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CASE LAW UPDATES

Pakistan Superior Courts — Verified Judgment Digest

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Province of Sindh through Chief Secretary, Government of Sindh, Karachi & others v. Zulfiqar Khushk & others (and connected CPLAs)

PETITIONS CONVERTED INTO APPEALS AND ALLOWED; SINDH HIGH COURT JUDGMENT DATED 12.06.2023 SET ASIDE

C.P.L.A. No. 2799 of 2023 (with CPLAs 2919, 3323, 5222, 5223, 5224, 5241, 5242, 5243, 5244 & 5245 of 2023) · Bench: Amin-ud-Din Khan, CJ; Ali Baqar Najafi, J (author) · Decided: 15.07.2026 · Uploaded: 16.07.2026

FACTS

Officers of the Provincial Civil Service (Secretariat) - PSS - filed constitutional petitions before the Sindh High Court seeking a direction to notify the Sindh Civil Servants (Provincial Management Service) Rules, 2006 for pre-service training so that PSS officers would not be discriminated against vis-a-vis the Executive Provincial Civil Secretariat / Ex-PCS Cadre. The Sindh High Court on 12.06.2023 allowed the petitions and, in post-remand proceedings ordered by the Supreme Court on 09.09.2022 (directing that the constitutional and legal issues be decided after notice to the Advocate General Sindh), declared the Provincial Civil Service (Secretariat) Rules, 2006 ultra vires of the Constitution. The remand originated in Ex-PCS Officers' Section 12(2) CPC challenge before the High Court, dismissal thereof and a contempt petition before the Supreme Court on 18.09.2017 arising out of orders dated 07.03.2017. The Cabinet examined and approved amended rules on 07.03.2025 and thereafter the PMS Rules 2018 (amalgamating PSS and Ex-CSS/PCS groups into a unified Provincial Management Service) were placed before the Federal Constitutional Court in these appeals. The Province of Sindh and connected petitioners assailed the SHC judgment declaring the Rules ultra vires.

LEGAL ISSUE

(i) Whether the Sindh Civil Servants (Provincial Management Service) Rules, 2018 - which amalgamate the PSS and Ex-PCS cadres into a unified Provincial Management Service - are ultra vires of the Constitution or otherwise inconsistent with earlier binding judgments of the Supreme Court in Suo Motu Case No. 13 of 2009, Ali Azhar Khan Baloch and the Chief Secretary Sindh contempt case; (ii) whether such Rules offend the constitutional guarantee of equality under Article 25; and (iii) the outer limit of judicial review over executive service classification and cadre formation.

HOLDING

The PMS Rules, 2018 do not suffer from the vice of discrimination and are not inconsistent with the Supreme Court judgments in Suo Motu Case No.13 of 2009, Ali Azhar Khan Baloch, or Chief Secretary Sindh (contempt). The cadre creation and amalgamation is an executive decision within the competence of the Legislature/executive. The seniority and promotion channels have been duly protected within the scope of Sections 8 and 9 of the Sindh Civil Servants Act, 1973. Post-BS-18 promotion is common to both, subject to the post-sharing formula. Rules are framed by combined competitive exams and non-civil servants cannot be inducted. Where the executive acts within the authority conferred by law and the legislative classification satisfies the constitutional test of reasonableness, judicial review must yield to institutional restraint. The petitions were converted into appeals and allowed; the impugned judgment of the High Court of Sindh dated 12.06.2023 was set aside.

LEGAL SIGNIFICANCE

This judgment (a) upholds the Provincial Management Service Rules, 2018 as a constitutionally valid amalgamation of the PSS and Ex-PCS cadres in Sindh, resolving a long-running post-remand controversy; (b) reinforces the settled principle from Nimat Ullah Butt, Ali Azhar Khan Baloch and the Chief Secretary Sindh contempt case that cadre creation is essentially an executive prerogative but is bounded by the constitutional guarantee of equality and the ban on absorbing non-cadre or non-civil-servant appointees into competitively-recruited cadre posts; (c) restates the classical Aristotelian formulation of the equality principle as requiring reasonable classification founded upon intelligible differentia; and (d) crystallises the constitutional-review posture that once the executive acts within statutory authority and satisfies the reasonableness test, judicial review must yield to institutional restraint - a caution likely to be quoted in future service and structural-reform challenges.

