JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT
ISLAMABAD

JUDICIAL DEPARTMENT

Execution Petition No.01 of 2007
Privatization Commission
versus
M/s Schon Group

&

Objection Petition No.1 of 2021 in
Execution Petition No.1 of 2007
in C.O.S. No.04 of 2007

Privatization Commission, Islamabad
versus
M/s Schon Group

&

Crl.Org.No. 212 of 2020 in
Execution Petition No.1 of 2007

Privatization Commission, Islamabad
versus
Syed Tahir Hussain

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Date of hearing:	**17.06.2026**
Petitioner by:	**M/s Bazad Haider, Hafeez Rana, Issac Ali Qazi, Tariq Aziz, Waqar ul Haq, Advocates.**
Respondents by:	**M/s Taimoor Aslam Khan, Malik Javed Iqbal, Barrister Zopash Khan and Mudassar Abbas Advocates.** **M/s Arshid Mahmood Kiani Deputy Attorney General & Asif Khan Jadoon, Assistant Attorney General.**

JUDGEMENT

SARDAR MUHAMMAD SARFRAZ DOGAR CJ:- Through this single judgment, I intend to decide the instant execution petition along with the connected petitions noted above, as they arise out of the same

arbitral award, involve common questions of fact and law, and are, therefore, appropriately disposed of together. During the pendency of this execution petition, C.M. No. 734 of 2022 was filed by the judgment debtor which is being decided alongwith main petition today.

2. The present execution proceedings arise out of an arbitral award dated 09.07.1997, which was subsequently made a rule of the Court through judgment and decree dated 18.10.2004**.** The said award has attained finality and is now sought to be executed at the instance of the decree-holder, the Privatization Commission of Pakistan.

3. The factual background reveals that the National Fertilizer Corporation (NFC) was the sole shareholder of Pak China Fertilizers Limited (PCFL)**,** holding 18,800,000 shares**,** constituting 100% of the company's paid-up share capital**.** Pursuant to the Government's privatization policy, NFC, through the decree-holder, invited competitive bids from the general public for the privatization of 90% of the shareholding in PCFL. Upon completion of the bidding process, the judgment debtor emerged as the highest successful bidder by offering PKR 27 per share against the face value of PKR 10 per share. Consequently, a Share Sale Agreement was executed on 26.05.1992 between NFC, executed between the decree-holder and the judgment debtor for the sale of 16,920,000 shares, representing 90% of the total paid-up share capital of PCFL, for a total consideration of PKR 457.84 million. In accordance with the terms of the agreement, the judgment debtor paid 40% of the sale consideration and, upon such payment, took over possession and management of PCFL on 26.05.1992.

4. The record reveals that pursuant to the acceptance of the bid submitted by the Judgment Debtor for the purchase of Pakistan Ceramic and Floor Tiles Limited (PCFL), the Judgment Debtor initially deposited a sum of PKR 2,000,000/- as earnest money along with the submission of its bid. Thereafter, an amount of PKR 116,778,400/- was remitted to the Decree Holder on 29.04.1992 through a bank draft dated 28.04.1992, followed by another payment of PKR 63,957,600/- through a bank draft dated 25.05.1992**.** The aggregate of these three payments amounted to PKR 182,736,000/-**,** constituting 40% of the total bid consideration**,** the

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receipt whereof was duly acknowledged by the National Fertilizer Corporation (NFC).

5. Subsequently, the Judgment Debtor made further payments towards the contractual consideration. A sum of PKR 69,444,478/- was paid through a pay order dated 30.05.1993 issued by Allied Bank Limited, while an additional amount of PKR 9,067,300/- was deposited through a pay order dated 25.05.1993 issued by Mehran Bank Limited. The cumulative amount of these payments, together with the applicable mark-up, totaled PKR 78,511,778/-**,** which was paid in addition to the previously acknowledged amount of PKR 182,736,000/-**.** Furthermore, vide Cheque No.000482 dated 25.05.1994, the Judgment Debtor made another payment comprising PKR 45,137,000/- towards principal and PKR 12,638,360/- towards mark-up, aggregating PKR 57,775,360/-**,** which was also received by the Decree Holder. After the execution of the Agreement dated 26.05.1992**,** disputes arose between the parties regarding their respective rights and obligations under the said agreement. In terms of Clause 11 thereof, the Judgment Debtor invoked the arbitration clause by filing a petition under Sections 8, 20 and 23 of the Arbitration Act, 1940 before the learned Senior Civil Judge, Islamabad, on 06.11.1993**,** seeking reference of the disputes to arbitration. The learned Trial Court, vide order dated 06.01.1994**,** accepted the request and referred the disputes to the sole arbitrator named in the agreement.

