

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice Khilji Arif Hussain
Mr. Justice Tariq Parvez

SUO MOTO CASE NO. 15 OF 2009 A/W
CMAs. 4928-4929/2009 & 1989 & 1998/2010.
(Corruption in Pakistan Steel Mills Corporation)

AND

CONST. PETITION NO. 30 OF 2010
(Wattan Party vs. Federation of Pakistan)

AND

H.R.C NOs.13922-S, 14156-S & 12664-P/2010
(Applications of Ahmed Hussain and Asif Khawaja)

For the petitioner : Barrister Zafaullah Khan, Sr. ASC.
(in Const. P.30/2009) Mr. Arshad Ali Ch. AOR.

On Court Notice : Mr. Dil Muhammad Alizai, DAG.

For Pak. Steel Mills : Mr. Fakhruddin G. Ibrahim, Sr. ASC.
Mr. M.S. Khattak, AOR.
Mr. Waseem Ahmed, CEO.
Mr. Qamar Mehmood Sindhu, Dy. GM.
Raja Aviz Mehmood,
Chief Law Officer.

For Ex-Chairman, PSM: Mr. Suleman Aslam Butt, ASC.
(Mr. Moin Aftab).

For Riaz Lalji : Mr. Mansoor-ul-Arfeen, ASC.

For M/o Industries : Mr. Gul Muhammad Rind, Secy.
Mr. Abdul Ghaffar Somoro, Ex-Secy.

- For M/o Interior : Mr. Rehman A. Malik (in-person).
Mr. Qamar Zaman Ch., Ex-Secy.
Mr. Nasir Hayat, Ex-Addl. Secy.
- For FIA : Mir Zubair Mehmood, Dir. (Sindh)
Mr. Moazam Jah, Dir. (Sindh)
Mr. Azam Khan, Director Law.
Mr. Khaleeq-uz-Zaman, Dy. Dir.
Mr. Akhtar Baloch, Dy. Dir.
Mr. Anwar Qureshi, Asst. Dir.

Mr. Wasim Ahmed, Ex-DG.
- For the NAB : Mr. Akbar Tarrar, Addl. PG.
- For the applicant : Dr. Aslam Khaki, ASC (in-person).
(in CMA 4928/2009)
- For the applicants : Mr. Abdul Hafeez Pirzada, Sr. ASC.
(in CMA 4929/2009) Mr. Mehmood A. Sheikh, AOR.
- For the applicants : Mr. Khalid Anwar, Sr. ASC.
(in CMA 1989/2010)
- For the applicants : Raja Qureshi, Sr. ASC.
(in CMA 1998/2010) Raja Abdul Ghafoor, AOR.
- For Pak. Steel Re-Rolling:
Mills Association Mr. S.M. Zafar, Sr. ASC.
- For Iron Steel Merchants: Mr. Sohail Muzaffar, ASC.
Mr. Khalid Javed, ASC.
- For respondent No.2 : Mr. Tahir Hussain Lughmani, ASC.
(in Const. P.30/2010)
- Dates of hearing : 7th, 16th & 30th Oct., 2009;
25th Nov., 2009; 17th & 24th Dec., 2009;
25th Jan., 2010; 8th Mar., 2010;
25th Jun., 2010; 21st Jul., 2010;
4th Nov., 2010; 24th Jan., 2011;
1st & 23rd Feb., 2011; 9th Mar., 2011;
13th & 28th Apr., 2011; 13th Mar., 2012
& 15th March, 2012.

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JUDGMNET:

TARIO PARVEZ, J. – Pakistan is governed under the Constitution of Islamic Republic of Pakistan, 1973 [herein after referred to as ‘the Constitution’] and the State is named as “Islamic Republic of Pakistan”. The very name of the country has direct nexus with the very reason and object of the creation of this country, which is reflected in Article 2A of the Constitution, commonly known as ‘Objectives Resolution’, which *inter alia* states that “*wherein the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set out in the Holy Quran and Sunnah*”. With this background of the very creation of the Muslim State, we have to visualize our individual as well as collective behavior, which is subject to teaching of Islam and *Sunnah* of Prophet Muhammad (PBUH).

2. It is commonly known that higher the position, greater the responsibility and the accountability. It is expected from every citizen of Pakistan that he shall be loyal to the State and the basic duty of every citizen is to be obedient to the Constitution and law as ordained under Article 5 of the Constitution.

3. Trust/breach of trust has been defined under Anglo-Saxon laws and by Courts interpretation but foremost importance

is to be given to teaching of Allah Almighty in the Holy Quran, a book which is for all times to come and for all human beings; in *Surah-Al-Anfal ayt.27* Allah Almighty warns:-

يَتَأْتِيهَا الَّذِينَ آمَنُوا لَا تَخُونُوا اللَّهَ وَالرَّسُولَ وَتَخُونُوا أَمْنَتِكُمْ
وَأَنْتُمْ تَعْلَمُونَ ﴿٢٧﴾

اے ایمان والو! نہ تو خدا اور رسول کی امانت میں خیانت کرو اور نہ اپنی امانتوں میں
خیانت کرو۔ اور تم (ان باتوں کو) جانتے ہو۔

Similarly, in *Surah-Al-Hajj ayt.38* it is command by Allah Almighty:

﴿إِنَّ اللَّهَ يُدْفِعُ عَنِ الَّذِينَ آمَنُوا﴾ إِنَّ اللَّهَ لَا يُجِبُّ كُلَّ خَوَّانٍ
كَفُورٍ ﴿٣٨﴾

خدا تو مومنوں سے اُن کے دشمنوں کو ہٹاتا رہتا ہے۔ بے شک خدا کسی خیانت کرنے
والے اور کفرانِ نعمت کرنے والے کو دوست نہیں رکھتا۔

In *Surah-Al-Baqarah ayt. 188*

وَلَا تَأْكُلُوا أَمْوَالَكُم بَيْنَكُم بِالْبَاطِلِ وَتَذُلُوا بِهَا إِلَى
الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ
﴿١٨٨﴾

اور ایک دوسرے کا مال ناحق نہ کھاؤ اور نہ اس کو (رشوۃ) حاکموں کے پاس پہنچاؤ تاکہ
لوگوں کے مال کا کچھ حصہ ناجائز طور پر نہ کھا جاؤ اور (اسے) تم جانتے بھی ہو۔

4. Corruption is generally defined as an act of doing something with the intent to give some advantage in consistent with official duty and to the rights of others; this amounts to

misconduct in office, misbehaviour in office, misdemeanor in office or official corruption; it is a menace and curse in a society.

In **Words & Phrases**, Permanent Edition, Vol.27 (at page 432), the word 'misappropriation' has been defined as '*wrong appropriation; to turn or put to a wrong purpose*'.

In **Words & Phrases**, Permanent Edition, Vol.27 (at page 546), the word 'mismanagement' has been defined as '*to manage badly, improperly, or unskillfully*'.

In **Stroud's Judicial Dictionary** (5th Edn.) at page 1605, the word 'misappropriate' is defined as 'wrongful conversion of or dealing with anything, by the person to who it had been interested.

In **Supreme Court on Criminal Law 1950-2002**, 6th Edn. (Vol.2), the definition of corruption has been elaborately and meaningfully given by Indian Supreme Court as under:-

“Corruption in a civilized society is a disease like cancer, which if not detected in time is sure to malign the polity of country leading to disastrous consequences. It is termed as plague which is not only contagious but if not controlled spreads like a fire in a jungle. Its virus is compared with HIV leading to AIDS being incurable. It has also been termed as Royal thievery. The socio political system exposed to such a dreaded communicable disease is likely to crumble under its own weight. Corruption is opposed to democracy and social order, being not only anti people, but aimed and targeted against them. It affects the economy and destroys the cultural heritage. Unless nipped in the bud at the earliest. It is likely to cause turbulence shaking of the socio-economic-political system in an otherwise healthy, wealthy, effective and vibrating society. [(State of Madhya Pradesh vs. Ram Singh) AIR 2000 SC 870: 2000 Cr. LR (SC) 188].

5. Corruption, spreading throughout the World in different countries at different levels and considering it to be a menace for the Society, the United Nations could not remain oblivious, formation of which is with the object to maintain peace amongst the Nations/States in this World, “*the United Nations Convention against Corruption*” was passed by the General Assembly Resolution 58/4 of 31.10.2003 and adopted, to which Pakistan is member country as signatory.