LEGAL PROPOSITIONS (VERBATIM)

— Cadre, as is well-known, is the strength of a service or part of service sanctioned as a separate unit and each cadre consists of certain number of posts.

— Sindh Government cannot absorb a civil servant of non-cadre post to any cadre which is meant for the officers who are recruited through competitive process.

— No civil servant of a non-cadre post can be transferred out of cadre to be absorbed to a cadre post which is meant for recruitment through competitive process.

— The constitutional guarantee of equality [is] directed against hostile discrimination and not against reasonable classification.

— Where the Executive acts within the authority conferred by law and the legislative classification satisfies the constitutional test of reasonableness, judicial review must yield to institutional restraint.

LEGAL PRINCIPLES EXPOUNDED

Creation and reorganisation of cadres within the civil service is an executive prerogative; there is no legal bar on the Government keeping distinct groups of officers as separate cadres, provided no specific term or condition of service is violated.

Source: *the creation of a separate cadre is an executive decision as held in Nimat Ullah Butt case*

Authority: *Nimat Ullah Butt case; Article 240 read with Sindh Civil Servants Act, 1973*

A non-civil-servant cannot be inducted into a cadre reserved for recruitment through the competitive process; and a civil servant on a non-cadre post cannot be absorbed by transfer into such a cadre post, though transfers out of cadre to other departments remain permissible subject to Rule 9(1) restrictions.

Source: *Sindh Government cannot absorb a civil servant of non - cadre post to any cadre which is meant for the officers who are recruited through competitive process*

Authority: *Section 8, Civil Servants Act 1974; Ali Azhar Khan Baloch (Paragraph 114); Chief Secretary Sindh contempt case (Paragraph 126)*

The constitutional guarantee of equality under Article 25 is directed only against hostile discrimination and does not preclude reasonable classification founded upon intelligible differentia rationally related to a lawful legislative object; the Legislature retains competence to reorganise administrative structures and to create new services in furtherance of efficient governance.

Source: *The constitutional guarantee of equality directed against hostile discrimination and not against reasonable classification*

Authority: *Article 25, Constitution of Pakistan; Imran a Tiwana case; Aristotle's classical formulation*

Section 8 of the Civil Servants Act, 1974 compartmentalises civil servants into Service, Cadre and Post so as to ensure that vertical progression remains within the same compartment; Section 5 does not confer discretion on the Government to relax any Rule so as to change a civil servant's cadre.

Source: *Section 8 of the Act makes class of Civil Servants for proper administration and such class is not interchangeable at the whims of*

Authority: *Sections 5 and 8, Civil Servants Act 1974; Ali Azhar Khan Baloch (Paragraph 114)*

The scope of constitutional review over executive service classification is narrow: courts are guardians of constitutional boundaries, not arbiters of administrative wisdom; once the executive acts within the authority conferred by law and the legislative classification satisfies the reasonableness test, judicial review must yield to institutional restraint.

Source: *Where the Executive acts within the authority conferred by law and the*

__Authority:__ Article 199, Constitution of Pakistan; Imran a Tiwana case

OPERATIVE ORDER

For the foregoing reasons, these petitions are converted into appeals and are allowed and the impugned judgment passed by High Court of Sindh at Karachi is set-aside. Announced in open Court on 15.07.2026.

Supreme Court of Pakistan

2 judgments

INCOME TAX ORDINANCE 2001 SS.4, 5, 8, 39 & 169; FIRST SCHEDULE PART I DIVISION III - CHARGE ON CORPORATE DIVIDEND INCOME; INTERPLAY BETWEEN SUBSTANTIVE CHARGING PROVISIONS AND MACHINERY PROVISIONS; PTR VS NTR

Commissioner Inland Revenue (Zone-1), Large Tax Payer Office, Islamabad v. M/s Saudi Pak Industrial & Agricultural Investment Company (Pvt) Ltd & others

CIVIL PETITIONS FOR LEAVE TO APPEAL DISMISSED; LEAVE REFUSED

C.P.L.A. Nos. 5257 to 5265 of 2024 · Bench: Yahya Afridi, CJ; Aqeel Ahmed Abbasi, J (author) · Decided: 03.07.2026 · Uploaded: 18.07.2026