6. Upon conclusion of the arbitration proceedings, the learned sole arbitrator announced his award on 09.07.1997**,** notice whereof had earlier been communicated to the parties through letter dated 03.07.1997**.** Being dissatisfied with the award, the Judgment Debtor filed objections under Section 30 of the Arbitration Act, 1940 before the learned Trial Court, challenging the validity of the award. The said objections were contested by the Decree Holder through a detailed reply filed on 11.06.1998, wherein it was prayed that the objections be dismissed and the arbitral award be made a rule of the Court.

7. Meanwhile, following the promulgation of the Privatization Commission Ordinance, 2000**,** the learned Trial Court, by order dated

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11.03.2004, transferred the entire record of the proceedings to the then Hon'ble Lahore High Court, Rawalpindi Bench, in exercise of powers under Section 31 of the said Ordinance. Upon transfer, the matter was registered before the High Court as Case No. 1 of 2004**.** Thereafter, on 05.07.2004, the Judgment Debtor sought unconditional withdrawal of the objections earlier filed under Section 30 of the Arbitration Act, 1940. The said request was accepted by the High Court and, consequently, the objections stood dismissed as withdrawn. Following the withdrawal of the objections, the Decree Holder realized an amount of PKR 171,117,716/- by encashing the guarantees furnished by the National Bank of Pakistan. Out of the said amount, PKR 138,070,527/- represented the principal liability, whereas PKR 33,047,189/- pertained to the EAD Loan component. Consequently, the principal amount payable by the Judgment Debtor stood fully satisfied on 15.07.2004**.**

8. Subsequently, the Decree Holder filed Review Application No. 9/C of 2004 before the Hon'ble Lahore High Court, Rawalpindi Bench, seeking that the arbitral award be made a rule of the Court. The said review application was allowed vide judgment and decree dated 18.10.2004, the arbitral award was made a rule of the Court, thereby acquiring the status and enforceability of a decree of the Court.

9. The present Execution Petition No.01 of 2007 was instituted for enforcement of the award/decree. In the course of execution, multiple official communications and account confirmations were issued between 2009 and 2019, including letters dated 02.06.2009, 31.05.2010, 10.03.2014, 19.10.2016, 19.01.2018 and 22.02.2019, as well as audit confirmations dated 29.10.2015 and 10.08.2018. These documents consistently treated the PCFL principal as nil and the recoverable simple mark-up as Rs.235.420 million.

10. C.M. No.734 of 2022 has been pressed by the judgment debtor, substantially seeking permission to deposit Rs.235,420,844/- as the admitted simple mark-up in full and final satisfaction of the PCFL component. The decree-holder opposes that position and seeks execution on the basis of later calculations which attempt to revive principal and/or claim mark-up-on-mark-up and further accretions.

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11. The Court also notes connected references in the record to other privatized units, contempt proceedings, and other collateral disputes. Those matters are not before this Court for final adjudication. This judgment is confined strictly to the PCFL component in Execution Petition No.01 of 2007 and to questions of execution, discharge and satisfaction arising between the decree-holder and the judgment debtor in this petition.

Material Payments and Official Account Position

- *The initial 40% sale consideration was paid as follows: Rs.2,000,000/- as earnest money; Rs.116,778,400/- through bank draft dated 28.04.1992; and Rs.63,957,600/- through bank draft dated 25.05.1992. These payments aggregate to Rs.182,736,000/-, which corresponds to 40% of the original sale price and was acknowledged as principal payment.*

- *On 25.05.1993, Rs.69,444,478/- was paid towards principal and Rs.9,067,300/- towards mark-up. On 25.05.1994, a further payment of Rs.57,775,360/- was made, of which Rs.45,137,000/- was attributed towards principal and Rs.12,638,360/- towards mark-up.*

- *The judgment debtor's statement of payments, when tested against the decree-holder's own subsequent records, shows principal paid before encashment as approximately Rs.297.317 million. Upon addition of Rs.138.070 million realized by encashment of the bank guarantees, the aggregate principal payment becomes approximately Rs.435.387 million. This figure substantially corresponds to the revised sale consideration after audit adjustment, stated on record as approximately Rs.435.388 million. The*

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negligible difference is a matter of rounding and not of substance.

