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ORDINANCE NO. VII OF 2023

AN

ORDINANCE

further to amend the Privatisation Commission Ordinance, 2000

WHEREAS, it is expedient further to amend the Privatisation Commission Ordinance, 2000 (LII of 2000), in the manner and for the purposes hereinafter appearing;

AND WHEREAS, the Senate and the National Assembly are not in session and the President of the Islamic Republic of Pakistan is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 89 of the Constitution the Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make the following Ordinance:-

It is hereby enacted as follows:

1. **Short title and commencement.**—(1) This Ordinance shall be called the Privatization Commission (Amendment) Ordinance, 2023.

(2) This Ordinance shall come into force at once.

2. **Substitution of section 28, Ordinance LII of 2000.**— In the Privatization Commission Ordinance, 2000 (LII of 2000), hereinafter referred to as the said Ordinance, for section 28, the following shall be substituted, namely:-

“28. Privatization Appellate Tribunal.—(1) Notwithstanding anything contained in any other law for the time being in force, no court other than the Privatisation Appellate Tribunal constituted under this Ordinance, hereinafter called as the Appellate Tribunal, shall exercise jurisdiction under this Ordinance.

(2) The Appellate Tribunal shall, for the purposes of hearing and deciding civil and criminal matters under this Ordinance, have the same powers as are vested in a civil court or, as the case may be, criminal court trying a suit or case under the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) in respect of—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents and material objects;
- (c) receiving evidence on affidavits; and
- (d) issuing commissions for examination of witnesses and documents.

(3) The Federal Government shall, by notification in the official Gazette, constitute the Appellate Tribunal consisting of a chairperson, one technical member and one judicial member to be appointed by it.

(4) A retired Judge of the Supreme Court shall be appointed as Chairperson of the Tribunal who shall be entitled to the salary, perks and privileges as were last drawn by him as such Judge.

(5) The technical and judicial members shall be entitled to the salary, perk and privileges as are admissible to a person appointed in MP-I scale of the Federal Government.

(6) The chairperson and members shall hold office for a period of three years extendable for another term, based on performance, on similar terms and conditions and shall cease to hold office on attaining the age of seventy years or on the expiry of the term unless renewed, whichever is earlier.

(7) No person shall be appointed as a technical member, or remain as such member, of the Appellate Tribunal unless he—

- (a) is a citizen of Pakistan;
- (b) is not of the age exceeding sixty-five years on the date of his appointment;
- (c) has not been by a competent court of law declared as undischarged insolvent;
- (d) has not filed a petition before a competent court of law to declare him insolvent and such petition is not pending adjudication;
- (e) has not been by a competent court of law declared of unsound mind or insane;
- (f) has not been by a competent court of law convicted for an offence involving moral turpitude, fraud, dishonesty or corruption;
- (g) is not incapable of discharging his duties by reasons of physical or mental unfitness and has not been so declared by a duly constituted medical board;
- (h) is not, or while appointed as technical member does not become, an officer or a director in any public listed company;
- (i) while appointed as technical member, does not fail to disclose any conflict of interest at or within the time provided for such disclosure under this Ordinance or does not contravene any of the provisions of this Ordinance pertaining to unauthorized disclosure of information;
- (j) is not, or while appointed as technical member does not become, an officer or director of an entity that is licensed or registered under this Ordinance;
- (k) is not or has not been a member or employee of the Commission unless a period of two years has elapsed after he has ceased to be such member or employee;

- (l) possesses at least a master's or professional degree or equivalent qualification from a university, or institute, recognized by the Higher Education Commission in finance, law, accountancy, insurance, economic, investment management, industry, banking or finance; and
- (m) possesses at least fifteen years of professional work experience in any of the fields under clause (1).

