clear proportionate liability of the creditors".

19. The honorable Sindh High Court has already set the criteria for similar Section 319 of the Companies Ordinance, 1984 (now Section 313 of the Act) for stay of the winding up proceedings, in the case of Zulfiqar Hussain vs. Bambino (Pvt.) Ltd. (2013 CLD 34 Sindh), and has exercised its jurisdiction in following terms:

11. As these provisions immediately make clear, section 319 is cast in terms rather different from other legislation. Whereas all the other sections are (or were) limited to the "stay" of winding up proceedings, section 319 uses broader language, empowering the court not merely to stay but also to "withdraw", "cancel" or "revoke" the proceedings. ... In my view the clear intent of the law maker in using words in addition to "stay" was to change the law, and this intent must be given due effect.

12. The second point that requires attention is that although the additional words have been used, they all (like "stay") refer to the winding up "proceedings" and not, as such, to the winding up order itself.

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Section 313
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Proceedings pursuant to an order can certainly be stayed while leaving the order intact. It must be kept in mind that the section provides for "all" proceedings to be stayed, withdrawn, cancelled or revoked (as the case may be). ... I would also note that, as is clear from the statutory provisions other than section 319 reproduced above, where the power of the court is limited only to grant a stay, such order may stay the proceedings "altogether" or for a limited time. Clearly, if a winding up proceedings are stayed altogether, the order itself is essentially rendered redundant: it is not thereafter to be given effect. ... Keeping all of the foregoing factors in mind, in my view, the only sensible meaning and effect of the additional words used is that the Court is now armed with power to withdraw, cancel or revoke (as the case may be) the winding up order itself, while still retaining the power as before, in appropriate cases, to simply stay the proceedings and leave the order intact.

13. ... An application under section 319 had to accept the order as valid and thus applied only in relation to events or situations that arose or developed after the order. ... The section itself uses the word "may" but in any case, it is well settled that jurisdiction in company law matters is equitable jurisdiction and at the discretion of the court. The court will act in accordance with well established principles regulating the exercise of equitable and discretionary powers. Much would of course depend on the relevant facts and circumstances of the case before the court and the relative weight and importance that it assigns to these factors, but certainly the power conferred by

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section 319 is not open ended nor can relief thereunder be claimed ex debito justitiae. Thirdly, the scope of section 319 is time bound: the application must be moved within three years of the winding up order. ... (emphasis added)

20. In the case of J Investment Corporation of Pakistan vs. Sunshine Jute Mills Limited (2005 CLD 713 (Lahore)), the honorable Lahore High Court has held that the time limit of three years prescribed in Section 319 of the Companies Ordinance, 1984 (now 313 of the Act) is directory and not mandatory as the violation has not been visited with any consequence or penalty, and the High Court has also the power, in the case of a company being wound up to sanction any compromise or arrangement. Similarly, in the case of Additional Registrar of Companies, SECP vs. Schon Textile Limited (2008 CLD 475 Sindh), the honorable Sindh High Court has decided the application for suspension of winding up order filed on the ground that company had improved its commercial viability. The honorable Court has held that the company had sufficiently fixed assets and interest of shareholders could be safeguarded by imposing restriction upon company not to dispose of fixed assets without permission of the court; if winding up order was maintained, the shareholders would get a meagre amount against their investment; if the company was allowed to function under the supervision and control of SECP and official liquidator, the same would be beneficial to the share-holders; by revival of the company, there was a chance that value of shares would be increased and share-holders would be benefited; and bona fides of the company could also be judged

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Sindh High Court

by suspending winding up order and to allow the company to implement scheme of revival under supervision of official liquidator and SECP. In another case, National Bank of Pakistan vs. Punjab National Silk Mills Ltd. (1989 MLD 2963 Lahore), the honorable Lahore High Court has withdrawn the winding up order which was passed only because the company was unable to pay its debts, and now had the requisite funds to discharge its liabilities and miscellaneous expenditures.