- *The decree-holder's letter dated 02.06.2009 stated the outstanding PCFL balance as principal nil, simple mark-up Rs.235.42 million and mark-up-on-mark-up Rs.802.64 million. By letter dated 31.05.2010, the Director General (Admin) certified that Rs.457.094 million had been realized as full and final payment of the sale price of PCFL, while separately recording Rs.235.420 million as simple interest/mark-up.*

- *The Privatization Commission's letter dated 10.03.2014 recorded a settlement approach under which the Commission decided not to charge mark-up-on-mark-up. The Negotiating Committee meeting dated 28.03.2016 reaffirmed the waiver and reflected Rs.235,420,844/- as simple mark-up in respect of PCFL. The decree-holder's letter dated 19.10.2016 conveyed settlement terms premised upon the same amount.*
- *The audit confirmations dated 29.10.2015 and 10.08.2018 required confirmation that the principal balance due from Schon Group was Rs.0/- and that the mark-up balance was Rs.235.420 million. The audited financial statements and third-party confirmations also reflected principal as nil and simple mark-up as the only recoverable PCFL amount. By letter dated 19.01.2018, the decree-holder again confirmed principal as zero/nil and mark-up as Rs.235.42 million. The subsequent demand dated 22.02.2019 called for deposit of Rs.235,420,844/- for PCFL.*

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12. Learned counsel for the decree-holder, while opening his arguments, vehemently contended that the arbitral award dated 09.07.1997 was duly made rule of the Court vide judgment and decree dated 18.10.2004**,** whereafter neither the award nor the decree was challenged before any competent appellate forum. Consequently, the said judgment and decree attained finality and became conclusive and binding upon the parties. It was argued that once an award has merged into a decree of a competent Court, the executing Court is under a legal obligation to enforce the decree as it stands and has no jurisdiction to reopen the controversy, reappraise the evidence, reinterpret the award, or adjudicate upon matters which stood finally determined in the original proceedings. Learned counsel submitted that the jurisdiction of an executing Court is strictly confined to execution of the decree and it cannot travel beyond its terms or convert execution proceedings into a fresh trial of the underlying contractual or privatization dispute.

13. Learned counsel for the decree holder further submitted that the objections presently raised by the judgment debtor are wholly misconceived, legally untenable and liable to be rejected on the grounds of delay, acquiescence, waiver, estoppel, election and conduct. It was argued that the judgment debtor had consciously withdrawn its objections to the arbitral award and thereafter allowed the decree to attain finality without pursuing any statutory remedy available under the law. Having accepted the legal consequences of the decree and remained inactive for several years, the judgment debtor is now estopped from reopening issues which either stood concluded by the award or could and ought to have been raised before the learned Arbitrator, in objections under Section 30 of the Arbitration Act, 1940, or through an appeal against the judgment whereby the award was made rule of the Court. Learned counsel maintained that the execution proceedings cannot be permitted to become a forum for raising fresh pleas or reviving issues which have long since attained finality.

14. Learned counsel next contended that the objections filed by the judgment debtor are also not maintainable in view of the mandatory requirements of Order XXI Rule 23-A, C.P.C**.** It was submitted that

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where execution of a money decree is sought to be resisted, the judgment debtor cannot seek adjudication of objections unless the decretal amount is first deposited in Court or adequate security to the satisfaction of the Court is furnished. According to the learned counsel, the statutory scheme is intended to prevent frivolous or dilatory objections aimed solely at delaying execution of decrees. Since neither the decretal amount has been deposited nor any security has been furnished by the judgment debtor, the present objections, according to the decree-holder, are incompetent and deserve outright dismissal.

15. Learned counsel further argued that the reliance placed by the judgment debtor upon various letters, minutes of meetings, correspondence, audit confirmations and internal accounting documents is wholly misplaced and legally inconsequential. According to him, such documents merely formed part of negotiations, administrative correspondence or internal financial reconciliation and neither constituted a binding settlement nor had the legal effect of amending, varying, superseding or extinguishing the rights crystallized under the arbitral award and the decree passed by this Court. It was submitted that even assuming, without conceding, that any understanding or settlement had subsequently been arrived at between the parties, the same could not affect the enforceability of the decree unless it had been lawfully recorded and certified as adjustment or satisfaction of the decree in accordance with the mandatory provisions of Order XXI Rule 2, C.P.C. In the absence of such certification by the executing Court, no private arrangement, correspondence or unilateral accounting exercise can be relied upon to defeat or diminish the decree-holder's right to execute the decree in accordance with law.

