JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

C.O No. 07 – 2022

Fahad Saif
Vs.
Mohtaram Fabrics Pvt. Ltd. and others.

Petitioner by:	Mian Sami-ud-Din, Mr. Nasir Mehmood and Ms. Haleema Sohail, Advocates.
Respondents by:	Syeda Muneeza Fatima, Special Public Prosecutor, SECP. Respondents No.1 & 2, ex-parte.
Assisted by:	Ms. Aymen Azeem, Law Clerk.
Date of Decision:	30.10.2025.

MOHSIN AKHTAR KAYANI, J: Through this company original petition, the petitioner, Fahad Saif, has prayed for the winding up of Mohtaram Fabric Private Limited and also claims any other relief deemed to be just, fair, and equitable.

2. Brief facts referred to in the instant petition are that the petitioner, Fahad Saif, is a shareholder and Chief Executive of the company, owning 50% shares in the company, comprising 500,000 shares originally allotted to him. The company was incorporated on 08.04.2021 under the Companies Act, 2017, having Corporate Unique Identification Number 0173086 and its registered office at House No. 62, Main Nazim Uddin Road, F-6/1, Islamabad. The objectives of the company are set forth in the Memorandum of Association, including

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establishing an industrial undertaking for manufacturing, stitching garments, made-ups, clothing, knitwear, weaving, apparels, hosiery, and other allied commodities, and for buying, selling, importing, exporting, and dealing in the products of the company within or outside Pakistan, as well as undertaking other connected businesses as mentioned in the Memorandum. The authorized capital of the company is Rs.10,000,000, divided into 1,000,000 ordinary shares of Rs. 10 each. Respondent No. 2, Mr. Ali Faisal, is the second shareholder and director of the company, also owning 50% shares in the company, comprising 500,000 shares, and as such, respondent No. 1 is a two-member company under the law.

3. The petitioner and respondent No. 2 were close friends for more than 20 years and were classmates at school. The petitioner is a businessman and owns separate and successful business by the name of Mohtaram Private Limited (Mohtaram Clothing), established in 2015. In November 2019, the petitioner and respondent No. 2 entered into an oral agreement to jointly pursue a new and separate business joint venture related to the production and sale of fabrics, whereby the petitioner permitted the use of the trademark "Mohtaram," which was under his ownership, for the fabric business.

4. It was agreed that the petitioner would contribute to the fabric business through his work, time, and effort, and that he granted permission to use the established brand name "Mohtaram" and the goodwill associated with it. The respondent No. 2 promised to make financial payments to meet the requirements for the production and

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sale of the fabric collection for each fashion season, as per the budget sheet shared by the petitioner from time to time. Under this oral agreement, each party would have equal 50% ownership in the fabric business. It was further agreed to incorporate a company where 50% shareholding would be available to both parties, and in such company, the assets and liabilities of the fabric business would be transferred. Eventually, the company was incorporated on 8.04.2021. After incorporation, the parties deposited Rs. 10,000 on 23.04.2021 and Rs. 10,000,000 on 26.04.2021 as capital into the company's bank account opened with Meezan Bank bearing account No. 010-5283339. The fabric business was being run through Mohtaram Clothing, and vendors entered into contracts with it. Therefore, the petitioner and respondent No. 2 transferred the entire capital amount of Rs.10,000,000 from the company to Mohtaram Clothing so that outstanding payments to vendors for the fabric business could be satisfied. The transactions were authorized and signed off by both the petitioner and respondent No. 2. However, in January 2022, the relationship between the petitioner and respondent No. 2 broke up, because respondent No. 2 continuously breached the joint venture agreement, violated his duties of good faith under the contract, fiduciary duties, and additionally committed serious tortious acts against the petitioner. As a result, the petitioner sent a legal notice dated 14.06.2022 to respondent No. 2. On the other hand, respondent No. 2 also filed a civil suit titled "*Ali Faisal versus Fahad Saif*" in the

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Civil Court at Lahore, whereupon the petitioner filed the instant petition for winding up of the company.