21. Further, in the case titled Abdul Rasheed Mughal vs. ECSA (PK) (Pvt.) Ltd. (2006 CLD 852 Lahore), the honorable Lahore High Court has held that

7. The nature, extent and the principles for exercise of the powers to stay winding up proceedings as set out in Halsbury's Laws of England Fourth Edition 1996 Reissue Volume 7(3) reads as follows:-

"2662. Exercise of power to stay winding-up proceedings. In the exercise of its jurisdiction to stay the Court will refuse to act upon the mere assent of the creditors in the matter, and will consider whether what is proposed is for their benefit and also whether the stay will be conducive or detrimental to commercial morality and to the interests of the public at large. ...

8. The principle for exercise of powers invoked by the instant application has also been dilated upon in the judgment reported as Mahabir Prasad Agarwala v. Ashkaran Chattar Singh, (1980-81) 85 CWN 557 at 581, 582, (as reproduced in AIR 1996 Calcutta 171) in the following terms: (1) if the Court is satisfied on the materials before it that the application is bona

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fide; (2) the Court would be guided by the principles and definitely come to the finding that the principles are applicable to the facts of a particular case; (3) mere consent of all the creditors for stay of winding up is not enough; (4) the offer to pay in full or make satisfactory provisions for the payment of the creditors is not enough; (5) Court will consider the interest of commercial morality and not merely the wishes of the creditors and contributories; (6) Court will refuse an order if there is evidence of misfeasance or of irregularity demanding investigation; (7) a firm and accepted proposal for satisfying all the creditors must be before the Court with material particulars; (8) the jurisdiction for stay can be used only to allow in proper circumstances of resumption of the business of the company; (9) the Court is to consider not only the question whether the proposal for revival of the company is for benefit of the creditors but also whether the stay will be conducive or detrimental to commercial morality and to the interest of the public at large; (10) before making any order Court must see whether the ex-directors have complied with their statutory duties as to giving information to the Official Liquidator by furnishing the statement of affairs; (11) and any other relevant fact which the Court thinks fit to be considered for granting or not granting the stay having regard to the particular facts of a particular case.

9. ... And a close and careful analysis of the statutory provision (section 319) and the aforequoted judicial precedents reveal that in essence a power has been conferred upon the Court to stay winding up

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proceedings on an application of a person or party mentioned in the said provision and within the period specified therein where it is proved to the satisfaction of the Court that the cause for the winding up order has disappeared or is likely to disappear. In other words, the mischief prompting the winding up order has been set at right or the company or its shareholders are able and willing to set it right either by arrangement, compromise or settlement and a proposal in this behalf for the revival of the company is submitted to the Court. Usually, such proposal would include an arrangement or settlement with the creditors especially if the winding up order has been passed on account of the inability of the company and its debts. The power conferred is primarily to consider a proposal for revival of the company and an eventual revocation or withdrawal of the winding up order. This is also evident from the wording of the statutory provision (section 319) whereby the word stay has been used along with withdrawn, cancelled or revoked, with reference to the winding up order. It is no coincidence that such power and jurisdiction has been exercised by this Court and by the apex Court to consider and approve arrangements for payment of debts and revocation of winding up order. Some of such cases in our jurisdiction include Mst. Dilshad Hussain v. PICIC and others 1986 SCMR 276, National Bank of Pakistan v. The Punjab National Silk Mills Ltd. and two others 1989 MLD 2963 and Messrs Consolidated Exports Ltd. v. Messrs Dyer Textile and Printing Mills Ltd. PLD 1984 Karachi 541.