In this Convention, corruption was considered as one of the serious problems and threats posed to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law. Illicit acquisition of personal wealth was equated with causing damage to the democratic institutions, national economies and the rule of law. It was thought that effective measures are required to be taken for which it was held that prevention and eradication of corruption is the responsibility of all States and every State must cooperate with another. It was, therefore, agreed upon, *inter alia*, that each State party shall in accordance with fundamental principles of its own legal system shall develop and implement or maintain effective, coordinated anti-corruption policies and shall promote the participation of society by reflecting the principles of the rule of

law, proper management of public affairs and public property, its integrity, transparency and accountability. It was also held that each State shall endeavour to periodically evaluate the entire relevant legal instruments and administrative measure with a view to determining their adequacy to prevent and fight corruption.

Each State party to the Convention was called upon that they shall ensure within their legal system the existence of a body or bodies as appropriate or necessary for the prevention of corruption and that each State party shall grant to such body or bodies '**necessary independence**' in accordance with the fundamental principles of its legal system so to enable the body or bodies to carry out its or their functions effectively, freely and without being influenced from within or from outside; they were to be provided necessary material resources with the specialist staff, with continuous/periodical training to such staff. Towards achievement of such goal, each State party was to take appropriate steps within their legal system for maintaining and strengthening system for recruitment, hiring, retention, promotion and retirement of civil servants. To protect and ensure the safety of the State properties in public sector besides the above measures, States parties were called upon to adhere to principles of efficiency, transparency and objective criteria, such as merit,

equity and aptitude, by adopting the measures for promoting adequate remuneration and equitable pay scales, however, taking into account the level of economic development of the State concerned. (**emphasis provided**)

Each State party was to adopt appropriate legislative and administrative measures in view of fundamental principles of their domestic law. It was the responsibility of the State party to promote, *inter alia*, integrity, honesty and responsibility among its public officials and was to adopt the measures for establishing the system to facilitate the reporting by the public officials of acts of corruption to the appropriate authorities.

In this Convention, it was highlighted that the Independence of Judiciary and its crucial role in combating corruption, each State party within the fundamental principles of its legal system shall take measures for strengthening integrity and preventing opportunities for corruption among members of Judiciary. It was also called upon the State party that it shall take measures as necessary to establish criminal offences when committed intentionally like making promise, offering or giving to a public official or any other person directly or indirectly of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to

obtaining from an administration or public authority of the State party an undue advantage.

Under the Convention, a very serious note was taken of extensive attitude at all levels and in different fields of life of increasing corruption and measures were suggested for its eradication which includes making such practices as criminal offence and establishing body or bodies including involving judicial system. The measures were also suggested for the retrenchment of the properties/assets by freezing, seizure or confiscating the same to the State. Since the Convention was under the auspices of the United Nations, covering the large number of States and because cases of corruption within or outside the State were increasing or have increased and the mobilization of the individual in the present geographical set up has become easy, therefore, in the Convention provisions for its eradication were incorporated that an accused person if committed a crime, the reporting country can request the other State party for return of the offender; care was also taken between the States parties to afford to each other the widest measures of mutual legal assistance in investigations, prosecutions and judicial proceedings.

6. It is manifest from the aforementioned *Quranic* Injunctions, Article 2A (Objectives Resolution) of the

Constitution, which is actually an offshoot of the *Quranic* Injunctions and also of the United Nations Convention against Corruption, that there are not only violation the *Quranic* Injunctions but also deviation of the established conventions agreed to by the nations the world over and to which Pakistan is also a signatory. A glaring consequence of this deviation can be seen in the case of Pakistan Steel Mills, which is the moot issue in these proceedings.

7. In the past, the strength of a country or nation was dependent upon and determined on the basis of volume of its fighting forces/Army, whether regular or volunteers. A State that would have a bigger army in order to capture its neighbourhood, comprising of small area, would attack and conquer the same in order to extend its own territory and administrative jurisdiction. By such conquer, not only the conquering State would acquire more area but would also become owner of its resources, found or available in such area of the conquered State; because of it the conquering State would become vast, wide and more strong. The stability of the State was dependent upon manpower. Big States were those which possess more land and more resources. It was, therefore, that the citizens of such States would be more resourceful and more prosperous as against the weaker and smaller States.

8. With the advancement of education and socio-cultural development, the present era of scientific inventions set in. The strength becomes of scientific inventions transformed from manpower to machine power. Today, a country which is advanced in technology is stronger than the one which is not more strong in machines or industry.

Machines have entered into every sphere of life of human being and have become indispensable; it includes almost every size of machinery. In our household items, the modern scientific devices have become part of our domestic needs; for example a grinder in the kitchen is not a luxury but a need; clothes which were washed with hands are being washed by washing machines. So where on the one hand smaller machines have become necessary for individuals, the heavy machines become need of a State/Country/Nation. A glance in the past history of Europe and America, hardly a century back and thereafter, clearly amplifies the change before and after introduction of machines/industries.

9. Technical advancement has become basis for the determination of per capita income of a country. There are three categories of the countries; one, who are developed; second who are developing; and third under-developed. Pakistan in the present state of its affairs does not fit into the category of

developed State; it is developing in certain spheres and is still underdeveloped in some sectors.

10. It cannot be denied today that strength of a country is totally dependent upon its commercial and economical activities. The currency rate is the test to evaluate the economical condition. Today in our country 1\$ is equal to about Rs.91/- whereas 1£ is equal to Rs.141/- or around. This rate of inflation clearly demonstrates that we are lagging behind because of our failure in building up our productive capacity.

11. It also cannot be denied that strong economy is guarantee for sustainment of State but for strong economy there has to be productive activities in the State itself. The currency rate of a country is determined on the basis of State's resources; either it be gold in State treasury or dollars or ponds reserves equal to gold. We for example in Pakistan have to produce such articles, which are exported abroad and from their export, foreign exchange is earned and brought in the country.

12. Pakistan Steel Mills (hereinafter referred to as 'the PSM') is one of such public sector installation of which people of Pakistan are proud of considering it to be the backbone of industries culture for Pakistan. It is not for the first time that this Court is under obligation to safe the national asset but even earlier too in the year 2005, the PSM was subject matter before

this Court in the case of Wattan Party vs. Federation of Pakistan (PLD 2006 SC 697).

13. Pakistan Steel Mills is a private limited company, wherein 100% of its shares are owned by the Government of Pakistan; it was incorporated in the year 1968 whereas it went into production in the years 1981 to 1984; the plant was installed with the collaboration and assistance of the Russian Government by the Ministry of Industries, Production and Special Initiatives; it is installed over the area measuring about 19000 acres of the land; the annual designed capacity of the PSM is 1.1 million tons; at the time of inception and commencement of production, its profitability was not good because of overstaffing, financial liabilities, poor working discipline, low capacity utilization, small sales, mismanagement and lack of attitude to feel responsibility.

14. It was in that background that in the year 1997, the Government of Pakistan decided to privatized it and got approval from the Council of Common Interest; somehow, the process of privatization discontinued and in the month of May, 2000, restructuring plan was approved by the Chief Executive of Pakistan, which included rightsizing of its employees, repair and maintenance of the plant etc. However, in the month of March, 2005, the Ministry of Privatization and Investment again moved a summary to the Board of Privatization Commission that the PSM

shall also be included in the program of privatization. After approval, bids were asked for; however, such process was challenged before the High Court of Sindh, Karachi, which matter ultimately landed before this Court and in the judgment reported as **Wattan Party** (supra), this process was checked and scrutinized.

15. Cognizance of the matter was taken by this Court while exercising its Suo Motu jurisdiction under Article 184(3) of the Constitution of Islamic Republic of Pakistan, when a write up was published in Daily DAWN on 11.09.2009 with a caption “Steel Mill Case”, it was authored by Ayesha Siddiqa, who is regarded as an independent strategic and political analyst.

