

# IN THE HIGH COURT OF SINDH, KARACHI

(Companies Jurisdiction)

J.M. 36 / 2001

In the matter of Companies Ordinance, 1984

**Saadi Cement Limited**

**Trade Centre, A-14, Block 7/8, KCHS,**

**Karachi**

**Petition / Application under section 284, 285, 286 and 288 of the Companies Ordinance 1984**

## **Report of result of meeting of Creditors held under Order of Court, dated August 16, 2001**

I, Salman Rasheed, Chairman of the meeting of the Creditors held in pursuance, of the order of the Court dated August 16, 2001 do hereby report the result of the said meeting.

1. In pursuance of the order of this Court a meeting of Creditors of the petitioner was summoned through notice published in daily DAWN, daily THE NEWS, daily JUNG and daily JASARAT newspaper, which was carried in these newspapers throughout Pakistan on August 17, 2001. Copy of the notices published is attached to this report as Appendix "A".
2. The meeting was held at National Bank of Pakistan situated at National Bank of Pakistan Building, I. I. Chundrigar Road Karachi on September 4, 2001 at 11.30 a.m. I was the Chairman of the said meeting. The representative of the Official Assignee, Mr. Shah Mohammad Junejo was also present during the meeting as an observer to file his report separately to this Court.
3. The Scheme of Arrangement together with schedules attached thereto, was circulated to the Creditors by the petitioner. Additionally the notice published, also stated that the Creditors can inspect and or obtain a copy of Scheme of Arrangement together with schedules attached thereto, (free of cost) from the office of the transaction lawyer, (appointed by the majority of the Creditors) M/s. Mohsin Tayebaly & Company, Advocates and Legal Consultants 2<sup>nd</sup> Floor Dime Centre, BC-4, Block 9, Kehkashan, Clifton, Karachi between 9.30 a.m. to 12.0 noon on any working day by presenting a request letter.

4. The Chairman stated that since the Scheme of Arrangement together with schedules attached thereto, has been circulated to all the Creditors, the purpose of this meeting is to decide the result of the proposed resolution through poll.
5. One Creditor, namely Standard Chartered Grindlays, submitted a memorandum reiterating its stance to record objections to the Scheme of Arrangement (which were conveyed to all lenders previously) to the Chairman during the meeting. Copy is attached to this report as Appendix “B-1 to B-4”.
6. Authorized representatives of Creditors were then invited to cast their vote, either in favour or against the proposed resolution. Ballot paper as per specimen attached at Appendix “C” was provided to each authorized representative of the Creditors.
7. Out of total of twenty six (26) Creditors, twenty three (23) Creditors’ authorized representatives attended and voted in the meeting. The amount of debt as accepted / admitted as of December 31, 2000 and recorded on the ballot paper of each individual Creditor by the petitioner was not disputed by any of the Creditors participated in the voting.
8. The total debt amounted to Rs. 4.65 billion, (Rupees four billion six hundred and fifty million only) out of which Creditors in value of Rs. 4.54 billion (Rupees four billion five hundred and fifty four million only) [98%] voted in the meeting while Creditors in value of Rs. 0.11 billion (Rupees one hundred and ten million only) [2%] remained absent.
9. Only one Creditor, namely Standard Chartered Grindlays, voted against the proposed resolution.
10. At the meeting as result of the voting as set out below 97% of the Creditors, present and voting have resolved as follows:

***“Resolved that the Scheme of Arrangement dated August 15, 2001 proposed by the Petitioner and filed before the Honorable High Court of Sindh, Karachi in JM / 36 of 2001 on August 16, 2001, be and is hereby approved, agreed and accepted, subject to such modifications as may be directed by the Honorable High Court of Sindh at Karachi.”***

The result of the voting was compiled and announced by the Chairman. Copy of the result sheet signed by the Chairman and the representative of the Official Assignee is attached at Appendix “D-1 to D-2”.