16. Lastly, learned counsel questioned the maintainability of the applications and objections filed by Pak-China Fertilizers Limited (PCFL) and any other entity which is not the judgment debtor named in the decree. It was contended that such persons have no locus standi to intervene in or obstruct the execution proceedings, as the execution Court is concerned solely with enforcement of the decree against the judgment debtor identified therein. Learned counsel submitted that the

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executing Court ought to confine its examination strictly to the terms of the decree, the arbitral award as merged into the decree, and the latest statement of account furnished by the decree-holder, without permitting collateral disputes or claims by third parties to unnecessarily impede or prolong the execution proceedings.

17. Learned counsel for the judgment debtor submits that the decree is not under challenge on its merits. According to him, the judgment debtor accepts the decree to the extent that it remains lawfully unsatisfied. The controversy, however, is confined to the question whether, after giving due effect to the payments made and adjustments admittedly recorded by the decree-holder itself, the decree-holder can still seek execution for the alleged outstanding principal amount and mark-up upon mark-up, notwithstanding its own official record to the contrary. It is further contended that the bank guarantees encashed on 15.07.2004 were appropriated by the decree-holder towards the outstanding principal and the EAD loan component. Learned counsel argues that once such appropriation had been consciously made, officially recorded, and consistently acted upon over a considerable period, the decree-holder was legally precluded from unilaterally re-appropriating the same amount after more than a decade with a view to revive the principal liability or create a claim for compound mark-up. Learned counsel places considerable reliance upon the decree-holder's official correspondence dated 02.06.2009, 31.05.2010, 10.03.2014, 19.10.2016, 19.01.2018, and 22.02.2019, the minutes of the Negotiating Committee meeting held on 28.03.2016, the audit confirmations dated 29.10.2015 and 10.08.2018, as well as the audited financial statements reflecting the outstanding principal as "Nil." It is argued that these documents are not mere proposals or negotiation papers but constitute formal and unequivocal admissions made by a public authority in the ordinary course of official business, public administration, and maintenance of public accounts, which carry significant evidentiary value. Learned counsel further submits that the claim for mark-up upon mark-up finds no support either in the original terms governing the transaction or in the decree itself. It is argued that, in any event, such claim ceased to survive

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once the decree-holder expressly waived or remitted the same. Reliance is placed upon Section 63 of the Contract Act, 1872, to contend that a promisee is legally competent to remit, wholly or in part, the performance of a promise or to accept any other satisfaction in substitution thereof. According to the learned counsel, the decree-holder consciously exercised such statutory right by treating only simple mark-up as recoverable while waiving any claim towards compound mark-up. It is next contended that Order XXI Rule 23-A of the Code of Civil Procedure is merely procedural in nature and cannot be invoked to prevent the executing Court from taking notice of admitted payments, adjustments, and satisfaction of the decree. Learned counsel submits that the judgment debtor has, in any event, expressed its willingness to deposit a sum of Rs.235,420,844/-, being the amount consistently acknowledged by the decree-holder itself as the outstanding simple mark-up payable in respect of PCFL. Lastly, learned counsel contends that the decree-holder is estopped, by virtue of Article 114 of the Qanun-e-Shahadat Order, 1984, from resiling from its own consistent and official representations. It is argued that a public authority cannot be permitted to approbate and reprobate simultaneously, nor can it, after repeatedly certifying through its audited accounts and official records that no principal amount remained outstanding, abandon such position during execution proceedings merely to enlarge the scope of recovery.

18. I have heard the learned counsel for the parties at length and have carefully perused the available record.

19. The controversy requiring adjudication does not concern the legality, validity or correctness of the arbitral award or the decree passed thereon. Those questions attained finality long ago and lie beyond the permissible scope of execution proceedings. The jurisdiction of an executing Court is confined to determining whether the decree remains capable of execution in whole or in part, and whether, by reason of subsequent payments, adjustments, appropriations or other legally recognized modes of discharge, the obligations created by the decree have already been satisfied. It is, therefore, essential to maintain the