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SECTION 319
WINDING UP COURT

10. It is equally clear that powers conferred are discretionary in nature and can only be exercised in furtherance of commercial morality and after bona fides of the parties have been established on the record. Such powers will not be exercised to permit the cover up of any malfeasances illegality or irregularity in the conduct of the affairs of the company. (emphasis added)

F. RELEVANT CASE LAW FROM FOREIGN JURISDICTIONS

22. I would like to reproduce some judicial pronouncements from foreign jurisdictions as well, while discussing pros and cons of winding up of a running company. In Sevior vs. Morga, [2012] VSC 480, the Victorian Supreme Court, Australia has discussed some parameters and things to be taken into consideration by the court while deciding a petition regarding winding up of a company:

[28] Secondly, in considering the application, the Court is to have regard not merely to the interests of creditors but to the public interest, including whether granting the order would be detrimental to commercial morality:

[29] In the context of public interest and commercial morality Buckley J in Re. Telescriptor Syndicate Ltd required to be satisfied that the trading operations of the company had been "fair and above board" and that there was not "an ugly side to the picture".

[30] However, concepts of commercial morality and public interest are not narrow.

Section 10
of the
Companies Act
1956

23. In Prendergast vs. Roelcross [2008] NSWSC 14, the New South Wales Supreme Court, Australia, after exhaustive discussion on an application to terminate winding up proceedings of a company has held as under:

[25] The question rather is whether it appears that it would be, or may be, contrary to the public interest if the company were permitted to resume operations. In a case such as the present where all of the shares are held by the plaintiff, the public interest means primarily the interests of existing and future creditors.

[29] There are other matters to be taken into account in assessing the public interest. The liquidation is causing significant harm to Worthbrook, or may be doing so, as Worthbrook is servicing the whole of the interest due to the St George Bank.

[33] ... I should conclude that it would be contrary to the public interest for the winding-up of the company to be terminated. I have regard in that respect, of course, to the undertakings proffered by Mr. Prendergast to the Court.

24. Likewise, in Navjivan Trading Finance Pvt. Ltd. case, [1978] 48 Comp Cas 402 (Guj), the Gujrat High Court, India has discussed the ramifications of winding up of a company in the following words:

13. *It is no doubt true that the modern trend as etched by a number of pioneering decisions rendered*

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by D. A. Desai J. of this High Court (no wonder tens of thousands of workers with gratitude filed eyes feel beholden to him for it) is against winding up of a company so long as it is possible to resurrect the company. Winding up is the last thing that the court would do and not the first thing that the court would do having regard to its impact and consequences, for winding up of a company would result in, (1) closing down of a unit which produces some goods or provides some services; (2) it would throw out of employment numerous persons and resulting grave hardship to the members of families of such employees; (3) loss of revenue to the State by way of collection that the State could hope to make on account of customs or excise duties, sales tax, Income Tax, etc; (4) scarcity of goods and in diminishing of employment opportunities. The court would not, therefore, be too keen or too anxious to wind up a company by an order of court only on the ground that the company is unable to pay its debts. In fact, it would be a blow to do so, so long as there is any possibility of resurrecting the company. It would not be right to say that creditors can insist on winding up of the company by court as a matter of right if the position of the company is such that it

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Court, High Court, Ahmedabad

would be unable to pay its debts to them even if the company can be resurrected. When the persons to whom the company becomes indebted enter into dealings with the company, they do so because they hope to make profits out of the transactions with the company in the usual course of business. It is an incidental risk and an occupational hazard for the persons who enter into such dealings which they undertake in order to earn profits. In fact, it is possible that in the course of their dealings for several years, they would have made huge profits out of the transactions entered into with the company. It would not, therefore, be right to wind up the company merely because the company is unable to pay its debts so long as it can be resurrected by a scheme or arrangement"

25. Additionally, in Tata Iron and Steel co. case, [2001] 104 Comp. Cas. 533 (Guj), the Gujarat High Court, India has discussed the same matter as under:

20. Certain important chronicles and contours to be kept in the mental radar, before reaching the conclusion in a winding up petition can be articulated as under: ...

(4) It is necessary for the company court to consider the financial status, strength and substratum of the

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Company High Court

company, in the overall context. It is possible, at times, that there may be a cash crunch. It may be also, possible, at times, that there is temporary cash crisis despite high sales and heavy turnover and, therefore, in such a situation, mere disability or only on the ground of inability to pay would not constitute a ground empowering the court to wind up the company.