5. Learned counsel for the petitioner contends that the substratum of the company has disappeared and both parties are engaged in litigation against each other before the District Court Lahore and Civil Court Islamabad, which reflects their own actions and intentions, that they cannot cooperate in a joint business and are in dispute. Therefore, it is not possible to achieve reasonable prospects or earn profit from the company. It has further been argued that the account statement of the company reflects no business activity since June 2021, and the company has no assets or liabilities accordingly. The petitioner and respondent No. 2's inability to agree on any matter has resulted in the company's failure to hold its first annual general meeting, maintain statutory records, or prepare financial statements. All these aspects clearly establish that it is just and equitable to wind up the company because the fabric business was conceived, and the decision to incorporate the company was made as a result of a long-standing close personal relationship between the petitioner and respondent No. 2. Such a relationship was in the nature of a quasi-partnership requiring mutual trust and reliance for the smooth running and success of the company. However, subsequent multiple litigations and the parties' conduct in failing to perform business activities now necessitates that the company be wound up.

6. Despite issuance of notice and the adoption of substituted service through publication, no one appeared on behalf of respondent

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No.1; therefore, proceeded against ex parte vide order dated 05.12.2022. As for respondent No.2, his counsel failed to appear on the previous dates of hearing, and even though an absolute last opportunity was granted vide order dated 27.10.2025, the same situation persists on the present date of hearing. The name of the learned counsel representing respondent No.2 is also reflected in the cause list; therefore, he is proceeded against ex parte vide order of even date.

7. Respondent No. 2, filed written reply and opposed the instant winding-up petition primarily on the ground that the petitioner has not been able to prove the requirements or prerequisites provided under Section 304A of the Companies Act, 2017, and that the petitioner intends to deprive respondent No. 2 of his hard-earned investment and life savings in the business of respondent No. 1 company, and that he has now reneged on his commitments and filed the present winding-up petition. It has further been contended that respondent No. 2, acting *bona fide* and being completely oblivious to the petitioner's alleged illegal designs, initially agreed with the petitioner that he would make an investment of Rs. 10 million in the business of Mohtaram over a period, so that the petitioner could pay his liabilities, including payments to vendors, salaries, utility bills, and the purchase of raw materials for the business of Mohtaram. In consideration thereof, the parties agreed to share 50% of the net profit of Mohtaram, with the option to reinvest their share of profits into Mohtaram's business to increase equity. He further contends that both parties also

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agreed to incorporate another company under the name and style of "Mohtaram Fabric" as a sister concern of Mohtaram, in which the petitioner and respondent No. 2 would be equal shareholders. He further contended that the relationship between the parties in continuation of the business is admitted till 2022. However, it has been claimed by respondent No. 2 that the petitioner was responsible for the transfer of assets and liabilities to respondent No. 1 company and that the petitioner never rendered the accounts of either Mohtaram or Mohtaram Fabric to the answering respondent despite multiple requests; rather, he used all funds provided by respondent No. 2 for his personal gains. He contends that there is no lawful justification on record by the petitioner to prove that the substratum of the company is gone or that the subject matter of the company has disappeared, and no such evidence has been submitted by the petitioner. It has also been contended that no effort was made for the survival of the company, and as such, the objectives of the company have not yet failed, nor has it become impossible to carry out the business. Hence, this petition deserves to be dismissed.

8. Respondent No. 3, SECP, has also filed their para-wise comments in detail, acknowledging the incorporation of the company on 01.04.2021 with the SECP and confirming the relationship of both shareholders, each holding 50%. As per the requirements of Sections 132 and 223 of the Companies Act, 2017, the annual general meeting has not been held, nor is any proof to that effect available. Similarly, the annual return containing the particulars in the prescribed form as

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on the date of the annual general meeting has also not been filed till date.

9. Arguments heard, record perused.

10. Perusal of the record reflects that the petitioner and respondent No.2, Ali Faisal, are joint shareholders of respondent No.1, Mohtaram Fabrics (Pvt.) Ltd., incorporated on 08.04.2021, having its registered office at Islamabad, with 50% shareholding of each partner consisting of 500,000 shares. There is no denial by either side that the company was incorporated under a joint venture agreement executed in November 2019, with the objective of pursuing a new and separate business using the trade name "Mohtaram," which was already available to petitioner No.1 in its separate company. Respondent No.2 invested an amount of Rs.10 million in the company's account, and presently, only Rs.10,000 remains therein.