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distinction between an impermissible challenge to the decree itself and a lawful inquiry into the extent to which the decree has been executed or discharged. Failure to appreciate this distinction would result in conflating two fundamentally different jurisdictions, namely, the appellate jurisdiction concerned with examining the correctness of the decree and the execution jurisdiction concerned solely with its enforcement. The real controversy, therefore, is confined to determining the subsisting decretal liability after taking into account the payments admittedly received by the decree-holder and the accounting treatment consistently reflected in its own official records. The inquiry is neither directed towards varying the terms of the decree nor towards conferring any fresh rights upon the judgment debtor. Rather, it seeks to ascertain whether any legally enforceable liability continues to exist after giving effect to the admissions, adjustments and appropriations made by the decree-holder itself. If the official financial records repeatedly demonstrate that the principal amount has been fully recovered and that the claim for mark-up-on-mark-up has either been expressly waived or has ceased to form part of the recoverable liability, the executing Court cannot disregard such material while determining the extent of satisfaction of the decree. Execution cannot become an instrument for recovering amounts which, according to the decree-holder's own authenticated records, have already been discharged or abandoned. The only legally sustainable inquiry, therefore, is whether any balance remains recoverable after giving full effect to those subsequent events, and not whether the decree itself should be reopened or reconsidered.

20. The evidentiary foundation of the present controversy rests predominantly upon documents emanating from the decree-holder itself. These include official correspondence exchanged by the Privatization Commission, minutes of meetings of its Board and various Committees, audited financial statements, audit confirmations, reconciliation statements, demand notices and other contemporaneous records prepared in the ordinary course of official business. Such documents cannot be equated with self-serving assertions advanced during litigation, nor can

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they be dismissed as inconclusive merely because they were generated in the course of discussions between the parties. Official records prepared by a public authority in discharge of its statutory and administrative functions carry a high degree of probative value, particularly where they are maintained over an extended period, subjected to audit, and consistently reflect the same financial position. Unlike pleadings prepared for the purposes of litigation, these documents constitute contemporaneous evidence of the decree-holder's understanding of the subsisting liability and, therefore, furnish a reliable basis for determining the extent to which the decretal obligation continued to survive. The contention advanced by the decree-holder that these documents merely formed part of negotiations and, therefore, lack evidentiary significance is wholly unpersuasive. Negotiations, by their very nature, ordinarily involve tentative proposals, counter-proposals and evolving positions, none of which necessarily represent a concluded or settled understanding between the parties. The documentary record presently before the Court, however, discloses an entirely different factual matrix. Far from reflecting fluctuating or inconsistent positions, the decree-holder repeatedly and unequivocally adopted the same accounting treatment over a considerable period of time. Its official records consistently recognized that the principal amount stood fully adjusted and that no principal liability remained outstanding. They further quantified the amount recoverable by way of simple mark-up at Rs.235,420,844/- and, with equal consistency, omitted any claim on account of mark-up upon accrued mark-up. This repeated accounting treatment, appearing in official communications, audited statements and internal financial records, demonstrates a conscious and settled administrative determination rather than an exploratory negotiating stance. It would be contrary to settled principles governing appreciation of evidence to disregard such consistent admissions merely because they were made outside the confines of judicial proceedings.

21. The encashment of the bank guarantees on 15.07.2004 assumes considerable legal significance in determining the extent to which the

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decreetal liability stood discharged, not merely because it resulted in the realization of a substantial amount by the decree-holder but, more importantly, because of the manner in which that amount was appropriated and consistently reflected in the decree-holder's own official records. The documentary evidence available on record unequivocally demonstrates that a sum of Rs.138.070 million realized through the encashment of the bank guarantees was appropriated towards liquidation of the principal liability, and such appropriation was neither provisional nor conditional but formed part of the decree-holder's settled accounting treatment maintained in the ordinary course of its official business. When this amount is considered alongside the payments admittedly made by the judgment debtor prior to the encashment of the guarantees, the aggregate amount appropriated towards the principal substantially satisfies the revised sale consideration as determined after the audit adjustments accepted by the decree-holder itself. This accounting position is not confined to a single isolated document but finds consistent reflection in the decree-holder's subsequent correspondence, financial statements, reconciliation records and other official documents, all of which proceed on the unequivocal footing that the principal liability had been fully extinguished and that the only amount thereafter considered recoverable was the outstanding simple mark-up. Such repeated and consistent acknowledgments contained in official records maintained by a public authority constitute admissions of considerable evidentiary value and cannot subsequently be disregarded merely because a different position is sought to be advanced during execution proceedings. Equally significant is the complete absence of any judicial order, revised decree, supplementary arbitral award, audit report, reconciliation statement or any other lawful instrument capable of demonstrating that the principal liability, once treated as fully satisfied, was thereafter revived or restored as an outstanding obligation. The decree-holder has also failed to produce any contemporaneous record suggesting that the appropriation of the encashed guarantee amount towards the principal was either erroneous or liable to reconsideration. In these circumstances, permitting the