11. Summary of the result is as follows:

<b>Voted For</b>		<b>Voted Against</b>	
Number of Creditors billion	Amount Rs. in billion	Number of Creditors	Amount Rs. In
22	4.40	1	0.14

12. After announcement of the results of the meeting concluded in a very cordial atmosphere.

September 10, 2001

**Chairman**

**IN THE HIGH COURT OF SINDH, KARACHI**

(Companies Jurisdiction)

J.M. 36 / 2001

In the matter of Companies Ordinance, 1984

**Saadi Cement Limited**

**Trade Centre, A-14, Block 7/8, KCHS,**

Karachi.....Petitioner

Petition / Application under section 284, 285, 286 and 288 of the Companies Ordinance, 1984

**Notice for the Creditors Meeting under Section 284 (1) of the Companies Ordinance, 1984 read with Rule 55 of the Companies (Courts) Rules, 1997**

Notice is hereby given that a petition / application under Sections 284, 285, 286 and 288 of the Companies Ordinance, 1984 was presented before the Honourable High Court of Sindh at Karachi on 16<sup>th</sup> August, 2001 by the Petitioner for sanction of a Scheme of Arrangement and in terms of an order dated 16<sup>th</sup> August, 2001 passed by the Honourable High Court a meeting of the Creditors of the petitioner will be held at 11.30 a.m. on 4<sup>th</sup> September, 2001 at National Bank of Pakistan situated at National Bank of Pakistan Building, I. I. Chundrigar Road, Karachi for consideration and approval of the Scheme of Arrangement by the Creditors. The proceedings of the meeting shall be conducted in accordance with the companies (Court) Rules, 1997. Mr. Salman Rasheed shall be the chairman of the meeting and Mr. Bashir Ahmed Memon, Official Assignee High Court of Sindh shall be present at the meeting as an observer.

**All Creditors are invited to attend**

**1. Preliminary Statement**

To consider and approve the Scheme of Arrangement proposed by the Petitioner, to its Creditors. The principal objective of the Scheme, is to record the terms and conditions of a legally binding compromise and arrangement between the Creditors on the one part and the Petitioner, the Sponsors and Directors on the other part, for ensuring the rehabilitation of the Petitioner through restructuring of Existing Liabilities of the Petitioner and ancillary measures, as follows:

- (a) The substitution of obligation of the Petitioner in respect of the Existing Liabilities with obligations under Term Finance Certificates to be issued by the Petitioner in the amount of the Restructured Liabilities upon terms and conditions specified in the Scheme.
- (b) Pooling of Securities available with the Creditors to be shared amongst all Creditors on a pari passu basis.
- (c) The suspension of Legal Proceedings by the Creditors against the Petitioner's pending issuance of TFCs and settlement / satisfaction of all the Creditors in respect of the Legal Proceedings upon issuance of TFCs in terms of the Scheme.
- (d) Constitution of an Executive Committee to facilitate the monitoring of the financial and operational affairs of the Petitioner during the subsistence of the Restructured Liabilities and the TFCs.

**2. Proposed Resolution to be passed with or without modification**

“Resolved that the Scheme of Arrangement dated August 15, 2001 proposed by the Petitioner and filed before the Honorable High Court of Sindh, Karachi in JM 36 / 2001 on August 16, 2001 be and is hereby approved, agreed and accepted, subject to such modifications as may be directed by the Honorable High Court of Sindh at Karachi.”

**3. Any other matter with the permission of the chair**

That may be necessary and / or incidental to be dealt with and may warrant resolution in accordance with Companies (Court) Rules 1997.