(8) No person shall be appointed as a judicial member, or remain as such member, of the Appellate Tribunal unless he—

- (a) has been a District and Sessions Judge;
- (b) is or has been an advocate having for a period of not less than ten years' active practice of conducting cases before a high Court; or
- (c) possess the qualifications provided for under clause (a) and (b) of sub-section (7) and does not suffer from disqualification provided for under clause (c) to (k) of sub-section (7) if therein for the word "technical member", the words "judicial member" were substituted.

(9) The Federal Government may, by a notice of not less than thirty days and after affording opportunity of being heard, remove from office the chairperson or a member of the Appellate Tribunal on the ground that he is incapable of properly performing the duties of his office by reason of physical or mental incapacity or having been guilty of misconduct.

(10) The chairperson or a member may by writing under his hand addressed to the Federal Government with a notice of not less than thirty days resign from his office and shall continue to perform his duties till acceptance of his resignation.

(11) Notwithstanding anything contained in this Ordinance, the Federal Government shall make rules governing practice and procedure of the Appellate Tribunal."

3. **Substitution of section 29, Ordinance LII of 2000.**—In the said Ordinance, for section 29, the following shall be substituted, namely:—

"29. Appeal to Supreme Court.— Any person aggrieved by an order of the Appellate Tribunal may within sixty days thereof prefer an appeal to the Supreme Court."

4. **Omission of section 30, Ordinance LII of 2000.**—In the said Ordinance, section 30 shall be omitted.

5. **Amendment of section 31, Ordinance LII of 2000.**—In the said Ordinance, in section 31,—

- (a) in sub-section (1), for the expression “this Ordinance before any forum, tribunal or court shall stand transferred to the High Court”,

the expression “the Privatisation Commission (Amendment) Ordinance, 2023 (VII of 2023) shall stand transferred to the Privatisation Appellate Tribunal” shall be substituted; and

- (b) in sub-section (2), for the expression “a High Court under sub-section (1), the High Court”, the expression “the Privatisation Appellate Tribunal under sub-section (1), the Privatisation Appellate Tribunal” shall be substituted and for the expression “forum, tribunal or court”, the words “the High Court” shall be substituted,

6. **Amendment of section 32, Ordinance LII of 2000.**—In the said Ordinance, in section 32,—

- (a) in sub-section (1), for the words “High Court”, the words “the Privatisation Appellate Tribunal” shall be substituted; and

- (b) in sub-section (6), for the words “High Court”, the words “the Privatisation Appellate Tribunal” shall be substituted.

7. **Omission of section 33, Ordinance LII of 2000.**—In the said Ordinance, section 33 shall be omitted.

STATEMENT OF OBJECTS AND REASONS

Privatisation Commission is established under Privatisation Commission Ordinance, 2000 (Ordinance LII of 2000) (hereinafter the Ordinance) with the object to conclude privatisation process in a fair and transparent manner avoiding unnecessary procedural and legal delays while adhering to the principles of due diligence, equity and justice. Section 28 to 33 of the Ordinance confer exclusive jurisdiction upon the High Court to adjudicate, settle all matters and try offences punishable under the Ordinance. These sections also enumerate the powers and procedure to be followed in High Courts besides providing the appellate fora against orders of the respective High Courts. This jurisdiction has the potential to lead to multiple petitions on the same matter across different High Courts, resulting in inordinate delays thereby impeding the privatisation process. Consequently, there exists a necessity to constitute a Privatisation Appellate Tribunal (hereinafter the Tribunal) to remove the issues related to privatisation transactions while adhering to the due process of law and principles of natural justice. The Tribunal shall have the exclusive power to adjudicate upon all matters arising out of the Ordinance. The Tribunal shall have the power of Civil Court and the order of the Tribunal may be assailed within 60 days of the date of the decision of the Tribunal before the Hon'ble Supreme Court. These amendments in Ordinance will ensure timely resolution of privatisation related disputes, thus resulting into expeditious closure of privatisation transactions and meeting the mandate set forth in the Ordinance.


Minister Incharge