Subsequent thereto, the Hon’ble Chief Justice of Pakistan recorded his lordship’s note, which is reproduced herein below for the sake of convenience:-

“Comments may be called from the Chairman, PSM
for 24.09.2009”

16. From record of the case, it reveals that on 07.10.2009, Mr. Qamar Mehmood Sindhu, Deputy General Manager (Legal) submitted comments under his signatures on behalf of the Chairman, PSM, while pointing out that the FIA (Federal Investigation Agency) is already conducting an enquiry in respect of risks losses and reduction in sales etc. in the PSM; his comments were, however, not supported by any external or

internal audit report for the years 2008-09; he was, therefore, ordered to file the same on the next date of hearing; on the same date of hearing, the then Chairman of the PSM was required to file further para-wise comments with reference to write up/article dated 11.09.2009. Simultaneously, Mr. Qamar Mehmood Sindhu, Deputy General Manger (Legal) was asked to furnish address and telephone numbers of Mr. Moin Aftab Sheikh, Former Chairman the PSM to the Registrar of this Court for the purpose of issuing notice to him; simultaneously, report was also called from the DG, FIA in respect of investigation already undertaken by FIA, as informed by the Deputy General Manager (Legal); comments from Ministry of Industries and Commerce were also called for and the matter was adjourned to 16.10.2009, on which date Mr. Abdul Mujeeb Pirzada, learned Sr. ASC appeared on behalf of Chairman, PSM and informed that comments on behalf of his client have been prepared but are in the process of being filed. Mr. Moin Aftab Sheikh, former Chairman PSM did appear in-person in response to notice but because of late service requested for time to file comments and his explanation; however, **no one put in appearance on behalf of the DG FIA.** (*emphasis provided*).

On 30.10.2009, Mr. Suleman Butt, ASC appeared on behalf of Mr. Moin Aftab Sheikh, Ex-Chairman PSM and submitted

reply on his behalf. Mr. Muhammad Azam, Director (Law), FIA also appeared and stated that tentative reports have been prepared whereas Mr. Abdul Mujeeb Pirzada, learned Sr. ASC also stated that a Committee has been constituted by the Management of the PSM, comprising of three members, with the terms of reference to find out financial/administrative reasons causing loss to the PSM and to fix responsibilities upon the person, if any, for causing financial loss, etc. with direction to complete the investigation and submit report by 28.10.2009.

On 25.11.2009, when the matter was taken up, Mr. Azam Khan, Director (Law), FIA filed an enquiry report which was made part of record. Mr. Abdul Mujeeb Pirzada, Sr. ASC for the PSM filed another report, which was also placed on record; he also placed on record newly awarded dealership during 2008-09 according to which 300 new dealers were registered by the PSM; Mr. Suleman Aslam Butt, ASC for Mr. Moin Aftab Sheikh, Ex-Chairman PSM also placed some documents to highlight the view point of his client and while referring to the said documents, demonstrated that he is not involved in the scam of losses to the PSM, which according to his estimation comes to Rs.22 billion.

On 17.12.2009, it was noticed by this Court that Ministry of Interior, Government of Pakistan under the signatures of Mr. A. Rehman Malik, Minister for Interior has constituted a

Joint Investigation Team (JIT), which order was reproduced in the order sheet of the said date and for the sake of convenience, the same is reproduced hereinbelow as well:-

“In pursuance of the directions of the Honourable Supreme Court of Pakistan regarding investigation into the affairs of Pakistan Steel Mills and also showing dissatisfaction into the investigation so far done by FIA. Keeping in view the observations of the Honourable Supreme Court, a broad based JIT has been constituted with the mandate to investigate the matter thoroughly and submit report within four weeks. The JIT is directed to keep the Honourable Supreme Court of Pakistan enabling the JIT to complete its investigation in a full transparent manner and on merits.

2. The JIT will consist of a senior officer of FIA at an ADG level, a Deputy Secretary of Ministry of Interior, one Deputy Secretary, Ministry of Production & Industries, Deputy Attorney General and a Police Officer of DIG rank from Sindh Police. A Coordinating Officer may also be appointed to coordinate the whole matter.

3. The services of a well reputed International Audit firm may be co-opted to assist the JIT to cover technical and complicated financial aspects as already discussed and agreed with the Minister for Industries.

4. All previous Inquiry Reports on the matter shall be re-assessed into transparently and on merit by the JIT.

5. ToRs of the JIT are annexed herewith. The JiT will complete the work in four weeks time.”

Along with above order of the Ministry, terms of reference were also attached and a team was constituted comprising of five members.

However, the above arrangement of constitution of JIT and terms of reference were not happily received by this Court

considering it to be an attempt to undo the directions contained in order dated 25.11.2009 and once an issue is under-examination/consideration before this Court, the same should not have been placed before the JIT.

17. It so happened that pending proceedings of the matter before this Court, the then DG FIA i.e. Mr. Tariq Khosa was transferred before completion of his tenure of his such assignment; however, his transfer issue was not acted upon by exercising restraint and in these circumstances notices were issued that let Mr. A. Rehman Malik, Minister for Interior in the Court that as to why he should not be proceeded against for contempt of Court.

18. Consistent efforts were being made by this Court to procure sufficient data in the form of material in respect of the allegations at least to make out *prima facie* case of corruption and mismanagement; as such the FIA was given time and again opportunity to do the needful to submit its report.

It was on 25.01.2010 when Mr. Azam Khan, Director (Law) and Mr. Zubair Mehmood, Director FIA Sindh had appeared and stated that as per their estimate, in order to proceed against the persons who were allegedly involved in causing huge losses to the PSM, neither the FIA nor the Special Court Anti-Corruption is empowered to retrieve the money or effect

recoveries except ordering seizure of the properties belonging to the delinquents; they had further stated that under the NAB Ordinance, the NAB authorities are competent to effect recovery of such amount.

19. It transpired that at this stage of proceedings, when the DG, FIA was to be taken on board in respect of making the process of recovery of the embezzled amount, some uncalled for changes were noticed in the FIA establishment including the constitution of JIT by Mr. A. Rehman Malik, Interior Minister; vide order dated 17.12.2009, this Court took serious notice of it and accordingly notice was issued to Mr. A. Rehman Malik, Interior Minister to explain as to why he should not be proceeded against for contempt of Court.

Subsequent thereto a report was filed by FIA on 08.03.2010, which was not accepted as satisfactory, however, it revealed from the report that certain named persons against whom FIA had registered cases through registering FIRs were released on bail by the Courts but no steps whatever were taken by the FIA towards seeking their cancellation of bails.

Another report was filed on 25.06.2010 by the FIA showing some steps taken towards recovery of misappropriated amount; however it was pointed out to the Court that it is the **ultimate duty of the DG, FIA to ensure recovery**, therefore, the Court directed the then DG, FIA to take steps towards fair and successful completion of the investigation. (*emphasis provided*).

20. Noticeable information was given to the Court on 04.11.2010, by Mr. Fakhurddin G. Ibrahim, learned Sr. ASC appearing for the PSM, while stating that M/s Anjum Asim, Shahid & Company has been appointed to conduct Forensic Audit; a terminology of the Forensic Audit and its efficacy has been highlighted in the application including the definitions of the terms; it was on 04.11.2010 that Mr. Wasim Ahmed, the then DG, FIA was called upon to go through our order sheets and also read inquiry report No.95/2009 prepared by Mr. Khaliqz Zaman, Deputy Director, FIA/Crime Circle, Karachi **but Mr. Wasim Ahmed rather contested this report by giving an impression that the said report is incorrect, however it was admitted by the DG, FIA that the PSM had sustained losses of Rs.22 billions.** (emphasis provided).

This Court once again was not satisfied with the investigation as reflected in our order sheet dated 24.1.2011, because it was noticed that no professional skill was shown by the investigating agency towards collection of incriminating evidence involving the culprits.

On 23.02.2011, this Court was informed by Mr. Fakhruddin G. Ibrahim, learned Sr. ASC for PSM that the Management of PSM had issued notice to 176 persons/companies who had received/purchased products (billets) from the PSM without

making payment of the actual market price and that they have been asked to make the payment of difference in the rates. It was directed to the Secretary, Ministry of Industries that its department being concerned to the affairs of the PSM has shown no interest to ensure effective progress in the investigation rather it was their duty to do so. However, it was admitted by the Secretary, Ministry of Industries, that uptill February, 2011, the PSM had sustained losses of Rs.26+11=37 billions. When confronted with the huge amount of losses caused to the Government exchequer belonging to the PSM, the Secretary requested that some time be given to him so he may file his report in black and white.

On 09.03.2011, we were informed by Mr. Fakhruddin G. Ibrahim, learned Sr. ASC for the PSM that the task of Forensic Audit has commenced and the Auditors have requested for three months time to accomplish the job. The Court however, responded that they had already consumed sufficient time, therefore, the Management of the PSM shall press upon the firm to undertake the exercise of Forensic Audit and complete the same as early as possible.