11. An annual general meeting was to be held by the company in terms of Section 132 of the Companies Act, which requires every company to hold its first annual general meeting within sixteen months from the date of incorporation and thereafter once in every calendar year within 120 days following the close of its financial year. It has also been observed that as per Section 223 of the Companies Act, the board of every company must lay before the company in its AGM the financial statement for the relevant period — in the case of the first such statement, since incorporation of the company, and in any other case, since the preceding financial statement, made up to the close of the financial year adopted by the company. Since respondent No.1 was

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incorporated on 08.04.2021, it was required to hold its first AGM within sixteen months and to file its financial statements in accordance with the provisions of the Companies Act, 2017. However, no such exercise was carried out, and no return report, or minute of annual general meeting was submitted to the SECP, respondent No.3. In this backdrop, this Court concurs with the basic requirement that, in any company, the shareholders who initially incorporated the entity must do so to achieve the business objectives set forth in its Memorandum and Articles of Association. Despite this commitment, both sides remained unable to proceed further, which is evident from their conduct. It is, therefore, clear that respondent No.1 was incorporated as a joint family venture in the form of a partnership. As such, there is an apparent deadlock between the two shareholders who are unable to proceed with the business of the company. Despite the best efforts of this Court, after examining the entire record, it is evident that the substratum of the company no longer exists, and the business never commenced. Consequently, the company has failed to comply with its statutory requirements, as confirmed by the SECP in its report. As a result, the requirement of winding up the company under Section 304 of the Companies Act can be initiated by any shareholder, creditor, or contributory, jointly or separately.

12. The Court also considered the legal requirements envisaged in Section 301(c) and (d) of the Companies Act, 2017, which revealed the default in holding two consecutive AGMs and non-filing of annual returns for the last two consecutive financial years is apparent.

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Similarly, in terms of Section 301(i) of the Act, it is just and equitable to pass a winding-up order. Therefore, considering all these aspects and legal requirements, along with Section 304 proviso (a)(ii), an application for winding up may be filed by a contributory to whom shares were originally allotted. Respondent No.2 has taken the stance in writing that all grounds raised by the petitioner are misconceived and not maintainable in terms of the requirements laid down under Section 304 of the Companies Act, 2017. However, despite being given fair opportunities to argue the case, respondent No.2 failed to appear on the last two dates of hearing and has, therefore, been proceeded against ex parte vide order of even date.

Requirements for winding up of a company under Companies Act, 2017:

13. In view of the above, I have considered the requirements laid down in Section 304 proviso (a) (i) (ii), which deals with specific conditions and reproduced as under:

> *"(a) a contributory shall not be entitled to present a petition for winding up a company unless-*
>
> *(i) either the number of members is reduced, in the case of a private company, below two, or, in the case of public company, below three; and*
>
> *(ii) the shares in respect of which he is a contributory or some of them either were originally allotted to him or have been held by him, and registered in his name, for at least one hundred and eighty days during the eighteen months before the commencement of the winding up, or have or devolved on him through the death of a former holder."*

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14. Upon comparison of the substantive provisions with the proviso, it appears that there are two mandatory requirements in subsections (i) and (ii)(a) of Section 304, and the word "and" has been used between these two parts. In this regard, Section 304 proviso (a)(i) and (ii) are to be read disjunctively for two reasons: first, holistic textual reading supports this; and second, a conjunctive reading would result in absurdities. Therefore, considering the textual approach, in Section 304 proviso (a), the use of the word "either" at the beginning of paragraph (i) supports a disjunctive reading. The use of the word "and" at the end of paragraph (i) is inconsistent with the word "either" if taken literally. Superior courts have permitted interpreting the word "and" as "or" to resolve inconsistencies or absurdities. In this regard, this Court is guided by the judgment reported as **2018 (1) SCC 5353 *(Mobilox Innovations Private Limited v. Kirusa Software Private Limited)***, wherein it was held that the expression "and" may be read as "or" to further achieve the object of the statute or to avoid anomalous situations. This interpretation is consistent with the view rendered in **1998 (7) SCC 59 *(Samee Khan vs. Bindu Khan)***, where it was observed that although "and" generally has a cumulative sense, but sometimes it is by force of a context read as "or". Maxwell on Interpretation of Statutes has recognized the above use to carry out interpretation of the legislation. It is occasionally found necessary to read the conjunctions "or" and "and" one for the other. It has also been explained in judgment reported as **2002 CLC**