**Explanatory Notes**

- 1. “**Creditors**” shall mean and include, banking companies, investment banks, leasing companies, leasing modarabas, and development financial institutions towards whom the petitioner is indebted and the term “**Creditor**” shall mean any one of them. All other capitalized terms used in this notice shall have the same meaning as prescribed in the Scheme of Arrangement.
- 2. The Creditors can inspect and or obtain a copy of Scheme of Arrangement together with schedules attached thereto, (free of cost) from the office of the transaction lawyer, (appointed by the majority of the Creditors) M/s. Mohsin Tayebaly &

Company, Advocates and Legal Consultants 2<sup>nd</sup> Floor Dime Centre, BC-4 Block 9, Kehkashan, Clifton, Karachi between 9.30 a.m. to 12.00 noon on any working day by presenting a request letter.

3. A Power of Attorney or other binding written authorization in favour of the representative of the relevant Creditor, to attend and vote in the meeting should be available with such representative at the time of the meeting.

**MR. SHAMIM MUSHTAQ SIDDIQUI**  
**Director, Pakland Cement Limited**

**MR. SALMAN RASHEED**  
**Designated Chairman of the Meeting**

**SUBJECT: SAADI CEMENT LIMITED (SCL):**

This memorandum has been prepared with regards to the creditors meeting called by High Court in response to the Scheme of Arrangement (SoA) submitted by SCL in the High Court.

We have reviewed the SoA in detail and we would like to reiterate our stance (as conveyed to all lenders previously), that we are prepared to consider a proposal for restructuring of PCL's liabilities provided it is on viable commercial grounds and on terms which do not impact our legal rights particularly to the benefit of other lenders. Furthermore, restructuring should be based on internationally accepted principles and should treat all creditors fairly by acknowledging and maintaining their existing rights.

The proposed SoA in its present form contains the material issues, which are not acceptable to us for the reasons mentioned above and again elaborated below. As a result we are not in a position to support the SoA. In this regard, we would request the Official Assignee and Chairman of the meeting to record our objections to the SoA which are as follows:

**SECTION C:**

**TERMS OF THE SCHEME**

**Clause 1b:**

This clause envisages pooling of securities available with creditors to be shared amongst all creditors on a pari passu basis.

This means that creditors with deficient collateral will improve their position resulting in dilution and impairment in collateral by others like us, which is not fair under any law and is not acceptable. We propose that to be fair, equitable and transparent, the collateral position of all lenders should be evaluated and recorded accordingly. For this a committee be formed consisting of legal counsels representing all creditors to review each creditor's security position in light of the legal documentation and charge registration, etc.

**Clause 2:**

- Sub Section "a".

For the issuance of TFC's, existing liabilities have been taken as amounts that were payable as of December 31, 2000. Markup that has accrued since December 31, 2000 has not been accounted for in the SoA. This has to be clarified and agreed before moving forward. As far as we interpret, some creditors are willing to waive their claim on mark up since December 31, 2000 for reasons known to them and are forcing this on other creditors including the signatories to this memorandum.

## **Appendix B-2**

Our view is that the entire markup amount payable should be included in the amount due from SCL and should be accordingly added to the face value of TFC Series B.

The definitions of the “Effective Date” and “Existing Liabilities” as defined under Section A should be amended accordingly.

### **Clause 3:**

- Sub section “F”.

It is proposed in the SoA that Al-Faysal Investment Bank Limited (AFIB) will be trustee for all security and all lenders will be required to relinquish their rights under the security in favour of NBP. While we have the utmost confidence in NBP, however, it is not acceptable or fair that we have to relinquish our legal rights under the collateral in favour of a 3<sup>rd</sup> party.

### **Clause 5:**

It appears from the SoA that the EXECUTIVE Committee (EC) will not be responsible for any claims by 3<sup>rd</sup> Parties. Our view is that the EC should remain liable to the creditors. Furthermore, there should be a mechanism in the SoA to amend the composition of the EC if 51% of the creditors so desire. No such mechanism is presently included in the SoA.

