ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

C.O. No.14 of 2019
The Additional Registrar of Companies, SECP
Versus
BRAC Pakistan

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	25.02.2020	**Mr. Sultan Mazhar Sher, Advocate for the applicant along with Mr. Ibrar Saeed, Special Prosecutor, S.E.C.P.** **Mr. Muhammad Qasim Qureshi and Sh. Danish Iftikhar, Advocates for the respondent.** **Mr. Habib Ahmed Bhatti, Advocate for the applicant/P.M.I.C. in C.M. No.239/2020.** **Ms. Aisha Faheem, Head of H.R. and Mr. Muhammad Imran, Head of Finance, for BRAC employees.**

Through the instant company original application under Sections 301 and 304 of the Company Act, 2017 (“the 2017 Act”), the applicant (Additional Registrar of the Companies, Securities and Exchange Commission of Pakistan) (“S.E.C.P.”) seeks the winding up of the respondent (BRAC Pakistan). The applicant also seeks the appointment of an official Liquidator to take charge of the assets, properties, accounts and management of BRAC Pakistan with full powers under the 2017 Act to liquidate BRAC Pakistan.

2. The record shows that on 31.01.2008, the BRAC Pakistan had been issued a license under Section 42 of the Companies Ordinance, 1984 (“the 1984 Ordinance”). The primary object of BRAC Pakistan was to provide financial and other assistance for the promotion, advancement and development of health services and education and also to sponsor, promote and provide financial assistance and training to non-government organizations, etc. in Pakistan.

3. Subsequently, on 04.02.2008, a certificate of incorporation was issued to BRAC Pakistan by the S.E.C.P. After a letter dated 02.01.2019 was received by the S.E.C.P. from District Officer Industries, Prices, Weights and Measures, Multan as to BRAC Pakistan being involved in subversive/anti-State activities, show cause notice was issued to BRAC Pakistan under Section 42(5) of the 2017 Act calling upon it to show cause as to why the license issued to it, may not be revoked. The proceedings pursuant to the said show cause notice culminated in the order dated 04.04.2019 passed by the S.E.C.P., whereby BRAC Pakistan's license was revoked under Section 42(5)(e)(h) of the 2017 Act. The requirements enumerated in Section 43(1) of the 2017 Act are required to be fulfilled by a company, whose license is revoked. Section 43(1)(c) of the 2017 Act provides that on the revocation of license of a company under Section 42 of the said Act by S.E.C.P., all the assets of the company after satisfaction of all debts and liabilities shall, in the manner as may be specified, be transferred to another company licensed under Section 42, preferably having similar or identical objects to those of the company, within ninety days from the revocation of the license or such extended period as may be allowed by the Commission. Section 43(2) of the 2017 Act provides that after compliance of the requirements mentioned in Section 43(1) of the said Act, the board of the company shall file within fifteen days from the date of such compliance, a report to the registrar of S.E.C.P. containing such information and supported with such documents as may be specified. It is an admitted position that the efforts to transfer the

assets and liabilities of BRAC Pakistan to Rural Community Development Program (“R.C.D.P.”) were not successful.

4. Section 43(4) of the 2017 Act provides that if the company fails to comply with any of the requirements of Section 43 within the period specified or such extended period as may be allowed by the Commission, the Commission may, without prejudice to any other action under the law, appoint an administrator to manage the affairs of the company subject to such terms and conditions as may be specified in the order and initiate necessary proceedings for the winding up of the company. Since the requirements of Section 43(1)(c) of the said Act had admittedly not been complied with, the S.E.C.P., on 31.05.2019, passed an order under Section 43 of the 2017 Act and appointed Mr. Naveed Qazi, as Administrator of BRAC Pakistan. The obligations, which the Administrator was required to fulfill are enumerated in paragraph 6 of the said order dated 31.05.2019. The interim report submitted by the Administrator to the S.E.C.P. on 07.10.2019 shows *inter alia* that the Administrator was unwilling to perform his functions after 31.10.2019. The said report also shows that BRAC Pakistan operated decentralized accounts all over the country, and the total number of such accounts was more than 145. As of 01.10.2019, the bank balances in BRAC Pakistan’s accounts was Rs.44 million. The total staff on the payroll of BRAC Pakistan, inclusive of both microfinance and education side, was 680 in April, 2019, which was reduced to 414 by the end of September, 2019. The staff has not been paid their salaries since the past several months.

5. The Administrator's report dated 07.10.2019 also confirms that the principal creditor of BRAC Pakistan is Pakistan Microfinance Investment Company (**"P.M.I.C."**) which has already instituted suit No.01/2020 for the recovery of Rs.802,810,769/- along with costs of funds, costs expenses and charges under the provisions of the Financial Institutions (Recovery of Finances) Ordinance, 2001. The said suit is pending adjudication before this Court.

6. On 15.10.2019, the S.E.C.P., in exercise of the powers conferred under Section 304 of the 2017 Act, sanctioned the filing of a petition under Section 304 read with Section 301 of the said Act for the winding of BRAC Pakistan. The said sanction was accorded after show cause notice dated 27.09.2019 was issued to BRAC Pakistan and a hearing pursuant to the said notice had taken place on 10.10.2019.

7. The instant application was taken up for hearing on 20.12.2019, whereon this Court issued notice to BRAC Pakistan. Furthermore, notice was also directed to be issued through publication in the Daily News and Jang in accordance with Rules 18 and 76 of the Company Court Rules, 1997. In response to the said notice, Mr. Habib Ahmed Bhatti, Advocate tendered appearance on 18.02.2020 on behalf of P.M.I.C., which according to him was the sole secured creditor of BRAC Pakistan. He also informed the Court as to the pendency of the suit for recovery instituted by P.M.I.C. against BRAC Pakistan.

8. On 25.02.2020, detailed submissions were made by the learned counsel for the applicant, the learned counsel for P.M.I.C. as well as the learned counsel for BRAC Pakistan. Given the fact that the license issued to BRAC Pakistan

under Section 42 of the 1984 Ordinance, had been revoked, and the efforts to transfer its assets and liabilities to another company holding such a license had not been successful, the learned counsel were in agreement that the only way forward was to order the winding up of the company. Such a course, according to the learned counsel, would aid in the unpaid salaries being released to BRAC Pakistan's employees and payments being made to its secured creditor.

9. In view of the above consensus, the instant application is allowed. Mr. Muhammad Sohaib, Advocate is appointed as Official Liquidator who shall take charge of all the assets, properties, accounts and management of BRAC Pakistan, and proceed to liquidate the said company in accordance with the law. The fee of the Official Liquidator shall be Rs.150,000/- per month.

10. As regards the suit for recovery instituted by P.M.I.C. against BRAC Pakistan, the former is at liberty to file an application under Section 310 of the 2017 Act.

11. The Official Liquidator shall submit his report under section 321(1) of the 2017 Act by 23.04.2020.

12. Re-list in the last week of April 2020.

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

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