(5) If the company is an ongoing concern having regular business and employment of employees, the court cannot remain oblivious to this aspect. The effect of winding up would be of putting an end to the business or an industry or an entrepreneurship and, in turn, resulting in loss of employment to several employees and loss of production and effect on the larger interest of the society. ...

(7) Winding up of a company, as such, is nothing but a commercial death or insolvency and, therefore, the company court is obliged to take into consideration not only the temporary inability, or disability to make the payment of debts, but the entire status and position of the company in the market.

(10) If the company has shown considerable growth in a reasonable span and is a growth oriented enterprise, even in a case of temporary inability would not be sufficient to drive it to winding up. ...

(14) The court is also obliged to consider that it would be in the interest of justice to give the company some time to come out of the momentary financial crisis or any other temporary difficulty as winding up is a measure of last resort.

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(15) Winding up course cannot be adopted as a recourse to recovery of the debt.

(16) The court must bear in mind one more celebrated principle and consider whether the company has reached a stage where it is obviously and plainly and commercially insolvent, that is to say, that its assets are such and its existing liabilities are such as to make the court feel clearly satisfied that current assets would be insufficient to meet the current liabilities, along with other principles.

(18) The element of public policy in regard to commercial morality has, likewise, to be taken into account before determining the winding up issue. The court has also to consider the purpose and policy behind sections 443 and 557 of the Companies Act.

(19) Winding up is the last thing the court would do and not the first thing to do having regard to its impact and consequences. Winding up of a company would ensue :

(a) closing down of a company which is engaged in production or manufacture or which provides some services;

(b) it would throw out of employment numerous persons and result in gross hardship to the members of families of the employees;

(c) loss of revenue to the State by way of collection of taxes which otherwise should have been collected, on account of customs, excise duties, sales tax, Income Tax, etc.;

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Visayas High Court, Cebu

(d) scarcity of goods and diminishing of employment opportunities

26. Regarding element of public policy with respect to commercial morality, the Gujrat High Court, in American Express Bank Ltd. case, [1999] 96 Comp Cas 841 (Guj.), has stated as follows:

The element of public policy in regard to commercial morality has likewise to be taken into consideration when the propriety of a winding up order is examined.

39. *The above passages from Palmer suggest that where immediate winding up is not warranted it would be equally unsound to allow it to stand over for a long duration as it acts at cross purpose for which winding up is not considered advisable. It also brings into consideration the element of public policy in decision making while exercising discretion by the court.*

49. *With the company there is at stake the livelihood of about 3,500 people who are employed with it.*

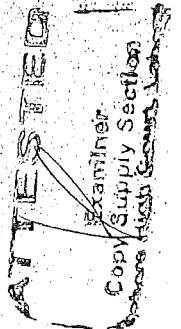
50. *In the circumstances when there is unimpeachable evidence of secured conditions having a faith in bank strength and capability of the company to survive the present crisis with a little patience on the part of those who have a demand to make against the company, the continuing threat of the company on the fringe of being wound up is to cause fear psychosis in the market and an aura of suspicion and uncertainty in the mind of those who are otherwise willing to deal*

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with the company commercially. Aiding the creation of such an atmosphere in a case like the present one will ensure for the benefit of those who seek destruction of the company rather than helping in salvaging it.

27. It has also been held by the Bombay High Court in Kesar Enterprises Ltd. case, [2002] 112 Comp Cas 174 (Bom); that winding up of a company should be treated as an extreme remedy and should not be dealt with casually as it would amount to economic death of a running and live commercial organization:

9. *The winding-up petition is an extreme remedy which has to be resorted to sparingly and in cases where there is absolutely no bona fide dispute. Seeking winding up of a petition is praying for the economic death of a running and live commercial organisation. In the present case, it is clear that the substratum of the respondent-company is as strong as it was before. The fact that the respondent-company is earning huge foreign exchange and paying a large amount of central excise to Government and contributing to the revenue of the State Government and that it employs more than 3,000 workers is enough for me not to order winding up of the respondent-company on the ground that the petitioners have to recover an amount of debt which is bona fide disputed. The Supreme Court has time and*



*again pronounced that the winding up petition is not a
legitimate proceeding resorted to for recovery of debts.*

There is a judicial unanimity.