FACTS

The Commissioner Inland Revenue (Zone-1) LTU Islamabad filed nine CPLAs against a common judgment dated 19.09.2024 of a Division Bench of the Islamabad High Court in connected Income Tax References including I.T.R. No.85/2015 (Commissioner Inland Revenue v. M/s Saudi Pak Industrial & Agricultural Investment Company (Pvt.) Ltd.). The IHC had decided two questions of law: (a) whether dividend income received by the taxpayer is assessable under Section 5 of the ITO, 2001 and chargeable at 10% as final tax (I.T.R. Nos. 84-86 of 2015), and (b) whether such dividend income is instead chargeable to normal corporate tax at 35% under Section 8 (I.T.R. Nos. 190-192 of 2015). The IHC answered the first question in the affirmative and the second in the negative in favour of the taxpayer, following this Court's judgment in Fawad Ahmad Mukhtar v. Commissioner Inland Revenue (2022 SCMR 426). The department pressed that (i) the proviso added to Section 8(1)(e)(ii) by the Finance Act 2007 excluded dividend received by a company from the purview of Section 8, so tax deducted was not final; (ii) the income should therefore be assessed under Section 39 (income from other sources) at 35%; and (iii) Fawad Ahmad was distinguishable on its facts.

LEGAL ISSUE

Whether dividend income received by a corporate taxpayer is chargeable to tax under Section 5 of the Income Tax Ordinance, 2001 at the specified rate of 10% under Division III of Part I of the First Schedule (as a separate block under the presumptive tax regime), or falls to be assessed under the residuary head of income from other sources under Section 39 at the normal corporate rate of 35%, having regard to the proviso added to Section 8(1)(e)(ii) by the Finance Act 2007.

HOLDING

Section 5 of the ITO, 2001 is the primary and specific charging provision for all dividends and provides its own mechanism of computation at the specified rate of 10% under Division III of Part I of the First Schedule as a separate block of income under the presumptive tax regime, distinct from Section 4 (normal tax regime). Section 39 is a residual provision only invocable if dividend somehow fails to fit within Section 5; the tax authorities cannot bypass a specific charging section to apply a higher rate under Section 39. Section 8 is merely a machinery provision and by settled principles of interpretation cannot replace or dilute the effect of a substantive charging provision. Charging provisions and provisions of a taxing statute must be construed harmoniously without rendering any of them inoperative. The questions were substantially covered by the ratio in Fawad Ahmad Mukhtar v. Commissioner Inland Revenue (2022 SCMR 426); the questions in I.T.R. Nos. 84-86/2015 answered in affirmative, questions in I.T.R. Nos. 190-192/2015 answered in negative - all against the department and in favour of the taxpayers. Petitions dismissed and leave refused.

LEGAL SIGNIFICANCE

This judgment (a) authoritatively reaffirms and applies Fawad Ahmad Mukhtar (2022 SCMR 426) to hold that corporate dividend income is chargeable exclusively under Section 5 of the ITO, 2001 at 10% as a separate block under the presumptive tax regime, foreclosing recurring departmental attempts to tax such income at the normal 35% corporate rate under Section 39; (b) crystallises the primary/residual relationship between Section 5 (specific charge) and Section 39 (residuary), and holds that the residual provision cannot be invoked to defeat a specific charge; (c) reiterates the classical rule that machinery provisions (Section 8) cannot override substantive charging provisions; (d) draws support from Taj International (2025 SCMR 67), Gilani Transport (2017 PTD 1540 SC), Eli Lilly (2009 SCMR 1279) and the five-member Bench in Elahi Cotton Mills (PLD 1997 SC 582) to consolidate the doctrine of separate-block/PTR taxation; and (e) provides a settled precedent likely to close the door on further departmental reference litigation on this issue.

LEGAL PROPOSITIONS (VERBATIM)

— The charge created under Section 4 in respect of taxable income derived from different heads of income, and the mechanism of computing the taxable income is distinct from the charge created under Section 5 in respect of taxable income derived from dividends.

— Section 5 of ITO, 2001 is the primary charging provision for all dividends, whereas Section 39 of ITO, 2001 serves as a residual provision.

— Section 8 is merely a machinery provision, and by settled principles of interpretation cannot replace or dilute the effect of a substantive charging provision.

— The machinery provisions cannot be engineered to deny the taxpayers benefit of separate/specific tax charging regime under Section 5 of ITO, 2001.

— The tax paid/deducted on the gross receipts covered under Section 5 of the ITO, 2001 is final discharge of liability.