Furthermore, EC must be required to circulate to SCL’s creditors a progress report on a monthly basis no later than the 5<sup>th</sup> day of the following month. This report should cover PCL’s financial performance and all material decisions taken by the Financial Controller and the EC during the previous months. In case a creditor requires any clarification it must be provided within a reasonable period of time. In Case any creditor has objections to the decisions taken by the Financial Controller or the EC, clarification and rationale for such a decision must be provided to that particular creditor within 30 days of the objection being raised.

The above requirements are critical for the protection of interest of the creditors who are not represented in the EC.

### **Clause 9:**

It appears from SoA that in order to declare default, the creditors will have to go through the Executive Committee (EC). Further it is also not clear if the EC is bound to declare default on the request of any creditor or it will have the final authority in this matter.

The stance of the signatories to this memorandum is that if default is called by any creditor, it should be binding on SCL irrespective of any decision to be taken by the EC.

## Appendix B-3

- Sub Section “e”

Besides other Events of Default, the SoA allows SCL to default on two installments of TFC’s and/or additional financing for default to take place. This is not acceptable to us and should be changes to one installment only.

The reason is that SCL has been in default for the past 4/5 years already as also acknowledged by the High Court as well as the Supreme Court of Pakistan. Default on one installment is enough and further leeway will be to the detriment of our interest.

Furthermore, it should be clearly stated in the SoA that any one of the items or events listed in Sub Section “a” through “i” will constitute as default.

### **Clause 10:**

- Sub Section “a”:

The SoA envisages that each directors of SCL will provide personal guarantees to all the creditors. Our view is that personal guarantees should only be available to creditors presently holding them. By providing personal guarantees to all the lenders, the position of the lenders who already hold directors’ personal guarantees will be eroded and impaired to the benefit of other creditors who do not have the benefit of such guarantees at present.

- Sub Section “b”:

List of assets legally or beneficially owned by directors of SCL to be provided to AFIB (Trustee). This list must be provided to all creditors and providing it to the Trustee only has no value nor it does anything to restore out confidence in the directors of PCL.

### **Clause 11:**

- Sub Section “a”:

All 3<sup>rd</sup> party collateral (including that provided by directors and sponsors of SCL) held by ay creditors must remain outside the ambit of pooled security at all times and not be transferred to the Trustee as discussed in clause 1 C above. If creditors holding 3<sup>rd</sup> party collateral are also forced to pool in their collateral, while it will be dilute their position but will impact position other creditors who do not hold any 3<sup>rd</sup> party collateral, which is not fair nor is equitable.

- Sub Section “b”:

Pledged shares of Pakland Cement Limited (PCL) must remain with the creditors to whom these have been pledged and not be brought under the ambit of the security pool as this would dilute and impair their security interest, to the benefit of other creditors who do not have access to such pledged shares at present:

**Clause 12:**

Management and directors must be required to give a clear undertaking for the benefit of all creditors of SCL, to ensure resumption of normal trading in the Stock Exchanges, of shares of SCL and SCL, within 60 days of restructure of liabilities of SCL. Failing which, this should also constitute as an Event of Default.

**SCHEDULE “K”:**

- TFC SERIES A and B

Tenor of TFC A and TFC B is nine and a half years, including three and a half years grace on mark up and principal under TFC A, which starts as of June 1, 2001. Our view is that grace on mark up be reduced significantly based on the fact that SCL has not paid any amounts for the past 4/5 years which essentially already translates into a grace period. A shorter grace on mark up will also enable us to see if SCL is serious in honoring its commitments and this will benefit all creditors.

**CONCLUSION**

Based on the above, it is our view that the SoA will be detrimental to our legal rights and security interest. We also conclude that the proposed arrangement is far from being transparent or equitable. If implemented, it will not only damage our legal position and rights but also serve as a wrong precedent for the future as sanctity of individual agreements signed between a borrower and a creditor will become questionable. This in turn is bound to impact the strength of our financial system.