We were also informed by Mr. Fakhruddin G. Ibrahim that the notices were issued to the dealers for making the payment of differential amount between market value and the price paid by

them and in this regard Rs.25 millions have been recovered. In the meantime, the Secretary, Ministry of Industries also submitted a comprehensive report pinpointing the dealers who have been benefitted by paying low prices of the products purchased by them from the PSM. We were also informed that because of taking effective steps towards the recovery and because of strict measures duly taken to cover up the losses of the PSM, there was remarkable reduction in the losses of the PSM i.e. if for the financial year 2008-2009, losses were Rs.25.5 millions, in the year 2009-2010, the same have been reduced to Rs.11 millions, while for the financial year 2010-2011, upto 31st December, 2010 they have been further reduced to Rs.5.7 millions.

Then it was on 13.04.2011, we were again informed by Mr. Fakhruddin G. Ibrakim, learned Sr. ASC that the Forensic Audit Report is almost complete and shall be received in the 1st week of June, 2011. He further informed that some of the dealers who were issued notices for depositing differential amount of price paid by them for the products, had deposited the amount, while few others contested the same. We were also informed that though the FIRs have been registered but many other dealers who were involved were let out and directions of the Court were sought to avoid discrimination. It was also noticed

that certain firms like M/s Abbas Steel Industries, if on one hand running their Private Limited Company, simultaneously was shareholder of the PSM; therefore, the directions were issued that let the FIA proceed against all of them without any discrimination but strictly in accordance with the law.

On 28.04.2011, it was informed by Mr. Azam Khan, Director (Law), FIA by stating that hectic efforts are in hand to furnish comprehensive audit report and Interpol Authorities have been approached to apprehend the culprits so that the looted amount of Rs.26 billions could be recovered. It was also pointed out that report from Ministry of Industries has also been given to the FIA which is being implemented in letter and spirit.

This Court also directed that the Ministry of Production shall explain as to why the comprehensive audit report so furnished was not acted upon and as to why no steps were taken in light of the said report.

21. Since by then the job of Forensic Audit Report for the year 2008-2009 was entrusted to M/s Avais Haider Liaqat Nauman (AHLN) and as per their calculation, cumulative losses of Rs.26.5 billions identified in the PSM as follows: -

Business Losses	:	Rs.4.68 billions.
Losses due to corrupt Practices	:	Rs.9.99 billions.
Losses due to mismanagement/ Negligence	:	Rs.11.84 billions.
Total	:	Rs.26.526 billions.

22. It was admitted by Mr. Gul Muhammad Rind, the Secretary, Ministry of Industries who was present in the Court on 13.03.2012 that they have received the above Forensic Audit Report some six months ago but no step so far has been taken by the Ministry concerned; he also informed that five enquiries were initiated by the FIA but no case is registered against any delinquent. We also inquired from the Secretary, Ministry of Industries as to why prompt action was not taken on receipt of Forensic Audit Report to which he responded that his Ministry is contemplating and deliberating to refer the matter to the NAB; this Court asked the Secretary to explain the reasons for not initiating action promptly.

23. Pursuant to our above directions to the Secretary Ministry of Industries, a report was filed by the Ministry regarding action taken by it on receipt of Forensic Audit Report. Paras 4,5,6 and 7 being relevant are reproduced herein below for convenience.

“4. That since investigations were carried out by the FIA under the instructions of this Honourable Court dated 09.03.2011 therefore, it was not advisable for the Ministry to refer the subject corruption case to the NAB authorities, without orders of this Hon’ble Court.

5. That during the last hearing of the lilted case on 13.03.2012, the Honourable Court observed that no effective measures were taken for recovery of losses and in such a pathetic situation about the affairs of Pakistan Steel Mills, the Ministry may itself take decision to refer the matter to the

NAB authorities regarding all cases which have been earlier registered by the FIA and regarding the inquiries, which are pending with the FIA.

6. That the matter regarding referring the above said cases to NAB authorities was discussed with the Minister for Production in light of the Supreme Court proceedings of dated 13-03-2012, MOP is of the opinion that although the Forensic Report has been provided to FIA for necessary action however, as advised by the Pakistan Steel's Board PSM management is in process of reviewing of the report in consultation with M/s. AHLN to make the same in accordance with the TORs of the contract assigned to the Audit firm. Moreover, as the investigation is with Director General FIA and Director FIA both are out of country therefore, after obtaining the present status of the inquiries conducted by them alongwith their comments/recommendations, the matter will be taken up accordingly. MOP feels that for expeditious finalization of inquiries, a senior Audit and Account Expert will be nominated to complete the inquiry.

7. The above facts show that no any delay occurs on the part of the Ministry of Production however, the Ministry requests the Hon'ble Court to instruct FIA for early finalization of the inquiry report.”

24. From perusal of different order-sheets, summary of which has been given in detail hereinabove, coupled with the final report filed by the Ministry of Industries in March, 2012, it has become clear to us that neither the FIA nor the Ministry of Industries have taken this matter seriously rather evasively and on no good pretext they intend not to refer the matter of Rs.26 billions mega scam to the NAB Authorities, which losses pertain to only **one year time** i.e. 2008-2009.

25. Likewise, in pursuance of notice issued by this Court, Sheikh Aftab Moeen Sheikh, who was Chairman of the PSM for the period from 2008-2009 filed his reply; perusal whereof indicates that efforts were made by him to justify/explain the alleged losses of Rs.26 billions; he in his reply stated that losses in the year 2008-2009 were due to severe economic recession in the World over because of serious turmoil occasioned in steel industry including the PSM and the sales fell from Rs.5.052 billion in July 2008 to Rs.1.131 billion in October, 2008; it was stated that surplus and cheap steel from the World market flooded in Pakistani market due to the recession, thus there was low demand of the PSM products, which caused piling up of huge inventory of finished goods and that economic suffering was further multiplied due to the fact that in 3rd quarter of the year 2008, price of steel products went down very sharply in the World steel market which fell by more than 68% from July, 2008 to November, 2008, rendering the PSM products uncompetitive in the domestic market. Stand was taken by Mr. Moin Aftab Sheikh that the prevailing domestic market had forced the PSM to reduce prices of its products round 35% in November, 2008.

It was further stated by him that during the period in question, procurement of basic raw materials from international market continued on higher pre-recession prices till end of

March, 2009 because the PSM has entered into long term contracts. Similarly, the PSM was to pay high freightment prices which continued till August, 2009 because of early contracts entered in May, 2005. Further explanation was tendered by him while stating that adverse affects of recession to the PSM started from August, 2008 which resulted into forced lower down of the sale prices, whereas contractual prices of raw materials remained higher which became reason of huge losses.

The situation was further highlighted by stating that decrease in revenue of the PSM was due to global economic recession, high prices of raw material (67% of total cost) resulting in higher cost of production, less utilization of capacity in production and personnel related costs (salaries of staff etc. were increased by 39%). It was also reasoned that Pak rupee as against US\$ was devalued i.e. 1\$ which can be bought in Rs.70/- went up to Rs.81/- per US\$ and there was increase in the prices of natural gas and power.

It was also responded by him that the PSM products went to the lowest ebb by November, 2008 and that the PSM products remained uncompetitive as compared to cheap and substandard imported identical steel products because surplus and substandard steel from international market flooded into local market of Pakistan with cheap price having inferior quality; and that

imported bulk of hot rolled materials were available in the market less than the listed prices of the PSM.

26. On technical side it was pointed out that out of eight main production units, Coke Oven & By-Products Plant and Blast Furnaces were required to be in continuous production around the year as the batteries placed therein must remained hot and once the batteries becomes cool down, total refractory bricks were to be dismantled and re-built again; which is also one of the reasons which occurred because of shutting down of the PSM.

27. For reducing the prices of the products of the PSM, it was stated that the same is managed and operated through a Committee which comprises top management officials of the PSM i.e. Chairman, Director Finance, Director Commercial and G.M. Marketing. This Committee considers the price trend of the steel products in the international market, which internationally has fallen by more than 68% from July, 2008 to November, 2008, due to international recession which yielded serious negative impact on the sale of the PSM products. It was in these circumstances to save the PSM from shutting down and to improve its liquidity position, various measures were taken by the PSM including drastic reduction in price etc. but its products did not pickup.

28. While responding to the allegations of corruption, it was stated that since the FIA is undertaking the investigation the responsibility of individual shall be determined which is dependent on the result of the investigation.