LEGAL PRINCIPLES EXPOUNDED

Section 5 of the Income Tax Ordinance, 2001 is the primary and specific charging provision for all dividends, providing its own mechanism of computation at 10% under Division III Part I of the First Schedule, as a separate block of income under the presumptive tax regime, distinct from Section 4 and the normal tax regime.

Source: *Section 5 of ITO, 2001 is the primary charging provision for all dividends, whereas Section 39 of ITO,2001 serves as a residual provision*

Authority: *Sections 4 and 5, Income Tax Ordinance 2001; Fawad Ahmad Mukhtar v. Commissioner Inland Revenue (2022 SCMR 426)*

Section 39 is a residual provision only invocable if a dividend somehow fails to fit within the scope of Section 5; the tax authorities cannot bypass a specific charging section to apply a higher rate of tax under a residuary provision.

Source: *Tax Authorities can only resort to Section 39 of ITO, 2001 if a dividend somehow , fails to fit within the scope of Section 5 of ITO, 2001*

Authority: *Sections 5 and 39, Income Tax Ordinance 2001; Directorate of Intelligence & Investigation-FBR v. Taj International (Pvt) Ltd (2025 SCMR 67)*

Section 8 is a machinery provision only, and by settled principles of interpretation cannot replace or dilute the effect of a substantive charging provision such as Section 5; charging provisions of a taxing statute must be construed harmoniously without rendering any of them inoperative.

Source: *Section 8 is merely a machinery provision , and by settled principles of interpretation cannot replace or dilute the effect of a substantive charging provision*

Authority: *Sections 5 and 8, Income Tax Ordinance 2001*

Where a separate charging provision specifies any income to be charged at a particular rate through a separate mechanism, that provision is given strict construction and preference over other provisions of law; provisions for taxation and computation of income not covered under such charging provision cannot be invoked for the purposes of charge or computation of that income.

Source: *in case a separate charging provision specifies any income to be charged at a particular rate of tax through a separate mechanism for its taxation while applying different rate of tax provided within the said charging provision for* *its computat ion, the said provisions are given strict construction and preference over other provisions of law*

Authority: *Commissioner of Income Tax v. M/s Gilani Transport (2017 PTD 1540 SC); Commissioner of Income Tax v. Eli Lilly Pakistan (Pvt.) Ltd (2009 SCMR 1279)*

The concept of taxing corporate dividends as a separate block of income under the presumptive tax regime, with the deducted tax being the final discharge of liability, is a settled feature of Pakistani income-tax jurisprudence traceable to the treatment of Section 80C of the ITO, 1979.

Source: *the tax paid/deducted thereon was treated as final tax liability , and the other charging provisions as well as provisions relating to computation of income and the rates specified therein, were not attracted*

Authority: *Elahi Cotton Mills Limited v. Federation of Pakistan (PLD 1997 SC 582)*

OPERATIVE ORDER

In view of hereinabove-mentioned facts and circumstances of this case, we do not find any substance in the above Civil Petitions for Leave to Appeal, as the questions proposed are substantially covered by the ratio laid down by this Court in the case of Fawad Ahmad supra. Consequently, the question framed in I.T.R. Nos. 84 to 86 of 2015 regarding the applicability of Section 5 and the 10% tax rate is answered in the affirmative, while questions framed in I.T.R. Nos. 190-192 of 2015 regarding applicability of 35% normal corporate tax is answered in negative. Both the questions proposed in the above petitions for leave to appeal are therefore decided in the aforesaid terms against the petitioner-department and in favour of the respondents-tax payers. Accordingly, these Civil Petitions being devoid of any merits, are hereby dismissed, and leave refused.

SALES TAX ACT 1990 SS.2, 3, 8(1)(H), 8(1)(CA), 8A, 47 & 73; S.R.O. 450(I)/2013 - INADMISSIBILITY OF INPUT TAX ADJUSTMENT ON BUILDING/CONSTRUCTION MATERIALS; NON-NEGOTIABLE BANKING-CHANNEL REQUIREMENT; NO ESTOPPEL AGAINST STATUTE; SCOPE OF 'QUESTION OF LAW' IN TAX REFERENCE

Commissioner Inland Revenue v. M/s Bawany Sugar Mills Ltd., Karachi

APPEAL ALLOWED; IMPUGNED SINDH HIGH COURT ORDER DATED 10.08.2017 AND ATIR ORDER DATED 01.07.2016 SET ASIDE; ORDER-IN-ORIGINAL DISALLOWING INPUT TAX ADJUSTMENT RESTORED