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[Lahore] 54 ***(Master Said v. Chaudhary Iftikhar Hussain, District Judge, Jhang and others)*** that:

> *"Passage from the Maxwell on the Interpretation of Statutes, 12th Edition---`And' and `or'. In Ordinary usage, `and" is conjunctive and `or' disjunctive. But to carry out the intention of the legislature it may be necessary to read `and' in place of the conjunction `or' and vice versa'. Passage from the Crawford on Statutory Construction: ' 188 Disjunctive and conjunctive words-In ordinary use the word `or' is a disjunctive that marks an alternative which generally corresponds to the word `either'. In face of this meaning, however, the word `or' and the word `and' are often used interchangeably. As a result of this common and careless use of the two words in legislation, there are occasions when the Court, through construction, may change one to the other. This cannot be done if the statute's meaning is clear, or if the alteration operates to change the meaning of the law. It is proper only in order to more accurately express, or to carry out the obvious intent of the legislature, when the statute itself furnishes cogent proof of the error of the legislature, and especially where it will avoid absurd or impossible consequences, or operate to harmonize the statute and give effect to all of its provisions."*

15. In **1991 SCMR 2164 (*Abdul Rauf Khan v. The Land Acquisition Collector)***, the courts explained that:

> *"The above two parts are to be read disjunctively as the word "and" can be read as "or" and vice versa if the context of the language of the provisions of a statute so requires."*

In another judgment reported as **2014 SCMR 1630 (*Federation of Pakistan v. Durrani Ceramics)***, it is held that:

> *"The basic rule for interpretation of statutes is to give the words their ordinary and natural meaning. Deviation from this rule is*

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> *permissible only when it becomes necessary, for example to avoid or overcome absurdity or render certain words meaningless. This exercise is undertaken when assigning the words their ordinary meaning does not reflect the true intention of the Legislature. By the use of 'and' in between 'natural gas' and 'minerals' in Entry 51, all the three items are to be read conjunctively with the words following them. In the said Entry 'and' could have been substituted by 'or' only if without the change absurd consequences would have followed. Restricting 'mineral oil' or 'natural gas' to their use in the generation of nuclear energy would not lead to any absurdity."*

Therefore when more than one interpretation is fairly and reasonably possible that which leads to manifest absurdity or injustice must be avoided as held in **2022 SCMR 1171** ***(Naila Naeem Yunus Vs. Indus Services Limited)***

16. Considering the above interpretation based upon the judgment of superior court as well as the interpretation of statutes this court while reading paragraphs (i) and (ii) of proviso (a) conjunctively will create an absurdity Where requirements of (i) are met, a single member of private company (or two members of a public company) will not be able to petition, unless requirements of (ii) are also met. This is absurd as it conflicts with section 301(e) and sections 14 and 15 of the 2017 Act. Thus clause (i) and (ii) must be read as two separate and independent requirements. Also, an original shareholder of a private company with two members, such as the present circumstances, will be unable to exit a deadlock situation by initiating a winding up petition under section 304 and will be remediless unless requirements of clause (ii) are also met. Situation of winding up by contributory will

