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ORDER SHEET.

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.**

C.O No. 09 of 2018

Additional Registrar of Companies, SECP

VS

M/s Southern Electric Power Company Limited.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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11.01.2019.	Mohsin Kamal Khan and Aarsal Hashmi, Advocates for the Petitioner. Ms. Kalsoom Rafique, Advocate for the Respondent.
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Through the instant petition, the petitioner seeks winding up of Respondent Company.

2. The facts, leading to the filing of the instant petition are that the respondent was registered as a public limited company under the laws of Pakistan. The object of the instant company was to establish power generating unit with the capacity of 108 MW of electricity. The company was incorporated on 20.12.1994, however the company stopped production since August 2012 due to shortage of funds. In this regards dispute also arose between the Petitioner Company as well as WAPDA/National Transmission & Dispatch Company Limited and the matter was agitated even before the International Commercial Court and is still pending. The company, apparently, is in default of payment to many institutions. The petitioner issued a show

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Registrar
 Additional Registrar of Companies
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 Judicial Department
 Islamabad High Court
 Islamabad

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cause notice to the respondent company, wherein, it was accepted and acknowledged that the company business is closed since 2012 and effort to re-start the same has failed. Even the listing of the respondent company with the Pakistan Stock Exchange has stopped since 12.01.2016. The auditors of the Company have also given a negative opinion on 30.06.2015 about the affairs of the company. In the referred backdrop, the petitioner seeks winding up of the respondent company; notice was issued to the company and in response learned counsel did enter appearance and filed reply.

3. Learned counsel for the petitioner, *Inter alia*, contended that the respondent company has ceased its operational activities since September 2012, therefore, is liable to be wound up under the Clause (m) of section 301 of the Companies Act, 2017; that a listed company is liable to be wound up under clause (m) of section 301 ibid if it suspends its business for a whole year; that the substratum of the company is lost as all the employees have left and trading is suspended in the Pakistan Stock Exchange since 12.01.2016 and there are no chances of revival; that respondent company has incurred net loss of Rs. 1,7590.24 million during the year 2015 and its equity has

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eroded, which stands at Rs. 8,909,377 million in negative. It was further submitted that the current liabilities of the respondent company exceed its total assets by Rs. 8,685,462 million. Hence, the company is unable to pay its debts, that the respondent company is incurring losses every year.

4. In reply the respondent company has taken up the position that the instant petition is not competent. It was further contended that three (03) agreements were entered into and the same are subsistent. It was admitted that the company is non-functional since September 2012 and is not trading on the Stock Exchange. It is also an admitted position that the company is unable to pay its debts as per the reply.

5. Arguments advanced by the learned counsels for the parties have been heard and documents placed on record examined with their able assistance.

6. The facts leading to the filing of the instant petition, have been mentioned hereinabove, therefore need not be reproduced.

7. The allegations leveled in the petition and substantiated by learned counsel for the petitioner are mostly admitted. It is an admitted position that the company is not involved in the process of production of

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electricity for which it was incorporated since 2012. It is also an admitted position that the unit is closed and employees have left. There is no scheme underway for re-start of the business hence it can be safely assumed that the substratum of the company has disappeared. Even otherwise, under section 301 (m) of the Companies Act, 2017 where a company is a listed company and does not trade on the Stock Exchange for more than a year it is liable to be wound up.

8. It is also one of the grounds for winding up respondent company that it is unable to pay debts. In this behalf, it was alleged that the equity of respondent company is in negative and the debts exceed the assets of the company. Learned counsel for the respondents company in reply has not specifically denied the referred allegations rather has given an evasive reply that the petitioner is put to proof of the same.

9. The petition has been filed by Securities & Exchange Commission of Pakistan, which is competent to do so under the Companies Act, 2017.

10. In view of the foregoing, the instant petition is allowed and the respondent company namely M/s Southern Electric Power Company Limited is ordered to be wound up.
M/s. Usman G. Rashid Advocate, Unyatalian

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Chambers, 1, Turner Road, Lahore (0333-4200935) and Kashif Ali Malik Advocate, 48-A, St. 57, G-6/4, Islamabad (0333-5330012) are appointed as Joint Official Liquidators.

11. Now to come up for fixation of terms of appointment of liquidators and further proceedings,

12. Relist in 3rd week of April, 2019.


(AAMER FAROOQ)
JUDGE

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