29. It appears that even the PSM management was trying to justify the alleged losses occurred during the financial year 2008-2009; its background is given in C.M.A. No.4481 of 2009 filed by Mr. M. M. Usmani, Chairman, PSM on 15.10.2009 explaining the position by stating that FIA has started investigation referred to it by the Government and that on receipt of report of investigation, disciplinary action will be initiated against the concerned employees. In fact this CMA is para-wise reply of the allegation as contained in the Article published in the Daily Dawn on 11.09.2009, written by Ms. Ayesha Siddiq. It was admitted that as per the provisional accounts of the PSM for the year 2008-2009, the estimated losses incurred were Rs.22.143 billions and that in fact Auditor General has reported the losses of revenue of Rs.9.672 billions only due to fixation of sale price of products below the market price. The reason for loss shown in the year 2008-2009 was explained to be receipt of lesser sales revenue as per budget estimate; one of the reasons was stated to be lower capacity utilization @ 65% as against 75% as envisaged in the budget estimates; due to lower capacity utilization (65%)

for production of raw steel, the production cost increased by Rs.1.2 billions; the personnel related costs as increased by 39% due to CBA agreement and enhancement of salaries etc.; piling up of huge Inventory of finished goods.

It was also explained that due to international steel market slump, situation became unstable which badly affect the sales volume and profitability of the PSM.

Another reason was stated to be that a bailout package amounting to Rs.10 billions for the PSM was approved by the Ministry of Finance but no release of the funds was materialized due to different requirement of the National Bank and hence, the advantage was not achieved. It was stated that import of secondary steel in the garb of primary is always damaging the sales of the PSM as the same was available in the market on lesser prices.

While responding to the charges/allegations, it was pointed out that during July, 2008 to February, 2009, scrape to the tune of 0.727 million tons was imported into Pakistan which was converted into ingots/billets, which competed with the PSM billets because the same was cheaper, therefore, due to wide difference between landed cost of the PSM billets and the local cost of billets, which resulted into taking out PSM products out of competition. Similarly, old ships were available at cheaper rate

for breaking demolition from which 0.75 million tons of steel plates/scraps were available in market at 30% less than PSM billets.

30. Overall impression one gets from the detailed para-wise comments filed by the then Chairman PSM i.e. Mr. M.M. Usmany, it appears that on the factual and technical side it was supporting the stance taken by Mr. Moin Aftab Sheikh, who was Chairman PSM from 26.05.2008 till 18.08.2009. In fact both are toeing the line of each other, rather supporting each other.

31. With reference to subject scam in the PSM, the FIA crime Circle Karachi also conducted inquiry in respect of different issues and submitted detailed report on 21.11.2009 before this Court qua the investigation and registration of cases by the FIA.

In Inquiry regarding award of canteen contract of the PSM, the FIA detected that the alleged staff of the PSM in connivance with the union/CBA and canteen contractor deviated from the normal procedure and approved three contracts, mechanically with *mala fide* intentions and ulterior motives by enhancing number of employees as well as rates exorbitantly, which resulted in causing huge loss to the Government exchequer; therefore, the Inquiry Officer recommended that three separate cases be registered against the three different firms and the alleged

officers of the PSM, who scrapped the first tenders fixed for opening/bidding, reapproved three contracts, mechanically without applying their minds with ulterior motives and in connivance of each other.

On the subject of scam of reduction of prices of finished good of the PSM and its allocation to favourites, the FIA team found that the prices of the PSM products were reduced in comparison to international market but when international market was at higher side the prices were not increased and in this way heavy financial loss was suffered by the PSM because of illegal and irrational decisions of Mr. Moin Aftab Sheikh, the then Chairman, PSM and others to give wrongful benefits to M/s Abbas Steel Group. It has been further observed that as per sales policy the management of the PSM was bound to give priority to consumers over traders/dealers to avoid commission/rebate but Mr. Moin Aftab Sheikh, the then Chairman and others favoured some traders especially M/s Abbas Steel Group and gave them maximum allocations, which also caused heavy losses to the PSM. It has been further observed that due to difference of prices of billet of the PSM with that of international market, the PSM suffered net loss of Rs.3,655,105,437/- in sale of billets and in this connection maximum benefit in selling of billets was availed by one group

i.e. M/s Abbas Steel Group which earned premium amounting to millions of rupees wrongfully.

It is also noticed by the Inquiry Officer that M/s Abbas Steel Group holds dual dealership i.e. trader dealership & consumer dealership which is in violation of established selling rules and regulations of the PSM.

It is further discovered by the FIA that Mr. Moin Aftab Sheikh before assuming the Charge of Chairman, PSM was paid employee of M/s Abbas Steel Group and used to visit the PSM as Director-M/s Abbas Steel Private Ltd. Since January, 2009 to August, 2009, more than two times, the Price Fixation Committee met and decided to increase the prices as high premium was prevailing in market but neither the prices were increased nor the minutes were prepared on the direction of Mr. Moin Aftab Sheikh, which resulted in heavy financial losses to the PSM.

Regarding procurement of 40,000 MT of metallurgical Coke through MV AFOVOS, the Inquiry Officer discovered that Mr. Moin Aftab Sheikh, the then Chairman PSM and Mr. Sameen Asghar, Director Commercial of the PSM with common objective and criminal intention in collusion with one Capt. Rashid Abro manipulated a surprise shipment of 40,000 MT of Met Coke without its formal approval or opening of LC and thus foisted it upon the management compelling it to accept

it despite the fact that international market registered a down slide in the prices of the material and freightment, allowed the payment on the already contractual price.

In respect of procurement of Coal at highly inflated price, it is exposed by the Inquiry Officer that during the period from May, 2008 to August, 2009, Mr. Moin Aftab Sheikh, Mr. Sameen Asghar in collusion with Capt. Rashid Abro deliberately and willfully imported Coal from Australia at highly exorbitant prices against the prevailing low prices in the market due to international recession and for personal wrongful gain they avoided to make any effort to bring down the prices of Coal and freightment, which resulted in huge losses to the PSM.

Qua procurement of 50,000 MT of Coal without tender through ship MV ANNOULA, it is observed by the Inquiry Officer that Mr. Moin Aftab Sheikh and Mr. Sameen Asgher with common objective and with criminal intent fraudulantly manipulated the import of 50,000 MT of coal on extremely exorbitant price and on payment of exorbitant freight charges without any justification or plausible explanation, thereby causing colossal loss to the PSM.

It is further observed by the Inquiry Officer that the above said officials abused their official position in attaining their

nefarious task by influencing their subordinate officers by compelling them to comply with their illegal orders under duress.

32. In pursuance of above investigation the FIA Sindh, Karachi registered ten cases against the management of the PSM and private persons/beneficiaries for causing loss of Rs.26 billions to the PSM. Out of these ten cases, the first three cases pertain to malicious import of raw material (coal and coke), involving loss of Rs.4.5 billions approximately in which the foreign companies are involved; six cases are in respect of corruption in sale of billets and other finished products to various dealers/consumers on the prices lower than the prevailing market rates causing loss of Rs.4 billions approximately; one case is about malicious award of canteen contract to favorites.

Case FIR No.36 of 2009 relates to loss of Rs.49 Crore to the PSM, accusing Mr. Moin Aftab Shaikh being Ex-Chairman, Mr. Sameen Asghar, Ex-Director Commercial and Capt. Rashid Abro a representative of M/s Noble Resources Singapore, alleging that they fraudulently manipulated a spot purchase of 50,000 MT of coal from Port Gladstone, Australia on highly inflated price and on extremely higher freight rates despite declining market rate. In this case interim charge-sheet is submitted in the Court followed by supplementary charge-sheet and the properties of the accused persons have also been seized

during investigation by the FIA; trial has commenced and is likely to be concluded within two months.

Case FIR No.37 of 2009, registered against the above named accused, relates to fraudulently manipulation by the accused named above in acceptance of 40,000 MT of Metallurgical Coke, arrived from China through MV Alpha Afovos, without opening of LC or obtaining necessary permission by the PSM on highly inflated price and on extremely higher freight rates resulting in loss of Rs.1 billions to the PSM. In this case as well charge-sheet has been submitted and trial has commenced.

In case FIR No.38 of 2009, again the above named persons have been accused for fraudulently manipulating the ten shipments of coal arrived from Ports Gladstone and New Castle of Australia and Robert Bank Canada respectively, on highly inflated price and extremely higher freight rates, causing loss of billions of rupees to the PSM. In this case charge sheet has been submitted and trial is under progress.