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be limited to clause (i) which correlates to section 14 and 15 of the 2017 Act and is in any event prohibited. The other available remedies cannot help such a contributory in the instant case which are as follows:

i. Cases of oppression or mismanagement by majority (s. 286) - requires more than 10% shareholding and less than 50%.
ii. Where a company is being wound up voluntarily (s. 305) - requires company decision i.e, consent of both directors/shareholders.
iii. Registrar may strike defunct company off register (s. 425) - requires registrar to act and not contributory.
iv. Easy exit of a defunct company (s. 426) - requires company to apply i.e., both directors/shareholders, not contributory. The above other remedies also cannot cover other grounds of winding up in s. 301 (which are applicable in the present case), which are as under:
    a. If default is made in delivering the statutory report to the registrar or in holding the statutory meeting;
    b. If default is made in holding any two consecutive annual general meetings;
    c. If the company has made a default in filing with the registrar its financial statements or annual returns for immediately preceding two consecutive financial years;
    d. If the company is unable to pay its debts;

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e. If the Court is of opinion that it is just and equitable that the company should be wound up;

Therefore, reading paragraphs (i) and (ii) of proviso (a) of s. 304 conjunctively will defeat the wisdom behind the proviso and will leave a contributory remediless in cases where circumstances laid out in s. 301 arise;

17. It is a settled law that a proviso should be interpreted in a manner not to nullify the enacting part or render it wholly inoperative. Reading paragraphs (i) and (ii) of proviso (a) of s. 304 conjunctively will render a contributory without any remedy where grounds for winding up exist. For the meaning of the proviso it has to be construed strictly and in the context of provision to which it is a proviso as held in **PLD 1992 [Karachi] 181 *(Muzaffar Poultry Farm Vs. Pakistan Poultry Association)*** and **PLD 1971 [SC] 252 *(Rafiuddin Vs. Chief Settlement Rehabilitation Commissioner)***, wherein it was held that "*function of a proviso is to restrict, limit or qualify the enacting part of a section to which it is attached, but not to nullify the enacting part or render it wholly inoperative*".

Grounds for winding up:

18. Now, adverting to the grounds for winding up, it is significant to note that the fabric business was never transferred to respondent No.1, and the very purpose and intention for incorporating Mohataram Fabrics have failed, as demonstrated from paragraph 11 of the plaint in the civil suit filed at Islamabad and paragraph 4 of the

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plaint in the suit filed by respondent No.2. The parties, in their respective pleadings before the court of law, clearly stated that the fabric business was never transferred to respondent No.1, nor was it subsequently done. Respondent No.1, therefore, serves no purpose in view of the fact that the fabric business was never transferred to the company.

19. There has been no business activity taking place in respondent No.1, which has remained a dormant concern since its incorporation. This is evident from the bank statement, the company's letter to Meezan Bank requesting a pay order, and another letter to Meezan Bank for RTGS transfer. Considering the mandate of law in the judgment reported as **PLD 1973 [Lahore] 60** ***(Mian Naseemuddin Vs. UBL)***, wherein it was held that when no balance sheets have been prepared or accounts got audited and even no such account or balance sheets were placed before the company judge. The company has particularly shown no activity except contracting heavy loans from various banks and other aid giving institution and then squandering the same. Such aspect out rightly declares the principle of "substratum gone" cannot be applied. Similarly, in **PLD 1997 [Karachi] 416** ***(Bankers Equity Vs. Baluchistan Coaters)***, it was held that the non-commencement of commercial production within one year of incorporation is per se a strong and valid ground for winding up a company. Furthermore, failure to hold statutory meetings, file statutory reports, or prepare financial statements, all of which are

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mandatory requirements, as has been confirmed through the SECP's parawise comments.

20. In this regard, this court has been apprised through the law referred in **1999 MLD 2609 *(Investment Corporation Vs. Sindh Tech Industries)***, whereby the report of Joint Registrar to the effect that annual account for the preceding two years have not been filed in the SECP and respondent company has not been able to file such report in the court. Such aspect out rightly discloses the default to delivering the statutory reports to the registrar and not held the statutory annual general meeting at least for two years, which is sufficient to raise an inference that substratum of company seems to have disappeared and it is not in position to run the affairs of company in accordance with law. In **2003 CLD 1494 (*Sheikh Mazhar Ali Vs. Lasani Straw Broad Mills)***, the balance sheet attached with the reply shows that they do not pertain to the company, but it is a joint account of Hussain Paper and Board Mills and Lasani Straw Board Mills. The ledger, also shows irregularities in the maintenance of the same. The entries in the ledger have been made at the whims of the respondents. No, balance sheet has been prepared nor it was ever audited by any Auditors. In **2021 CLD 570 (*M/s Fizza Developers Vs. Essem Hotels Limited)***, the winding up order is declared justified on the basis of breach of provision of section 301 (d) of the Act of 2017 as statutory obligation of filing financial statements for immediately preceding two consecutive financial years. Furthermore, on the grounds that the