C.A. No. 939 of 2018 · Bench: Irfan Saadat Khan, J (author) · Decided: 14.07.2026 · Uploaded: 17.07.2026

FACTS

The respondent, Bawany Sugar Mills Ltd., claimed input sales tax adjustment on cement and steel used in the construction of plant and machinery for the tax period July to December 2013. The Deputy Commissioner Inland Revenue disallowed the claim vide Order-in-Original No.08/92/2015 dated 30.01.2015 and imposed a penalty of Rs.6,82,761. The Commissioner Inland Revenue (Appeals) dismissed the taxpayer's appeal vide order dated 28.02.2015. The Appellate Tribunal Inland Revenue (ATIR) then accepted the taxpayer's appeal and vacated the disallowance vide order dated 01.07.2016. The department filed a Tax Reference Application under Section 47 before the Sindh High Court, which dismissed the reference in limine by judgment dated 10.08.2017 on the ground that the two questions proposed were questions of fact - not questions of law within the reference jurisdiction - and referred to concessions purportedly made by the departmental representative before the authorities below. The Supreme Court granted leave on 21.06.2018 on two framed questions: (i) whether input tax on the said building material fell within the ambit of Sections 3 and 8 of the 1990 Act read with applicable notifications; and (ii) whether the claim was in any event inadmissible under Sections 8(1)(ca), 8A and 73 of the 1990 Act.

LEGAL ISSUE

(i) Whether the input sales tax claimed by the respondent on cement and steel used in immovable structures (plant construction) was admissible under Sections 3 and 8 of the Sales Tax Act 1990 read with the applicable notifications, having regard to Section 8(1)(h) and S.R.O. 450(I)/2013; (ii) whether such input adjustment was in any case inadmissible for failure to comply with the mandatory banking-channel requirement of Section 73; and (iii) whether the Sindh High Court was justified in dismissing the tax reference on the basis that the questions were questions of fact and by relying on concessions purportedly made by the departmental representative.

HOLDING

Section 8(1)(h) of the Sales Tax Act, 1990 contains an absolute statutory bar making input tax adjustments inadmissible on goods permanently attached to or used in immovable property, expressly including building and construction materials such as cement, steel, paints, electrical fittings and wiring. The tax period (July-December 2013) wholly post-dates the restrictive statutory regime reinforced by S.R.O. 450(I)/2013. Section 73 of the Act is a rigid, non-negotiable condition precedent: a failure to channel transactions through the mandatory banking channel completely invalidates the eligibility of an input tax claim, irrespective of commercial reality. There is no estoppel against a statute: mere concession on a question of law by a party or its counsel cannot bind a Court, which is under a duty to interpret and apply the law correctly regardless of any such concession. The questions arising under Sections 2, 3, 8(1)(ca), 8A and 73 of the Act were questions of law which required proper adjudication; the High Court and the ATIR erred in dismissing the matter as a mere question of fact. Both questions of law answered in the affirmative, i.e., in favour of the Department and against the taxpayer. Impugned SHC order dated 10.08.2017 and ATIR order dated 01.07.2016 set aside; the Order-in-Original disallowing input tax adjustment restored.

LEGAL SIGNIFICANCE

This judgment (a) firmly settles that input sales tax on building and construction materials (cement, steel, paints, electrical fittings, wiring) used in immovable structures is inadmissible under Section 8(1)(h) of the Sales Tax Act, 1990, and expressly ties this restriction to the reinforced statutory regime post-S.R.O. 450(I)/2013; (b) elevates Section 73 to a rigid, non-negotiable condition precedent - the banking-channel mandate operates as an independent statutory bar irrespective of commercial genuineness; (c) reaffirms and applies the classical no-estoppel-against-statute doctrine in Imtiaz Ahmad v. Ghulam Ali (PLD 1963 SC 382), Ikram Bus Service (PLD 1963 SC 564), Shahul Hameed (1980 SCMR 469) and the Privy Council decision in Rao Girdhari Lal Chaudhary (1940) - the concession by counsel cannot bind the Court on a question of law; and (d) draws a clear boundary between questions of law and questions of fact in tax-reference jurisdiction: where a controversy hinges on the legal consequences of admitted facts under specific statutory provisions, the question is one of law and must be adjudicated on the merits.