Case FIR No.1 of 2010 is in respect of award of Canteen contract wherein it is alleged that Mr. Moin Aftab Sheikh, Ex-Chairman, PSM in connivance with other accused persons fraudulently scrapped the already floated tender estimating Rs.4,62,49,827/- with an increase of 30% and award of contract

by manipulation at exorbitant cost of Rs.12,72,91,007/-, causing colossal loss to the PSM to the tune of Rs.81,041,180/- to the PSM. In this case besides Mr. Moin Aftab Sheikh, Ex-Chairman, ten other persons are accused; namely Brig. (R) Abdul Qayyum, PEO (A&P) PSM; Muhammad Atique Khan, DGM Incharge (IR) PSM; Imtiaz ul Haq, DGM, PSM; Muhammad Farooq, Manager IR Department, PSM; Muhammad Aslam, Canteen Contractor of M/s Feed Well; Ali Haider, Canteen Contractor of M/s Cosmos Enterprises; Asghar, DM (ECD) PSM; Najmuddin Suho, Chairman Food Committee, PBU/CBA, PSM; Syed Zahid Ali Hashmi, Canteen Contractor of M/s Casa Caterers and Wazir Ali. In this case as well charge has been framed against all the accused persons and the trial has commenced. However, some of the accused are in judicial custody, whereas some are on interim pre-arrest bail.

Case FIR No.39 of 2009 is regarding loss of Rs.3.65 billions, occurred due to corruption in sale of billets of the PSM to 220 consumers/dealers due to non-increase of price according to international market. In this case four companies of M/s Abbas Steel Group are also one of the traders/consumers dealers, who lifted 49,000 MT billets in 2008-09 which comes to 19% of the total sale of billets on the prices fixed by the PSM; as per audit report the sale price of the billets was much lower from the

market-value. Charge sheet in this case is submitted in the Court against the Management of the PSM and concerned Directors of four companies of M/s Abbas Steel Group besides seizure of industrial land measuring 224 acres belonging to M/s Abbas Steel Karachi and residential houses of two of the Directors of the said group.

FIR No.9 of 2010 has been registered for extending illegal benefit of 90 days Free Credit Scheme without mark up to M/s Amrelli Steel Ltd. Karachi by extending the scheme *mala fide*ly; in this way M/s Amrelli Steel Ltd. Karachi lifted 10,000 MT of cast billet amounting to Rs.339 million resulting in causing loss to the PSM. The accused persons involved in this case are Sameen Asgher, Ex-Director Commercial, PSM; Abbas Akbar Ali, CEO of M/s Amrelli Steel Ltd.; Tariq Irshad, Proprietor of M/s Export International; Mehmood, Proprietor of M/s Dunhill Corporation and Ch. M. Shafiq, Proprietor of M/s Choudhry Steel Re-Rolling Mills, Lahore. In this case as well Charge Sheet has been submitted and trial is in progress.

Case FIR No.13 of 2009 is registered regarding violation of the PSM Sales Rules against Muhammad Sohail Proprietor of M/s Remya Traders, Karachi and Muhammad Javed Ghani, Proprietor of M/s Javed Trading Corporation, Quetta on the allegation that they both used to obtain the PSM products in the

name of M/s Javed Trading Corporation, Quetta being a consumer dealer but the material was never transported to factory premises yet sold in local market on premium/own. It is alleged against both these accused persons that they opened the bogus accounts in M/s Habib Metropolitan Bank, Karachi for running their illegal business and used to transfer the funds for purchase of the PSM products to sell them in local market which resulted in causing loss to the PSM. In this case charge sheet against the accused persons has been submitted; however, reportedly they both are on bail.

Case FIR No.15 of 2009 is registered on the same subject as noted in above para against accused persons namely Ghafoor Pathan, Deputy Manager/Incharge Customer Service Marketing, PSM; Mohammad Sabir owner of M/s Gujrat Steel Private Ltd. and Muhammad Imran representative of the said firm. It is alleged that they in collusion with each other, knowingly and fraudulently lifted the flat products on the name of their four companies i.e. M/s Gujrat Steel Ltd., Karachi, M/s Bombay Wala Steel, Karachi, M/s AWB Corporation, Karachi and M/s Alfalah Steel Corporation, Karachi; against Mr. Abdul Ghafoor Pathan it is alleged that he being Deputy Manger, PSM/In-charge, Customer Services Marketing Department, PSM from July 2009 to December 2009 misused his official authority and willfully

allowed lifting of the aforesaid products and granted illegal benefit in allocation to the above mentioned accused persons and violated the rules and regulations of the PSM, and willfully ignored/skipped the directions of the PSM i.e. *“no customer shall hold consumer and trader dealership (s) at the same time”*. In this case interim charge sheet was submitted in the Court, which is treated as final and the case is under trial stage.

Case FIR No.17 of 2009 is against 13 persons including the traders and officials of the PSM for causing wrongful loss to the Government exchequer and for wrongful gain to the tune of million of rupees regarding sale/purchase of various finished products i.e. Billets and HR. The names of the accused are Moin Aftab Sheikh, Ex-Chairman, PSM; Sameen Asgher, Ex-Director Commercial, PSM; Rasool Bux Phulpoto, MD, PSM; Zulfiqar Ali of M/s Aramis International Trading; Abrar Ali of M/s Iftikhar and Co.; Shahid Hussain of M/s Hussain Enterprises; Qutab Khan of M/s Mehran Traders; Muhammad Farooq Ali of M/s Zaman Traders; Ahmed Hussain Jivani of M/s Ahmed Hussain Jeevani; Waqar Ali of M/s Karrfour Enterprises; Muhammad Adil Usman of M/s Adeel Traders; Faisal Hafeez of M/s Mughal Traders and Muhammad Rafique of M/s Al Rehman Steel Traders. It is alleged that the PSM officials named above in collusion with the traders mentioned above fraudulently and

dishonestly with ulterior motive sold the Billets and HR to these consumers dealers on reduced prices as compared to that of international market. It is to be noted that reportedly some of the accused in this case are absconding; some are on bail whereas the Ex-Chairman, PSM is in the judicial custody.

Case FIR No.18 of 2009 is registered against twenty seven accused persons on the allegation that the consumer/dealers accused in this case in collusion with top management of the PSM including Moin Aftab Sheikh, Ex-Chairman, PSM and others fraudulently and dishonestly with ulterior motives caused wrongful loss to the PSM and wrongful gain to the companies accused in the FIR regarding sale/purchase of various finished products including long and flat products of the PSM on reduced prices as compared to that of international prices. The accused in this FIR are Moin Aftab Sheikh, Ex-Chairman, PSM; Sameen Asgher, Ex-Director Commercial, PSM; Rasool Bux Phulpoto, MD, PSM; Dewan Abu Obaida Farooqi of M/s Dewaan Steel Mills; Dewan Muhammad Rehan Farooqi of M/s Dewaan Steel Mills; Zubair Qayyum But of M/s BBJ Pipe Industries Pvt. Ltd., Lahore; Muhammad Hashim of M/s Bashir Pipe Industries Ltd., Lahore; Amir Iqbal of M/s AN Industries Pvt. Ltd., Lahore; Farooq Ahmed of M/s Jamal Pipe Industries Pvt. Ltd., Lahore; Ch. Jamal Abdul Nasir of M/s Win Pipe Industries, Islamabad;

Iftikhar Ali of M/s Hattar Solid Steel Corporation Pvt., Karachi;
Faiz Muhammad Brohi of M/s Indus Steel Pipe Ltd., Karachi;
Munir Ahmed Dogar of M/s Indus Steel Pipe Ltd., Karachi; Brig
(R) Hashmat Ali Shah Bukhari of M/s Indus Steel Pipe Ltd.,
Karachi; Shahnawaz Ishtiaq of M/s Nawab Brothers Steel Mill
Pvt. Ltd., Karachi; Ch. Waheed ud Din of M/s Victory Pipe
Industries Pvt. Ltd., Islamabad; Mehmood Ali Mehkri of M/s
Metropolitan Steel Corporation, Karachi; Syed Asgher Jamal
Rizvi of M/s Metropolitan Steel Corporation, Karachi; Badruddin
Akbar Ali of M/s Amrelli Steel Ltd., Karachi; Muhammad Zafar
Ali Khan of M/s Sarhad Re-Rolling Mills Pvt. Ltd., Karachi;
Sarfraz Hussain of M/s AS Steel Re-Rolling Mills, Karachi;
Aamir Malik of M/s Madina Steel Industries Re-Rolling Mills,
Lahore; Asif Bhagani of M/s Faizan Steel, Karachi; Asif Sohail
of M/s AF Steel Re-Rolling Mills, Lahore; Mian Muhammad
Yasin Suleman of M/s Hajvery Traders, Lahore; Zubair Shoukat
of M/s Ramzan Tube Mill, Lahore and Jamil Akhtar of M/s
Millat Pipe Industries, Gujranwala. In this case as well some of
the accused are absconder; some are on pre-arrest bail, whereas
Ex-Chairman, PSM is in the judicial custody and the trial is under
progress.