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decree-holder to retrospectively alter its own accounting treatment by reclassifying an amount already appropriated towards principal as payment of another component of liability would not only undermine the sanctity and reliability of official financial records but would also offend the settled principles governing appropriation of payments, admissions against interest and the finality attached to consistent accounting treatment adopted by a creditor. An executing Court, while determining the extent of satisfaction of a decree, cannot ignore such contemporaneous documentary evidence or permit a decree-holder to assume mutually destructive positions at different stages of the same transaction, particularly where no lawful basis exists for departing from its earlier and repeatedly acknowledged financial position. The cumulative effect of the documentary record, therefore, irresistibly leads to the conclusion that the principal liability stood fully adjusted and discharged upon appropriation of the payments, including the proceeds realized through the encashment of the bank guarantees, leaving no legal justification for its subsequent revival in the course of execution proceedings.

22. The law is well settled that statements, admissions, acknowledgments and the subsequent conduct of parties, though incapable of altering, varying or overriding the terms of a decree which has attained finality, remain highly relevant and admissible for determining questions relating to its execution, discharge and satisfaction. An executing Court does not exercise appellate or review jurisdiction over the decree; however, it is statutorily empowered under Section 47 of the Code of Civil Procedure, 1908, to adjudicate all questions arising between the parties concerning the execution, discharge or satisfaction of the decree, and in discharging such jurisdiction it is both competent and duty-bound to examine subsequent events that bear directly upon the subsisting decretal liability. Where a decree-holder, through its own official correspondence, audited financial statements, Board resolutions, reconciliation statements, demand notices and other contemporaneous records maintained in the ordinary course of

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its official business, repeatedly acknowledges receipt of payments, appropriates those payments towards the principal liability, quantifies the balance amount recoverable and consciously waives or abandons a particular component of the claim, such admissions constitute substantive evidence against the maker under the provisions of the Qanun-e-Shahadat Order, 1984, and continue to bind the party unless satisfactorily explained or lawfully withdrawn. The evidentiary significance of such admissions lies not merely in their existence but in their consistency, continuity and official character, particularly where they represent the settled accounting position of a public authority maintained over an extended period and subsequently reflected in its audited financial records. To take cognizance of these admissions does not amount to reopening, modifying or rewriting the decree; rather, it enables the executing Court to ascertain whether, by reason of subsequent payments, adjustments, appropriations, remissions or waivers, the decretal obligation has already been wholly or partly discharged, thereby ensuring that execution remains confined to the recovery of only such amount as continues to be legally recoverable. It is equally well established that no litigant can be permitted to approbate and reprobate or to assume mutually destructive positions in relation to the same transaction. A decree-holder who has consistently represented in its official records that the principal liability stands fully discharged and that only a specified amount of simple mark-up remains outstanding cannot subsequently contend, in execution proceedings, that the very payments earlier appropriated towards principal should instead be treated as payments towards mark-up-on-mark-up so as to artificially revive a principal liability already acknowledged to have been extinguished. Such an exercise would not only contradict the decree-holder's own official admissions but would also violate the equitable doctrine embodied in the maxim ***Qui approbat non reprobat***, which prohibits a party from accepting and rejecting the same transaction according to its convenience, as well as the allied maxim '*Allegans contraria non est audiendus"*, which precludes a litigant from being heard on mutually inconsistent assertions. These equitable principles, now firmly embedded

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in the jurisprudence governing estoppel and election, have repeatedly been recognised by the Honourable Supreme Court of Pakistan, inter alia, in *"Faqir Muhammad v. Fazal Rahman"* **(1970 SCMR 662),** *"Federation of Pakistan v. Amir Hamza"* **(2001 SCMR 1959),** and *"Overseas Pakistanis Foundation v. Sqn. Ldr. (Retd.) Syed Mukhtar Ali Shah"* **(2007 SCMR 569)**, and have also received persuasive affirmation in comparative common law jurisprudence, including the decision of the High Court of Justice in **MBP v. LGK [2020] EWHC 90 (TCC),** wherein it was reaffirmed that an unequivocal election, once made and acted upon, cannot subsequently be abandoned by adopting an inconsistent position to the prejudice of the opposite party. In the present case, the decree-holder's own official records unmistakably disclose a clear and unequivocal election regarding the appropriation of payments and the extent of the outstanding liability, and in the absence of any lawful justification for departing from that settled position, it cannot now be permitted to alter its previous accounting treatment so as to enlarge the decretal liability through execution proceedings. Such a course would undermine the certainty of official financial records; defeat the doctrine of finality attaching to admissions, and transform execution proceedings into a mechanism for creating liabilities rather than enforcing those that lawfully continue to subsist, a result wholly inconsistent with the governing principles of procedural and equitable jurisprudence.