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business stand suspended from last many years, which are the grounds to wound up the company.

Just and equitable grounds for winding up:

21. Now, adverting towards just and equitable grounds available for the winding up, it appears that company was formed on the basis of close and personal relationship between the petitioner and respondent No.2 and those relationship has deteriorated mutual trust as reflected from the legal notice as well as the cross suits filed by both the sides. In these peculiar circumstances, the affairs of company have to be considered in terms of partnership and to apply the same principle in winding up a private limited company as would entitle a partner to have a partnership firm dissolved as held in **PLD 1965 [SC] 221 (*Ladli Prsad Jaiswal Vs. The Karnal Distillery Co. Ltd.)*** and it is justiciable to dissolve such a private company. Similar view has also been rendered in **PLD 1970 [Lahore] 539 (*Maqbool Ellahi Vs. Rasool & Co.)***, where it was held that company was conceived on the basis of friendship, mutual trust and great alliance between private relationship, which was virtually a two-man company headed by one of the persons holding equal representation between them and the company and due to demise of one of the partners, serious dispute and differences arose between the parties, which deteriorated mutual trust and resultantly, the company is required to be wound up. I have also been guided with **PLD 1997 [Karachi] 376 (*Qamar Loan Vs. Kashmiriam Private Limited)***, where parties have lost complete faith and confidence in each other and they have been suspecting each other

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for considerable time and all efforts to make as equitable distribution of assets and properties between them failed despite hectic efforts. In such scenario, the business activity of the company has not been done and same was halted. Therefore, the company is required to be wound up. These aspects further persuaded the court to rely on **1998 1 B.C.L.C. 554 at 556** (*Re Worldhams Park Golf Course Ltd, Whidbourne Vs. Troth and another*), **1983 B.C.L.C. 273** (*Re RA Noble & Sons (Clothing) Ltd.*), **2004 C.L.D. 437** (*Adil Masood Zia Vs. Cossar Carpets*), **1996 C.L.C. 1863** (*Khurshid Ismail and others Vs. Unichem Corporation*), **A.I.R. 1958, A.P. 259** (*Joaldu Anantha Raghurama Vs. East Coast T. & S. Co.*).

22. Therefore, in view of the above circumstances, this Court is of the clear view that the affairs of the company cannot be conducted in this manner and that respondent No.1 must be wound up, as all essential requirements, namely, the substratum of the company being gone, the absence of business activity, and non-compliance with the statutory requirements of the Companies Act, 2017, stood fully established.

23. In the light of foregoing, respondent No.1 is hereby ordered to be wound up, and the petition is **ALLOWED**. However, in addition to the winding-up order, this Court also observes that where all such factors are present, the Court may exercise its powers under Section 342 of the Companies Act, 2017, read with Section 308(1)(e) of the Act, which confers discretion upon the Court to pass an order of dissolution where the company possesses no funds or assets.

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Accordingly, while exercising such powers under Section 322(1) read with subsection (5), this Court has the discretion to straightaway dissolve the company at any stage of the proceedings if it is not economical to continue formal winding-up proceedings after the passing of a winding-up order. As a result, there is no need to appoint an official liquidator, especially when only Rs.10,000/- remains in the company's account. Therefore, this company is simultaneously ordered to be wound up and dissolved. The Registrar of Companies is directed to take all necessary actions as provided under Section 342 of the Companies Act, 2017, accordingly.

(MOHSIN AKHTAR KAYANI)
JUDGE

Approved for reporting.

A.Waheed/-

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