G. ANALYSIS BY THIS COURT

28. In view of the Preamble, Sections 313 and 314 of the Act read with Rule 95 of the Rules, it is apparent that the honorable High Court has jurisdiction and power to stay the winding up proceedings, and to make an order on such terms and conditions as the Court thinks fit, (a) within three (3) years after an order for winding up; (b) on application of any creditor, contributory, Registrar or the Commission; and (c) 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 (Section 313(1)). The J Investment Corporation of Pakistan case (*supra*) has already established the above time period of three (3) years as directory, and not mandatory. Similarly, the above referred case law also suggests that the High Court has power to stay the proceedings of the Winding Up Order, also for a limited period of time, on the basis of events or situations that arose or developed after the winding up order, while keeping in mind the relevant facts and circumstances of each case. Sindh High Court in "Messrs Consolidated Exports Ltd. v. Messrs Dyer Textile and Printing Mills Ltd." (PLD 1984 Karachi 541) had held as under:-

*"19. I also find it in the public interest if the
winding up proceedings are', stayed to allow the
respondents an opportunity to run their textile*

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Karachi
Section 313(1)
PLD 1984 Karachi 541

mills as this course would not only benefit the economy of the country but would also provide employment to a large number of workmen. It will not be out of place to mention that the Government has financially supported the sick textile mills under its various schemes. I was informed at the bar that respondents Mills was the largest textile Mill before its closure in the private sector, having 1,612 workers out of which 1,264 workers have filed the claims and would be benefited by the present scheme."

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29. While deciding such application, the honorable High Court has discretion to seek a report of the official liquidators on necessary facts or matters, in all matters related to winding up of the company (Section 313(2)). It is also obligatory for the Honorable High Court to "ascertain" and "have regard" to the wishes, value of each debt of the creditor(s), or voting power exercised by each contributor, of the company (Section 314). The honorable High Court is also required to regulate the corporate entities for protecting interest of shareholders, creditors, stake holders and general public and ensure principles of good governance (Preamble). The honorable High Court is required to give notice to the concerned persons and to forward order for stay of winding up of the Company to the Registrar of Companies (Section 313(3) and Rule 95).

30. The case law mentioned above has clearly established that even after passing of a winding up order, efforts should be made by the

judicial forums to allow the companies to continue running commercially on the ground that company has improved its commercial viability; has acquired the requisite funds to discharge its liabilities and miscellaneous expenditures for its operations; the cause for the winding up order has disappeared or is likely to disappear; or the company is able and willing to set it right either by arrangement, compromise, settlement or a proposal for the revival of the company. However, before passing such an order, the Court must give regard to the benefit and interest - and not merely wishes - of the contributor, creditors and public, in proper circumstances of resumption of the business of the company. It is equally clear that powers conferred are discretionary in nature and can only be exercised in furtherance of the mentioned broader principles of commercial morality and after bona fides of the parties have been established on the record with regard to the proposed financial status and strength.

31. Similarly, it is apparent from the above cited case laws that winding up is the last thing that the court would do and not the first thing that the court would do having regard to its impact and consequences, including (a) closing down of a unit which produces some goods or provides some services; (b) loss of employment of numerous persons and resulting grave hardship to the members of families of such employees; (c) loss of revenue to the State by way of collection that the State could hope to make on account of customs or excise duties, sales tax, Income Tax, etc.. The effect of winding up must be considered - putting an end to the business or an industry or an entrepreneurship - and

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the court should not be too keen or too anxious to continue winding up of a company and must give weightage if there is any possibility of resurrecting the company.

32. It is an admitted fact that the Company was one of the leading exporters of textile in the country and winding up of this company will amount to economic death of not only of the Company but also all employees of the Company. In developing countries like Pakistan, the judicial forums should provide opportunities to the sick industries to revive and to restart their business at full pace and to pay off and settle their debts and other liabilities, especially when the banks are also willing and have no objection in this regard. Admittedly, during the period of 2000 -2015, electricity short fall was a major contributor to overall shrinkage of commercial activities.