23. The subsequent conduct of the decree-holder in consciously abandoning its claim for mark-up-on-mark-up and repeatedly restricting its demand to simple mark-up constitutes a legally significant waiver that cannot be ignored while determining the extent of the decreetal liability remaining unsatisfied. The documentary record unmistakably demonstrates that after appropriating the payments received towards the principal liability and treating the same as fully discharged, the decree-holder consistently quantified its recoverable claim at Rs.235,420,844/-, representing only the outstanding simple mark-up, without asserting any entitlement to compound mark-up or any further capitalization of

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accrued profit. Significantly, no provision of the Share Sale Agreement, the arbitral award or the decree has been brought to the notice of this Court which authorizes the perpetual capitalization of accrued mark-up or permits the indefinite imposition of mark-up upon previously accrued mark-up irrespective of subsequent appropriations and adjustments. Even assuming that such a contractual right originally existed, the law recognizes that a promisee is fully competent to relinquish, remit or waive, either wholly or in part, the performance due in its favour. Section 63 of the Contract Act, 1872 expressly embodies this principle by authorizing a promisee to dispense with or remit the performance of a promise or to accept any satisfaction which it considers appropriate in substitution thereof. Once such remission or waiver has been voluntarily and unequivocally made, particularly through official correspondence, financial statements, demand notices and other contemporaneous records maintained in the ordinary course of business, it becomes legally binding and cannot subsequently be withdrawn to the detriment of the opposite party in the absence of any lawful justification. The decree-holder, having consistently represented over a prolonged period that only simple mark-up remained recoverable and having omitted any claim relating to mark-up-on-mark-up from its official financial treatment, cannot now be permitted to resurrect that abandoned claim merely because execution proceedings are pending before this Court. The contention that the judgment debtor failed to file a formal rejoinder is equally devoid of legal substance, for procedural omissions cannot be elevated above substantive justice where the material evidence emanates from the decree-holder's own official records and unequivocally establishes the true financial position between the parties. The function of an executing Court is not to mechanically enforce every amount asserted by the decree-holder but to ensure that execution remains confined to the amount which is lawfully recoverable under the decree after giving due effect to all subsequent payments, adjustments, appropriations, remissions and waivers recognized by law. Likewise, Order XXI Rule 23-A, C.P.C. cannot be construed as imposing an absolute prohibition against judicial scrutiny of the decreetal amount claimed in execution,

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nor can it be invoked to compel recovery of a liability which stands extinguished by operation of law or by the decree-holder's own admissions. The jurisdiction of the executing Court necessarily extends to determining the actual amount remaining payable, and where the judgment debtor has unequivocally expressed its willingness to satisfy the outstanding liability repeatedly acknowledged by the decree-holder itself, namely the sum of Rs.235,420,844/- representing simple mark-up, no legal purpose would be served by permitting recovery of amounts which have neither been consistently maintained in the decree-holder's official records nor supported by any contractual, statutory or judicial authority. To hold otherwise would not only undermine the binding effect of voluntary waivers recognized under Section 63 of the Contract Act, 1872, but would also permit the enforcement of a liability which the decree-holder itself consciously relinquished, thereby converting execution proceedings into an instrument for recovering claims unsupported by law, equity or the contemporaneous documentary record.

24. The preliminary objection regarding the locus standi of Pak China Fertilizers Limited (PCFL) is wholly misconceived and does not merit any detailed consideration, for the determination of the issues presently before the Court neither depends upon the independent rights or obligations of PCFL nor upon any claim asserted by it. The controversy has been adjudicated exclusively on the basis of the decree-holder's own official record, its contemporaneous financial statements, audited accounts, reconciliation reports, correspondence and other documentary evidence maintained in the ordinary course of its official business, all of which collectively establish the extent to which the decretal liability stood discharged through subsequent payments, appropriations and waivers. Consequently, the legal status or participation of PCFL does not have any bearing upon the questions arising in these execution proceedings. Equally significant is the fact that the decree-holder is a statutory public authority entrusted with the discharge of public functions and, as such, is expected to maintain the highest standards of transparency, consistency and institutional integrity in its financial and