LEGAL PROPOSITIONS (VERBATIM)

— Section 8(1)(h) of the Act expressly dictates that input tax adjustments shall be inadmissible on goods permanently attached to or used in immovable property, specifically highlighting building and construction materials, paints, electrical fittings, and wiring etc.

— Section 73 of the Act, in our view is structured as a rigid, non-negotiable condition precedent, a failure to channel transactions completely invalidates the eligibility of an input tax claim, entirely irrespective of the commercial reality of the underlying trade.

— There can be no estoppel against a statute. Mere concession on a question of law by a party would not operate as an estoppel.

— It is the duty of the Court to interpret and apply the law correctly regardless of any concession made by a party or its counsel.

— The proper application of statutory exclusions, the application of amending S.R.O.s, and the enforcement of the banking mandate under Section 73 of the Act are in fact questions of law which required proper adjudication.

LEGAL PRINCIPLES EXPOUNDED

Section 8(1)(h) of the Sales Tax Act, 1990 imposes an absolute statutory bar on input tax adjustments in respect of goods permanently attached to or used in immovable property, expressly including building and construction materials such as cement, steel, paints, electrical fittings and wiring.

Source: *which expressly dictates that input tax adjustments shall be inadmissible on goods permanently attached to or used in immovable property. specifically highlighting building. and construction materials, paints, electrical fittings, and wiring etc*

Authority: *Section 8(1)(h), Sales Tax Act 1990; S.R.O. 450(I)/2013*

Section 73 of the Sales Tax Act, 1990 is a rigid, non-negotiable condition precedent to the entitlement of any input tax adjustment: failure to route the transaction through the mandatory

banking channel completely invalidates the input tax claim, regardless of the commercial genuineness of the underlying trade.

Source: *Section 73 of the Act, in our view is structured as a zigid, non-negotiable condition precedent, a failure to channel transactions completely invalidates the eligibility of an input tax claim, entirely irrespective of the commercial reality of the underlying trade*

Authority: *Section 73, Sales Tax Act 1990; Sheikh Spinning Mills Ltd. v. Federation of Pakistan (2002 PTD 2959)*

There can be no estoppel against a statute; a mere concession by a party or its counsel on a question of law does not operate as an estoppel and cannot preclude the Court from interpreting and applying the law correctly.

Source: *there can be no estoppel against a statute. Mere concession on a question, of law by a party would not operate as an estoppel. It is the duty of the Court to interpret and apply the law correctly regardless of any concession made by a party or its counsel*

Authority: *Imtiaz Ahmad v. Ghulam Ali (PLD 1963 SC 382); Ikram Bus Service v. Board of Revenue West Pakistan (PLD 1963 SC 564); Shahul Hameed v. Tahir Ali (1980 SCMR 469); Rao Girdhari Lal Chaudhary (Privy Council, 1940) per Lord Atkin*

Where a controversy hinges on the legal consequences of admitted facts under specific statutory provisions, it inherently constitutes a question of law within the reference jurisdiction of the High Court under Section 47 of the Sales Tax Act, 1990; the concession of a departmental representative or counsel cannot oust that statutory jurisdiction.

Source: *when a controversy hinges on legal consequences. of admitted facts under specific statutory provisions, it inherently constitutes a question of law*

Authority: *Section 47, Sales Tax Act 1990*

OPERATIVE ORDER

Consequently, this appeal is allowed, the impugned order of the High Court, dated 10.08.2017, and the order of the ATIR, dated 01.07.2016, are hereby set aside, and the O-in-O disallowing the input tax adjustment is hereby restored. Both the questions of law are therefore answered in the affirmative, i.e., in favour of the Department (Appellant) and against the Taxpayer (Respondent). No order as to costs. Announced in open Court on 14.07.2026.