33. However, since the situation has changed after the Winding Up Order; the Bank has shown their willingness to restructure the debts of the Company; in view of the Scheme of Arrangement, Restructuring Plan, joint statement and other documents submitted by the Applicants; and the interest of the creditors, contributors and public, there appears to be no other restriction to refrain this Court from allowing the instant interim application. By looking at the matter pragmatically under the applicable law, in the best interest of commercial morality and condition of textile industry of the country, it will be against the public interest to deny such interim relief to the Applicants, who have prima facie established their case for interim relief.

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EXAMINER

H. RELIEF AND WAY FORWARD

34. Accordingly, in view of the above case law and applicable provisions of the law, particularly Sections of the Act and the Rules, the prayer of the Applicants for interim relief is accepted, and the Company is temporarily allowed, till the disposal of the main application, to resume the commercial operation and the Production Units of the Company. As per undertaking made by the Applicants in writing today and confirmed by official liquidators, production units shall be managed by the Ex-Management of the Company, including Mian Muhammad Latif (Ex-Chief Executive Officer) and Mian Muhammad Naeem (Ex-Director) after consultation with the JOLs and the nominee of Habib Bank Limited (Lead Bank) in the following manners:

- (a) *steps shall be taken for rehabilitation and operations of the Company and its Production Units;*
- (b) *necessary staff, labour and employees shall be hired for the said purposes;*
- (c) *commencement and undertaking of business operations;*
- (d) *Books of Accounts of the Company shall be maintained in accordance with the law;*
- (e) *the operations of banks accounts of the Company shall be allowed for meeting the expenses related to the above purposes as well as for running the affairs of the Company;*
- (f) *RSM Avas Hyder Liaqat Nauman & Co. (Chartered Accountants) will look after the financial affairs of the Company; and*

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General Manager

IN THE LAHORE HIGH COURT, LAHORE.

(Jurisdiction Under The Companies Ordinance, 1984)

Saudi Pak

C.O. No. 143 /2011

IN THE MATTER OF COMPULSORY WINDING UP OF CHENAB LIMITED
UNDER COMPANIES ORDINANCE 1984.

Saudi Pak Industrial and Agricultural Investment Company Limited
having its Registered Office at Saudi Pak Tower, 61-A, Jinnah Avenue,
Islamabad, and a Regional Office at 2nd Floor, MM Tower, 28-A, Block K,
Gulberg II, Lahore, through Mr. Arshad Ahmad Khan its duly constituted
Attorney.

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Lahore High Court

Versus

Petitioner

Chenab Limited, having its Registered Office at Nishatabad, Faisalabad
through its Chief Executive.

Respondent

PETITION UNDR SECTION 305, 306 AND 309 READ WITH SECTION
314 OF THE COMPANIES ORDINANCE, 1984 FOR COMPULSARY
WINDING UP CHENAB LIMITED.

Respectfully Submitted:-

1. That the correct addresses of the parties have been supplied in the
heading of the petition which are sufficient for the purposes of

Register, Register of the Members, Register of Allotment of Shares, Register of Directors, Register of Mortgages and charges, Register of Assets and Liabilities, Minute Book of the Directors meetings and Minute Book of the shareholders meetings counter foils of the share scripts, etc. Direct that no item, stock or goods belonging to the respondent Company should leave the premises till decision of this Petition unless the relevant documents evidencing such departure is counter signed by the Representatives of the Petitioner Company.

This Hon'ble Court may also be graciously pleased to appoint a Local Commission to immediately make inventories list and all details of the Properties of the Respondent Company.

Any other relief which this Hon'ble Court deems fit may also be granted.



Ali Rana

Petitioner

Saudi Pak Industrial and Agricultural Investment Company Ltd

Through



TRUE COPY
C.O. No.