33. The above gist of the FIRs is given just to have a
glance at the progress so made by the FIA in the matter.

34. Due to heavy losses suffered by the PSM in the year 2008-09, the Management of the PSM appointed M/s AHLN (Avais Haider Liaquat Nauman) Chartered Accountants to conduct Forensic Audit of the PSM to determine the cause or causes of such huge losses. They were also given the mandate to establish responsibility for the loss incurred and provide evidence to the management of the PSM of any wrong doing.

The firm M/s AHLN carved out the following task while conducting the Forensic Audit of the PSM:-

- i) To find out and tabulate the break-up of losses and the reasons behind them.
- ii) To investigate and segregate the losses incurred due to negligence, mismanagement and corruption.
- iii) To find out the people and agencies responsible for the losses and report their name along with complete details of loss caused to PSM as a result of their involvement required.
- iv) To provide the management with the evidence required for taking any subsequent disciplinary or criminal proceedings.
- v) Recovery of losses from whosoever is/are responsible for the losses by tracing their assets in the Court of Law.
- vi) To suggest corrective measures to facilitate transparency and avoidance of any such losses in future.

35. A careful perusal of the Forensic Audit Report on the PSM reveals that the Auditors took into account the sales,

procurement of bulk raw material, purchases, production, etc. while compiling their report.

While examining Sales of the PSM it was opined by the Auditors that prices of the PSM products had not been increased during the year 2008-2009 specifically from November, 2008 onward despite increase of the local/ international prices; the then Chairman of the PSM, who was Convener of the Price Fixation Committee did not take steps as required by Terms of Reference (TOR); the then Director Commercial (Mr. Samin Asghar) also did not act as required by the TOR.

Qua allocation of products, the Auditors observed that the PSM suffered huge losses due to manipulating the process of allocation of its products to some specific customers; these deviations in the process of allocation of products have been noted specifically from November, 2008 to April, 2009 when the management of the PSM decreased the prices of its products by 30-35%; it was opined that Administrative Head of Marketing Department i.e. the Chairman PSM acted in collusion with specific customer and had deliberately manipulated the process of allocation of material to get the maximum benefit of reduced prices.

The then Director Commercial/Acting Chairman PSM approved the extension of free credit scheme on 02.12.2008

without prior approval of the Price Fixation Committee and in this way M/s Amreli Steel and three other customers enjoyed facilities of Free Credit Scheme (FCS), which resulted in loss of Rs.13,622,074/- to the PSM.

The report further reveals that priority was given to traders/dealers as compared to consumers by allocating the material to specific customers during the said period; non-implementation of the SOPs of Marketing Department resulted in losses caused to the PSM. The Board of Directors issued instructions for constitution of High Power Committee to negotiate with the suppliers, shipping companies but the then Chairman never constituted such committee in total disregard of the instructions of the Board of Directors. The Iron Ore Lump was approved to be procured at a very high price by the Chairman against the best interest of the PSM.

While discussing the purchase by the management of the PSM, the Auditors opined that the Incharge Purchase Department failed to get approvals from all the concerned departments and from the Chairman and to place the purchase order within the validity period of the offer. According to the Audit Report, the purchase proposals so forwarded by the purchase department to the Chairman for approval were rejected making the freight cost as the base of rejection, however, the tender was awarded to the

supplier quoting the higher freight rate than quoted previous year. It was observed by the Auditors that the then Chairman acted negligently and in complete disregard to the financial implications of decision to continue the production of Cast Billets, even when the losses were being incurred on such production; he even did not take any step to reduce production level to the minimum.

During the course of audit, it was observed by the Auditors that some transactions qua sales were carried out in total contravention of normal business practice; these anomalies were observed in all of the sales made during the period from November, 2008 to April, 2009 in all of the PSM products i.e. Billets, Hot Rolled Product, Cold Rolled Product and Galvanized Product; it was observed that one or more characteristics in the contracts of some customers are common like signature of buyer on the contracts of different customers is of the same person; likewise contracts of similar quantities and similar products are entered into by different dealers with same handwritings; similarly, business addresses were same or very close to each other; it was observed by the Auditors that these dealerships belong to one person or closely related group.

36. In order to examine the above mentioned Audit Report, the Board of Directors of PSM in their meeting held on

30.07.2011, constituted a seven members designated Committee which examined and reviewed the report and gave its findings as under:-

- a.** The Committee opined that M/s AHLN while elaborating their assignment methodology in their technical proposals, has mentioned that the assigned is being taken up jointly in association with their UK counterpart i.e. RSM Tenon; but the Committee in this regard has not observed any reflection of the contribution made by RSM Tenon; the Committee, therefore, insisted that the contribution of RSM Tenon should be clearly reflected in the report and the endorsement of the same as required earlier should also be made part of the Report.
- b.** The Committee concluded that the work as per the given TOR is incomplete with respect to clause 2(e) which, if acknowledged, will reduce the scope of assignment of M/s AHLN and the basic objective of this exercise i.e. recovery of the lost money will not be achieved.
- c.** The Committee also opined that the business loss, as indicated in the preliminary report has not been catered for, as it comprises of those elements of expenditures and provisions which are independent of any operational level of activity; the Committee was of the view that PSM must have suffered a substantial loss on account of difficult market condition, global recession and devaluation of Pak Rupee against US\$ which was factors were not accounted for by M/s AHLN in the breakup of 26.5 billion losses.
- d.** The Committee observed that the double counting adjustments as identified in special notes to observations 7.4.1 to 7.4.3 are also not available in the Report.
- e.** The Committee observed that clause 2(c) of TOR which speaks that the Forensic Consultants are required to pinpoint those who were responsible for the losses from within the PSM and any beneficiary outside the PSM is not complied with.
- f.** The Committee further observed that the conclusions drawn by M/s AHLN for many of their observations were made on some serious matters without the conciliation the management's point of view on logical/technical ground.
- g.** While the quoting the definition of "Corruption" in legal terms the Committee observed losses attributed towards the corruption have not been passed to the individual dealers, suppliers or other beneficiaries to the extent of benefit drawn by such individuals/groups/parties; therefore, no one can be charged for the same and such vague allegations without substantial evidences/specific charges, may result into a total confusion in transferring the responsibility on individuals/groups/parties for recoveries.

37. In view of above findings, the Committee concluded that the M/s AHLN has not completed the assignment in true spirit of Forensic Accountancy as generally accepted.

38. We do realize that this case of mega scam was entrusted to the FIA by this Court for investigation and we have been receiving reports from the FIA from time to time but we have been invariably showing our displeasure and express our dissatisfaction both as to the manner and pace of the investigation conducted by the FIA; although the FIA has also filed Audit Reports but ultimately the auditing of the PSM was entrusted to M/s AHLN (Avais Haider Liaquat Nauman) Chartered Accountants, who though did not conclude their work within time but in reasonable time had conducted Forensic Audit of the PSM for the year 2008-2009.

39. It is generally not advisable that pending investigation, the charge of the same be taken over and entrusted to another agency but in the given circumstances and for the reasons, which shall be detailed hereinafter, we are constrained to hold that the no meaningful results are likely to be achieved towards the investigation so far conducted by the FIA, in particular qua the recovery of misappropriated money, which is not within the power and jurisdiction of the FIA authorities but under the law, the NAB Authorities can recover the said

misappropriated money besides criminally prosecuting the persons either mentioned in the reports of the FIA so far filed or to whom the NAB Authorities subsequently will find so involved in the scam in the PSM for the year 2008-2009.

40. The reasons for transferring the investigation from FIA to the NAB Authorities are formulated as under:-

- i) The FIA had been filing either preliminary or incomplete reports and had never filed any satisfactory final report;
- ii) We do not find any serious effort on the part of the FIA towards prosecution of the cases registered through the FIRs mentioned above;
- iii) Despite observations made by this Court and although from the FIA, it appears that they were not happy because of bail-before-arrest or bail-after-arrest, granted to nominated accused but no appeal for cancellation of bail has been filed against the accused involved in the whole scam of misappropriation of money;
- iv) There are number of accused who have been shown absconder but no purposeful steps are taken by the FIA to procure their arrest except obtaining only their warrants of arrest;
- v) It has been admitted at the bar by the Director Legal, FIA and other officials that so far as recovery of misappropriated amount is concerned, it cannot be successfully effected by the FIA authorities, whereas they themselves in their reports have not only pinpointed the names of those persons, who were responsible for the said misappropriation of money but in some matter, they have specified the mount misappropriated by the individuals;
- vi) During the course of investigation, the DG

FIA including Mr. Tariq Khosa, from whom there were good expectations, was transferred and even later on by some of the DGs, we have noticed no-cooperation towards the investigation of the case or at times evasive replies;

- vii) At the first stage of proceedings, the then DG Mr. Waseem Ahmed openly in Court disagreed with the reports of his own subordinates, who were conducting the investigations;
- viii) The entire investigation appears to be casual and not final result oriented;
- ix) We do not find any conclusive report prepared by the FIA.

