

Form No:HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No. CO No.74580/2023
Sohail Nisar **Versus** **Nadeem Nisar & others**

Sr.No. of Order/ Proceeding	Date of Order/ Proceeding	Order with signatures of Judge and that of parties or counsel, where necessary.
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05.04.2024 Mr. Feisal Hussain Naqvi, Advocate for the petitioner.
Mr. Shehzad A. Elahi, Advocate for respondent No.1.
Mr. Waqqas Ahmad Mir, Advocate for respondents No.2 and 2A.
Mr. Ashtar Ausaf Ali, Advocate for the applicant in C.M.No.9/2024.
Mr. Wajahat Ali Advocate/Commission.

Significant time has been spent on hearing oral arguments of the learned counsel for the parties. It is evident that the parties are in tension with each other on issues of recent origin. The arguments in this Court and the list of documents relied upon (which are common in some respects though varying in construction) have underscored the reasons for falling out amongst brothers regarding a business which is a family business operated through an arrangement stitched together by a loose set of rules. It is unfortunate to note that the brothers have now chosen to thrust allegations at each other and ultimately to bring their disagreements into the public domain. The reasons for this are not hard to divine. The wide margin of judgment afforded to each party has eroded over time. At the heart is the enormous sums of money involved and the gradual lack of trust which set in.

2. Inevitably, the resolution of the dispute would involve a complex set of orders to be passed. If taken to its logical end, the solution cannot be shallow or facile. In a likely scenario, the brothers may have to part ways in a commercial sense and take the route of severance of business relationship. This may involve a buy-out scheme yet the litigation may linger on for a number of years. This will have debilitating effect not only on their personal relations but, as time passes, the businesses would suffer irreparably to the detriment of both the parties.

3. The circumstances brought forth in the prefatory above led this Court to propose the resolution of disputes between parties through mediation. This method of alternate dispute resolution now finds statutory expression in Order IX-B of the Code of Civil Procedure, 1908. This paradigmatic Order was inserted by the Lahore High Court's amendment on 22.08.2018 and was the first such attempt, in my opinion, to codify the rules relating to mediation in our legal landscape. For, it is a cardinal rule of administration of justice that the courts have such powers only as are conferred by law. We cannot derive powers upon fanciful and improper notions. A Judge is constricted by rules. Therefore, if this Court is to compel

the parties to mediate, it must be soundly based and have provenance in law.

4. Order IX-B provides that:

“Alternate Dispute Resolution

1. Reference to mediation. (1) Except where the Court is satisfied that there is no possibility of mediation or an intricate question of law or facts is involved, the Court shall refer the case for mediation.

(2) While referring the matter for mediation, the Court may indicate the material issues for determination through mediation.

2. Appearance of parties. Where a case is referred for mediation, the Court shall stay the proceedings for a period not exceeding thirty days and direct the parties to appear before the Mediation Centre, set up by Lahore High Court, on such date and time as the Court may specify.

3. Settlement. (1) Where the mediation proceedings are successful and the parties have arrived at an agreement, the Mediator shall cause the same to be recorded in writing, signed by the parties or their recognized agents or their pleaders and attested by two independent witnesses.

(2) The agreement shall be certified by the Mediator and transmitted forthwith, through the Administrator of the Mediation Center, to the Court.

(3) The Court shall, on receipt of the agreement, pass a decree in terms thereof unless the Court, for reasons to be recorded in writing finds that the agreement between the parties is not enforceable at law.

(4) Where settlement relates only to a part of the dispute, the Court shall pass decree or an order in terms of such settlement and proceed to adjudicate the remaining issues.

4. Failure of mediation. Where the mediation fails and no settlement is made between the parties, the Mediator shall submit a report to the Court and the Court shall proceed with the case from the stage it was referred to Mediation.”

5. As the statutory wording makes clear, a court is obliged to refer a case for mediation. This is a mandatory requirement enjoined by law now and equally applies to proceedings under the Companies Act, 2017 to the extent

as this Court may determine in its discretion. Reference may be made to section 6(15) of the 2017 Act, which provides that:

“(15) Save as otherwise expressly provided under this Act, the provisions of the Qanun-e-Shahadat (Order)1984 (P.O. No. X of 1984) and the Code of Civil Procedure, 1908 (Act V of 1908) shall not apply to the proceedings under this section except to such extent as the Court may determine in its discretion.”

6. Mediation, in the first instance, should be the preferred mode of resolution and applies, *a fortiori*, to cases which involve wrangling between close family members. This method has many obvious benefits least of all to save cost, businesses and personal relations. If taken under the scrupulous attention of this Court and by a respectable Mediator, the process will likely succeed in its purpose.

7. Seeking footing in the statutory text, the dispute is being referred to mediation. It must be noted that the parties, too, were forthcoming to the suggestion and wholeheartedly embraced it.

8. We also have precedents for resort to this method of dispute resolution of corporate disputes. Jawad Hassan, J. of this Court has taken this route in at least two cases reported as Faisal Zafar and another v Siraj-ud-Din & 4 others (2024 CLD 1) and Netherlands Financierings

Maatschappij Voor Ontwikkelingslanden N.V. (F.M.O.)
V/S Morgah Valley Limited and SECP (2022 LHC 9764). In CP 2226-L of 2021 etc. *Province of Punjab etc. v M/s Haroon Construction Co. etc.*, Supreme Court of Pakistan alluded to the process of mediation as an effective mode of disposition in the toolkit of courts.

9. Different names came up for consideration as a Mediator. The parties did not disagree on the name of Justice Mushir Alam, formerly Judge Supreme Court of Pakistan who, doubtless, preeminently qualifies for the assignment given his impressive resume and the respect that he has garnered over the years. Under the circumstances, Justice Mushir Alam is appointed as a Mediator to attempt to resolve the disputes which have arisen between the parties in respect of commercial and management issues of ATS Synthetic (Pvt.) Ltd. (respondent No.3) (ATS)

10. Broadly the material issues of determination would be the allegations relating to certain transactions in respect of business activities of ATS during the year 2023 (the exact dates can be specified in the parties' briefs to the Mediator) so that those transactions work to the benefit of ATS and not any particular individual. If the parties arrive at an agreement on this aspect, the learned Mediator shall further delve into the issue of

management woes confronting ATS (which seem to be loose and elastic at the moment) and to ask the parties to agree on the future course of managerial structure keeping in line with the 2017 Act. The parties shall present their briefs and skeleton arguments to the learned Mediator and exchange copies in advance. The contents of the petition and its replies may serve as briefs on behalf of parties. The procedure of mediation is left to be determined by the learned Mediator who is requested to proceed expeditiously in the matter given the sensitivity of the situation. Before I tear myself away, it is earnestly expected that the parties will approach the process of mediation with fairness and an eye on the future of ATS which, taken together, has given them enormous benefits over their working lifetimes.

11. Relist on 09.04.2024.

C.M.No.1/2023

12. The order passed on 13.11.2023 is modified so that any cheque from ATS accounts in excess of Rs.1 million shall be countersigned by respondent No.1 too. This order shall be conveyed to the bankers of ATS.

**(SHAHID KARIM)
JUDGE**

Approved for reporting.

JUDGE