Sindh High Court

1 judgment

CPC ORDER 12 RULE 6 (JUDGMENT ON ADMISSIONS); COMPANIES ACT 2017 (SCHEME OF ARRANGEMENT); FINANCIAL INSTITUTIONS (RECOVERY OF FINANCES) ORDINANCE 2001 - PROVISIONAL, UNRECONCILED AND REVISABLE FIGURES IN A SCHEME OF ARRANGEMENT DO NOT CONSTITUTE A CLEAR AND UNEQUIVOCAL ADMISSION; DISTINCT OPERATION OF CORPORATE RESTRUCTURING VS RECOVERY JURISDICTION

Bank Islami Pakistan Limited v. M/s Hascol Petroleum Limited

ADMISSION APPLICATION (CMA NO. 23/2026) DISMISSED; BANKING SUIT TO PROCEED IN ACCORDANCE WITH LAW

Banking Suit No. B-20 of 2022; 2026 SHC KHI 1457 · Bench: Sana Akram Minhas, J · Decided: 20.07.2026 · Uploaded: 20.07.2026

FACTS

The Plaintiff, Bank Islami Pakistan Limited, instituted Banking Suit No. B-20 of 2022 on 09.06.2022 for recovery of principal Rs.1,550,082,003 from the Defendant, Hascol Petroleum Limited. Thereafter, Hascol filed Judicial Companies Matter No. 31/2022 (JCM-31) before the Sindh High Court in its company jurisdiction, seeking sanction of a Scheme of Arrangement under the Companies Act, 2017 with its creditors and members. Schedule 'B' to the Scheme identified the Plaintiff Bank as a creditor and reflected the outstanding principal figure of Rs.1,550,082,003. The Plaintiff Bank thereafter filed CMA No. 23/2026 in the Banking Suit under Order 12 Rule 6 CPC, seeking a judgment on admissions for the said principal amount, contending that the figure in Schedule 'B' amounted to a clear and unequivocal admission. Hascol contested the application: it maintained a pending preliminary objection to the maintainability of the Banking Suit (CMA No.11563/2022 seeking leave to defend, questioning the authority of the signatories to the plaint) and further contended that the figures in the Scheme were provisional, unreconciled and expressly protected from being used as admissions by Article 9.5 of the Scheme.

LEGAL ISSUE

Whether the outstanding-principal figure of Rs.1,550,082,003 recorded against the Plaintiff Bank in Schedule 'B' to Hascol's proposed Scheme of Arrangement under the Companies Act, 2017 (JCM-31) constitutes a 'clear, unambiguous, categorical and unqualified' admission within the meaning of Order 12 Rule 6 CPC, such that the Plaintiff Bank is entitled to a judgment and decree on admissions in the Banking Suit under the Financial Institutions (Recovery of Finances) Ordinance, 2001.

HOLDING

The jurisdictional preconditions for the exercise of powers under Order 12 Rule 6 CPC remain unsatisfied. The Scheme of Arrangement was prepared as a proposal for compromise amongst Hascol, its creditors and members. Article 5.2 of the Scheme expressly recorded that the figures in Schedule 'B' had been calculated by Hascol in good faith based on its own books and records and had not been reconciled with the creditors, with an Objection Period, third-party audit, revision and updating mechanism prescribed such that only the revised Schedule 'B' was to be final and binding. Article 9.5 expressly provided that if the Scheme was neither approved by the requisite majority of creditors nor sanctioned by the Court, nothing in the Scheme - including the amounts in the Schedules - could be relied upon, construed or used as an admission or produced in evidence in any pending or future proceedings. The Scheme must be construed holistically as a single integrated document and cannot be dissected by isolating a single figure. Corporate restructuring under the Companies Act, 2017 and recovery under the Financial Institutions (Recovery of Finances) Ordinance, 2001 operate in distinct statutory spheres. The figures in the Scheme were provisional, unreconciled and revisable, and did not amount to a clear, unequivocal, categorical and unqualified admission. The Admission Application therefore failed on its own merits; the controversies, including the existence and extent of Hascol's alleged liability, require adjudication in the ordinary course. CMA No. 23/2026 was dismissed and the Banking Suit ordered to proceed in accordance with law.

LEGAL SIGNIFICANCE

This judgment (a) provides a systematic exposition of the jurisdictional preconditions for a judgment on admissions under Order 12 Rule 6 CPC, insisting that the admission be clear, unambiguous, categorical, unqualified and admitting of no doubt; (b) draws a sharp doctrinal line between corporate restructuring proceedings under the Companies Act, 2017 and recovery proceedings under the Financial Institutions (Recovery of Finances) Ordinance, 2001, holding that figures in a proposed Scheme of Arrangement cannot be transposed into a recovery suit as admissions; (c) gives dispositive weight to protective 'no-admission' clauses in Schemes of Arrangement (Article 9.5-type provisions), reinforcing their utility as safe-harbour drafting; (d) reminds that the Scheme must be construed as a whole and cannot be selectively dissected; and (e) is of immediate practical significance to banks, financial institutions and restructuring counsel, likely to be relied upon in every future contest over admissions derived from Scheme schedules or debtor restructuring proposals.