Examiner: J.S. Commercial Branch
Lahore High Court, Lahore

Shezada Mazhar

Shezada Mazhar
Advocate Supreme Court
PH-L No. 10242

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Lahore High Court, Lahore

Ali Rana

Ali Rana
Advocate High Court
PH-L No. 37108

Mazhar Law Associates

Suite No. 34, 2nd Floor, Sadiq Plaza
69 The Mall, Lahore.

Note: Branch is requested to put up CO. 44/2011 along with the present C.O. The said C.O. 44/2011 is pending before Mr. (J) Umar Alta Beindial.

Shezada Mazhar



Corporate Supervision Department
Company Law Division

Say No to Corruption

THROUGH TCS

No: EMD/233/670/2005-465-467

January 8, 2020

Sr#	Respondents	Address
1.	Mr. Aurangzeb Mirza, Advocate Official Joint Liquidator Chenab Limited	Office No. 6-7, 2 nd Floor, Imtiaz Plaza, 85-The Mall, Lahore.
2.	Mr. Jalal Ahsan, Chartered Accountant Official Joint Liquidator Chenab Limited	Ahsan & Ahsan Chartered Accountant , 119/120 Chuburji Park, Lahore.

Subject: Joint Official Liquidators in the matter of winding up of Chenab Limited

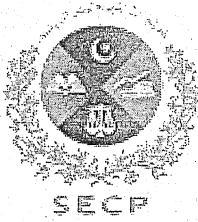
Dear Sir(s),

This is with reference to the captioned subject.

2. The Honorable Supreme Court vide order dated January 8, 2019 in case of CPLA No. 2971 of 2017 (Chenab Limited vs. Saudi Pak. Industrial and Agriculture Investment Company Limited) has dismissed the petition. Therefore, the Honorable High Court order dated July 13, 2017 in case of C.O No. 42 of 2011 (Saudi Pak. Industrial and Agriculture Investment Company Limited vs. Chenab Limited) stands still, where Chenab Limited (the "Company") was ordered to be wound up and appointed Mr. Aurangzeb Mirza, Advocate and Mr. Jalal Ahsan, Chartered Accountant as joint Official Liquidators.

3. The Company's winding up is in process and final dissolution in accordance with the provisions of the repealed Companies Ordinance, 1984 (*now the Companies Act, 2017*) has not been effected yet. In terms of provisions of section 387 of the Companies Act, 2017 (the "Act"), a company being wound up shall continue to be a company for all purposes till its final dissolution in accordance with the provisions of this Act and, unless otherwise specified, all provisions and requirements of this Act relating to companies shall continue to apply. Further, from the date of commencement of the winding up of a company, the official liquidator shall be deemed to have taken the place of the board and chief executive of the company, as the case may be.

4. In view of the above, in terms of provisions of section 358 of the Act, the liquidator is required to hold annual general meeting (AGM) of the company within a period of sixty days from the close of first year after the commencement of winding up, in the manner provided under section 132 of the Act. Hence, it is the responsibility of the liquidators to comply with all the legal requirements regarding holding of AGM, and to lay therein audited accounts consisting of statement of financial position and the receipt and payment accounts, auditor's report and the liquidator's report on the acts, dealings and the conduct of the company's winding up during the preceding period from the date of winding up. Moreover, in terms of section 358(2), a return of convening of each general meeting together with a copy of the notice, accounts and the reports, the list of contributories as on the date of



Corporate Supervision Department
Company Law Division

Continuation Sheet - 2 -

the meeting and the minutes of the meeting be filed by the liquidator with the registrar within fifteen days of the date of the meeting.

5. You are hereby advised to furnish related evidence of compliance of above-mentioned provisions regarding AGM for the financial years ended June 30, 2017, June 30, 2018 and June 30, 2019 along with certified copy of audited accounts, list of contributories, and minutes of AGM along with attendance sheet.

Please furnish your reply within five working days.

Regards,



Ayesha Riaz
Additional Director

✓ Cc: Chenab Limited

Nishatabad,

Faisalabad.

Phone: 0092-41-8754472-6