Signed on September 3, 2001 by:

1. Standard Chartered Grindlays Bank Limited



Appendix "C"

**SAMPLE**  
**BALLOT PAPER**

**MEETING OF CREDITORS OF SAADI CEMENT LIMITED  
HELD ON SEPTEMBER 4, 2001 AT 11:30 A.M. UNDER J. M. No. 36/2001  
BEFORE THE HIGH COURT OF SINDH AT KARACHI  
PETITIONER - SAADI CEMENT LIMITED**

Name of Creditor

Amount of Existing Liabilities

(Rs. in 000)

Rs. \_\_\_\_\_

**Proposed Resolution to be passed:**

“**RESOLVED** that the Scheme of Arrangement dated August 15, 2001 proposed by the Petitioner and filed before the Honourable High Court of Sindh, Karachi in J.M. 36/2001 on August 16, 2001, be and is hereby approved, agreed and accepted subject to such modifications as may be directed by the Honourable High Court of Sindh at Karachi.”

**IN FAVOUR OF THE RESOLUTION**

**AGAINST THE RESOLUTION**

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**Authorized Signature**

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**Authorized Signature**

**SAADI CEMENT LIMITED**  
**RESULT SHEET OF CREDITORS' VOTING**

**HELD ON SEPTEMBER 4, 2001 AT 11:30 A.M. FOR APPROVAL OF THE "SCHEME OF ARRANGEMENT"  
UNDER J.M. NO. 36/2001 BEFORE THE HIGH COURT OF SINDH AT KARACHI**

Sr. No.	Name of Institutions	Amount of total Liability	Present & Voted	Voted For	Voted Against
1	Standard Chartered Grindlays Bank	140,913	140,913		140,913
2	ABN Amro Bank	16,411			
3	Crescent Investment Bank Limited	227,431	227,431	227,431	
4	Faysal Bank Limited	1,039,023	1,039,023	1,039,023	
5	First Capital Securities Corporation Limited	10,171			
6	Industrial Development Bank of Pakistan	40,995	40,995	40,995	
7	Islamic Investment Bank Limited	51,373	51,373	51,373	
8	National Bank of Pakistan	927,309	927,309	927,309	
9	National Development Finance Corporation	1,078,617	1,078,617	1,078,617	
10	Pak Libya Holding Co. (Pvt.) Limited	105,300	105,300	105,300	
11	Saudi Pak Industrial and Agri. Inv. Co. (Pvt.) Ltd	4,670	4,670	4,670	
12	Union Bank Limited	118,790	118,790	118,790	
13	The Bank of Khyber	2,059	2,059	2,059	
14	Prudential Commercial Bank Limited	75,963			
15	Prudential Discount & Guarantee House	88,984	88,984	88,984	
16	First Allied Bank Modaraba	135,306	135,306	135,306	
17	First Fidelity Leasing Modaraba	16,894	16,894	16,894	
18	First Leasing Corporation Limited	46,267	46,267	46,267	
19	Ghandara Leasing Company Limited	14,960	14,960	14,960	
20	Ibrahim Leasing Limited	40,759	40,759	40,759	
21	Long Term Venture Capital Modaraba	62,473	62,473	62,473	
22	National Development Leasing Corp. Ltd	189,464	189,464	189,464	
23	Orix Leasing Pakistan	3,376	3,376	3,376	
24	Pakistan Industrial & Commercial Leasing Ltd	31,026	31,026	31,026	
25	Pakistan Industrial Leasing Corporation Ltd	160,650	160,650	160,650	
26	Union Leasing Ltd	16,675	16,675	16,675	
	<b>TOTAL</b>	<b>4,645,859</b>	<b>4,543,314</b>	<b>4,402,401</b>	<b>140,913</b>
	<b>PERCENTAGE</b>		<b>100%</b>	<b>97%</b>	<b>3%</b>

**RESULT:**

The Resolution for approval of the "Scheme of Arrangement"  
Passed by the Creditors 97% by value