LEGAL PROPOSITIONS (VERBATIM)

> — *A judgment on admissions may be rendered only where the admission relied upon is clear, unambiguous, categorical, unqualified and admits of no doubt.*
>
> — *The figures appearing in the original Schedule B were never intended to constitute a final admission.*
>
> — *The Scheme, including its schedules, constitutes a single integrated document and must be construed as a whole. It cannot be dissected by placing reliance upon isolated schedules or individual entries while disregarding the remaining provisions which qualify, explain or condition them.*
>
> — *The Plaintiff Bank has, in substance, invited this Court to extract a single figure from a document which, when read as a whole, repeatedly emphasizes and makes clear that the figure is provisional, unreconciled and liable to revision.*
>
> — *Consequently, the jurisdictional preconditions for the exercise of powers under Order 12 Rule 6 CPC remain unsatisfied.*

LEGAL PRINCIPLES EXPOUNDED

A judgment on admissions under Order 12 Rule 6 CPC may be rendered only where the admission relied upon is clear, unambiguous, categorical, unqualified and admits of no doubt; where the admission is qualified, provisional or subject to conditions, the jurisdictional preconditions for the exercise of the summary power are not satisfied.

Source: *a judgment on admissions may be rendered only where the admission relied upon is clear, unamb iguous, categorical, unqualified and admits of no doubt*

Authority: *Order 12 Rule 6, Code of Civil Procedure 1908*

A Scheme of Arrangement filed under the Companies Act, 2017 must be construed as a single integrated document; its Schedules and individual entries cannot be read in isolation from the operative provisions which qualify, explain or condition them.

Source: *The Scheme, including its schedules, constitutes a single integrated document and must be construed as a whole. It cannot be dissected by placing reliance upon isolated schedules or individual entries*

Authority: *Companies Act 2017 (Scheme of Arrangement provisions)*

Where a Scheme expressly records that its figures are calculated in good faith on the company's own books, are unreconciled with creditors and are subject to a defined objection, third-party audit and revision mechanism, those figures are provisional and do not amount to admissions capable of grounding a decree under Order 12 Rule 6 CPC.

Source: *the amounts of the Outstanding Liabilities (as stipulated in Schedule B) have been calculated and determined by the Company in good faith based on Its books and records*

Authority: *Article 5.2 of the Scheme (illustrative); Order 12 Rule 6 CPC*

A protective 'no-admission' clause in a Scheme of Arrangement (providing that if the Scheme is not approved or sanctioned, nothing therein - including figures - shall be relied upon, construed or used as an admission or produced in evidence) is dispositive: the figures were never intended to constitute admissions capable of being relied upon in collateral or adversarial proceedings.

Source: *if the Scheme is neither approved by the requisite majority of creditors nor sanctioned by the Court , nothing contained therein*

Authority: *Article 9.5 of the Scheme (illustrative safe-harbour provision)*

Liabilities reflected in a Scheme of Arrangement under the Companies Act, 2017 are not, by themselves, admissions for the purposes of Order 12 Rule 6 CPC in a banking recovery suit under the Financial Institutions (Recovery of Finances) Ordinance, 2001; corporate restructuring proceedings and recovery proceedings operate in distinct statutory spheres.

Source: *The company law jurisprudence relating to schemes of arrangement*

Authority: *Companies Act 2017; Financial Institutions (Recovery of Finances) Ordinance 2001; PLD 2003 SC 215 (Saudi-Pak Industrial and Agricultural Investment Company v. Allied Bank of Pakistan); 2007 CLD 1620 (Absar Akhtar v. Zarai Taraqiati Bank Ltd)*

OPERATIVE ORDER

Consequently, the jurisdictional preconditions for the exercise of powers under Order 12 Rule 6 CPC remain unsatisfied. The controversies between the parties, including the existence and extent of Hascol's alleged liability, require adjudication in the ordinary course. The Plaintiff Bank is, therefore, not entitled to a judgment on admissions. Accordingly, CMA No. 23/2026 is dismissed. The Banking Suit shall proceed in accordance with law.