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administrative affairs. Official representations made by such an authority cannot be treated as casual or tentative assertions capable of being altered at will according to the exigencies of litigation. Where a public authority has, through repeated official acts extending over a considerable period, consistently acknowledged that the principal liability stands fully satisfied, appropriated the payments accordingly, quantified the recoverable balance at a specified amount of simple mark-up and consciously refrained from asserting any claim on account of mark-up-on-mark-up, it creates a settled factual and legal position upon which the opposite party is entitled to rely. Any subsequent departure from that position must necessarily be supported by lawful authority, a valid statutory or contractual basis, or a competent judicial determination demonstrating why the earlier admissions and accounting treatment no longer represent the true legal position. No such material has been placed before this Court. In these circumstances, permitting the decree-holder to abandon its long-standing and consistently maintained official position would amount to allowing it to assume mutually inconsistent positions in relation to the same transaction, a course which is fundamentally inconsistent with the equitable principles governing judicial proceedings. Such conduct is squarely hit by the doctrine embodied in Article 114 of the Qanun-e-Shahadat Order, 1984, which incorporates the principle of estoppel and precludes a party from resiling from its previous representation where another has acted upon it or where justice and good conscience require consistency in legal and factual assertions. The doctrine is founded upon considerations of fairness, certainty and the integrity of judicial process, ensuring that litigants, particularly public authorities, do not secure an unfair advantage by alternately affirming and denying the same state of affairs according to their changing interests. To permit the decree-holder to disregard its own official admissions and accounting treatment at the execution stage would not only undermine the credibility of public records but would also erode public confidence in the consistency and accountability expected from governmental institutions. The administration of justice demands that a public authority be held to the representations deliberately made in its

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official records unless those representations are lawfully withdrawn or displaced by cogent evidence of a superior legal character. No such circumstances exist in the present case. Accordingly, the objection concerning the locus standi of PCFL is devoid of merit and does not affect the determination of the real issues arising for adjudication in these execution proceedings, which must necessarily be resolved on the basis of the decree-holder's own unequivocal admissions and consistent official conduct.

25. Having examined the entirety of the documentary record, the contemporaneous official correspondence, audited financial statements, reconciliation reports, Board proceedings, admissions made by the decree-holder and the applicable principles. governing execution, discharge and satisfaction of decrees, this Court is satisfied that the decree-holder has failed to establish any lawful entitlement to recover an amount beyond the sum of Rs.235,420,844/-, which throughout its own official record has been consistently acknowledged as representing the outstanding simple mark-up payable under the PCFL component of the decree. The evidence unequivocally establishes that the principal liability had already been appropriated, adjusted and treated as fully discharged by the decree-holder itself and that the claim relating to mark-up-on-mark-up had either been consciously waived or was no longer regarded as recoverable. No subsequent order, contractual stipulation, statutory provision or any evidence has been produced to justify either the revival of the principal liability or the resurrection of a claim founded upon compound mark-up. The jurisdiction of an executing Court extends only to the enforcement of subsisting obligations recognized by law and does not authorize the recovery of claims which stand extinguished by payment, adjustment, waiver or other legally recognized modes of discharge. Since the decree-holder itself repeatedly restricted its recoverable claim to the aforesaid amount of simple mark-up, the judgment debtor cannot, in law or equity, be compelled to satisfy a liability greater than that consistently admitted by the decree-holder in its official records. Consequently, the application

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filed by the judgment debtor (C.M.No. 734 of 2022) merits acceptance to the extent indicated above, and the judgment debtor is accordingly permitted and directed to deposit or pay the sum of Rs.235,420,844/- towards the outstanding simple mark-up relating to the PCFL component of the decree. Such payment shall be made either by depositing the said amount with the learned Additional Registrar (Judicial) of this Court or by remitting the same directly to the decree-holder through a banking instrument acceptable to the Registrar within a period of thirty (30) days from the date of this judgment. Upon such deposit or payment being made within the stipulated period, the entire PCFL component of the decree shall stand fully and finally satisfied, discharged and extinguished, and no further amount shall remain recoverable thereunder. The decree-holder shall thereafter, within fifteen (15) days of the receipt of the said amount or its deposit before this Court, file a formal acknowledgment confirming complete satisfaction of the PCFL component of the decree, thereby enabling the execution proceedings relating to that component to attain their lawful and conclusive termination in accordance with the mandate of law.

(CHIEF JUSTICE)

ARSHAH

APPROVED FOR REPORTING

(CHIEF JUSTICE)

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