41. Above are the few reasons, which persuade us to conclude that the investigation of the case be transferred and entrusted to the NAB Authorities.

42. We may add here that the incumbent Chairman NAB has been making public statements of his uprightness and integrity. The Chairman NAB under the National Accountability Ordinance, 1999 is head of the investigation agency. The very title of the 'national accountability' suggest that the nation expect from the Chairman and all those who are working under the NAB Ordinance that no person who has *prima facie* committed the offence of corruption and misappropriated the public money to which every citizen of Pakistan has got a right and claim that the ownership of the State treasury belong to them, would be taken to task.

43. We may here highlight the purpose of the promulgation of the NAB Ordinance, 1999; its very preamble deals with the subject matter of the instant case; same is reproduced herein below for the sake of convenience:-

“WHEREAS it is expedient and necessary to provide for effective measures for the detection, investigation, prosecution and speedy disposal of cases involving corruption, corrupt practices, misuse or abuse of power or authority, misappropriation of property, taking of kickbacks, commissions and for matters connected and ancillary or incidental thereto;

AND WHEREAS there is an emergent need for the recovery of outstanding amounts from those persons who have committed default in the repayment of amounts to Banks, Financial Institutions, Governmental agencies and other agencies;

AND WHEREAS there is a grave and urgent need for the recovery of state money and other assets from those persons who have misappropriated or removed such money or assets through corruption, corrupt practices and misuse of power or authority;

.....
.....
.....

AND WHEREAS it is necessary that a National Accountability Bureau be set up so as to achieve the above aims;” (emphasis provided)

44. It is categorically stated by the FIA in para-8 of Civil Misc. Application No. 417 of 2011 that the commercial audit, carried out by the FIA was discussed with the Management of the PSM but the Management did not agree with the same rather contested the same. It was pursuant to such disagreement of the Management of the PSM that the FIA and the Chairman PSM agreed thereby to appoint the forensic audit which was carried out by M/s AHLN (Avais Haider Liaquat Nauman) Chartered Accountants. The Management of the PSM was so adamant not

to accept its liability by showing account clearance certificate of its dealers and nominated accused firms, stating therein that no outstanding amount was recovered from them and it was on such basis that the nominated accused persons succeeded in getting relief of bail from the different Courts including from the High Court of Sindh.

45. During the course of investigation by the FIA to find out as to who and how huge losses of over 26 billions rupees was caused to the PSM, Bank accounts and details of M/s Abbas Steel Group and its linkage with Mr. Riaz Lallji, the transaction of lifting of billets below the market price was also obtained and also to ascertain whether Mr. Riaz Lallji hold any position of Director, shareholder or Chief Execution in M/s Abbas Steel Group but the FIA failed to establish any linkage between the losses caused to the PSM and the involvement or interest of Mr. Riaz Lallji.

46. Similarly, as one Mst. Sabin Sakina, who was reportedly in United Kingdom was served with a questionnaire by the FIA regarding her contentions in respect of alleged transaction of the PSM with M/s Abbas Steel Group but till to date no progress could be made.

47. It appears from Civil Misc. Application No. 1576 of 2012 that Mr. Riaz Lallji and Mrs. Nazneen Lallji, who were the

Directors of M/s Abbas Steel Group and were in the Management in September, 1996 had apparently resigned from the Directorship in the year 2004-2005. At the time of investigation M/s Sabina Sakina, Khalid Khan and Malid Bashir Ahmed were the Directors for last about three years; strangely enough, the two later named persons were made accused in case FIR No. 39 of 2009 but connection or otherwise of Ms/ Sabina Sakina does not surface from the report of the FIA.

48. We may reiterate here that the investigation by the FIA so far has failed to pinpoint the real beneficiaries under the garb of M/s Abbas Steel Group.

49. The purpose of present proceedings is not to punish someone but to secure the recovery of looted money, which has been plundered by the persons *prima facie* connected with the commission of the offence and if there cases are sent up for trial before the Court of competent jurisdiction, they shall be held responsible but strictly in accordance with law.

50. The reasons which persuade us to decide that the investigation be taken over from the hands of the FIA and entrusted to the NAB are reflected in our order sheets, wherein we have noted at different times that whenever a DG FIA could make a headway and was about to lay hands on the culprits, he used to be posted out on unknown pretext and when Mr. Wasim

Ahmed, DG FIA took over the charge, he in open Court had disagreed with the investigation of his subordinates. We also felt that attempts to divert the fair and honest investigation were also made by the Ministry of Interior by appointing Joint Investigation Team in spite of the fact that the matter was *sub judice* before this Court and the FIA was carrying out the investigation under the directions of this Court.

51. Even otherwise, as compare to investigation under the FIA, the investigation that would be carried out by the NAB would be more purposeful and effective; in this regard we may refer to Section 12 of the NAB Ordinance, where under the Chairman NAB or the Court, trying the accused for any offence under the NAB Ordinance can order freezing of his property or part thereof, whether in his possession or in possession of his relative, associate or person on his behalf; similarly Section 25 of the NAB Ordinance provides for voluntary return and plea bargain; through such process at least the State money, which belongs to the people of Pakistan can be recovered/retrieved, leaving apart the criminal prosecution of the persons involved by the Trial Court, if reference is sent before it.

52. We have also noticed from so far submitted reports of the FIA that many of the nominated accused are still absconding and their arrest in the near future is not expected but the NAB can

press into service Section 31-A of the NAB Ordinance against the accused persons, who are either absconding or purposely avoiding being served with the process issued against them either by the Court or by other authority like investigating agency because under the NAB Ordinance, such conduct itself is an offence which is punishable with imprisonment, which may extend to two years.

53. Keeping in view all above facts and circumstances, i.e. undisputedly there is huge loss caused to the PSM in the year 2008-2009, coupled with the fact that in more than one audit reports the reasons have been highlighted for such losses which include that major portion of losses is due to misappropriation of money and at times due to negligence and mismanagement, we feel that to secure the interest of public at large, the propriety demands that the investigation so far conducted by the FIA, which appears to us unsatisfactory, shall now be taken over by the NAB authorities. Therefore, we direct the DG FIA to handover all the record so far prepared/collected by the FIA in this mega scam of the PSM to the Chairman NAB. Consequently, the Chairman NAB is directed to :-

- i) supervise/appoint a team of honest and upright officers under his administration to further probe in the mega scam of losses of more than

26 billions rupees to the PSM, which pertains only to one financial year i.e. 2008-2009;

- ii)** determine the accusation against the individuals responsible for such losses and misappropriation including negligence; since the sufficient material including the Forensic Audit Report will be before him, his team shall feel facilitated for further probing in the matter in its own manner;
- iii)** ensure that immediate and stringent steps are taken for the recovery of looted money from the persons who are responsible for it;
- iv)** also ensure completion of investigation/enquiry within the shortest possible time;
- v)** further ensure the arrest of the accused who have been declared absconder or who may be found involved in the case;
- vi)** that if in his opinion the bail obtained by some of the nominated accused is not justified, he shall direct his prosecution agency to seek cancellation of the same by filing application before the Court of competent jurisdiction;
- vii)** make it sure that after and on completion of enquiry/investigation, references are filed against the persons found involved in the crime;

The above exercise shall be completed by the Chairman NAB within a period of three months and fortnightly report about progress of the investigation/enquiry shall be filed before the Registrar of this Court for our perusal in Chambers and for passing appropriate orders, as may be deemed necessary in the circumstances.

54. Simultaneously, we direct our office to transmit a copy of entire record of the case, compiled during the course of hearing, along with order sheets to the Chairman NAB for his information/ guidance.

55. So far as contempt proceedings initiated against Mr. A. Rehman Malik, Interior Minister vide order dated 17.12.2009 are concerned, reference of which has been made in para-19 above, the same be registered independently and notices be issued for a date after two weeks.

All the titled cases are disposed of in above terms along with ancillary Misc. Applications.

Islamabad,
Announced in Court

On 16th day of May, 2012.

APPROVED FOR REPORTING.