

**ORDER SHEET
HIGH COURT OF SINDH, KARACHI**

J.C.M. No. 06 of 2017

Date	Order with signature of Judge
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**Present
Mr.Justice Muhammad Ali Mazhar.**

Add Oil (Private) Limited & another.....Petitioners

Date of hearing: 13.10.2017

Mr. Naveed-ul-Haq Advocate for the Petitioners.

Mr. Salman Saleem Rajan Advocate for the S.E.C.P.

Muhammad Ali Mazhar-J: This petition has been brought under Section 284 read with Sections 285 to 288 of the Companies Ordinance, 1984 for obtaining sanction of this court to the scheme of arrangement for amalgamation of petitioner No.2 together with petitioner No.1. In the prayer clauses, the petitioner has entreated along these lines:

- “1. **That the petitioner therefore humbly pray that after the members of the petitioner No.1 and members of petitioner No.2 have approved, adopted and agreed to the scheme of arrangement by the requisite statutory majority at meeting to be convened under the order of this court requested in the interlocutory application aforesaid of the petitioners, this court may be pleased to make the following orders:**
- a) **An order under Section 284(2) of the Companies Ordinance, 1984 sanctioning the scheme of arrangement as set forth in annexure A hereto so as to make the scheme of arrangement binding on the petitioner No.1 and its members and on the petitioner No.2 and its members.**
- b) **The following orders so as to take effect at the same time as the order sanctioning the scheme of arrangement takes effect in accordance with the Section 284 (3) of the Companies Ordinance, 1984, namely:**

- (i) **An order under Section 287(1)(a) of the Companies Ordinance, 1984 transferring to and vesting in the petitioner No.1 the whole undertaking of the petitioner No.2 together with all properties, assets, rights, liabilities and obligations of every description including those described in the scheme of arrangement.**
- (ii) **An order under Section 287(1)(b) of the Companies Ordinance, 1984 directing the petitioner No.1 to allot 3,286,956 ordinary shares of the nominal value of PKR 10 credited as fully paid up in the petitioner No.1 for every one 1 ordinary share certificate of nominal value of PKR 10 each credited as fully paid up in the petitioner No.2 and their respective entitlement to such ordinary shares of the petitioner No.2 and that for this purpose the Registrar of Members of petitioner No.1 shall be closed for a period of ten days prior to and inclusive the date fixed by the directors of the petitioner No.1 by reference to which the registered holders of the share certificates of the petitioner No.2 are to be determined for entitlement of the ordinary shares of the petitioner No.1 and that notice of such closure shall be given to the members of the petitioner No.1 in manner provided in the Articles of Association of the petitioners.**
- (iii) **An order under Section 287(1)(c) of the Companies Ordinance, 1984 directing that all legal proceedings, if any, instituted by or against the petitioner No.2 which may be pending shall be continued by or against the petitioner No.1.**
- (iv) **To direct that post-amalgamation, the authorized share capital of the petitioner No.1 shall stand enhanced to Rs.2,705,000,000 (Rupees Two Billion and Seven Hundred and Five Million) divided into 270,500,000 (Two Hundred Seventy Million and Five Hundred Thousand) ordinary shares of the face value of Rs.10/- (Rupees Ten Only) each without any performance of any further acts and deeds.**
- (v) **An order under Section 287(1)(d) of the Companies Ordinance, 1984 declaring the dissolution, without winding up, of petitioner No.2 so as to take effect from the date on which the ordinary shares of the petitioner No.1 are allotted to the holders of the share certificates of the petitioner No.2 in accordance with the scheme of arrangement.**
- (c) **Such further or other order or orders as may seem just and proper to this court.”**

2. The scheme of arrangement available at Page No.41 of the court file provides the transferring to and vesting in the petitioner No.1 the whole undertaking of the petitioner No.2 together with all properties, assets, rights, liabilities and obligations. In Clause 6.6 of the scheme it is further avowed that the amalgamation will be advantageous to shareholders, employees and all stakeholders as the merged company is likely to experience economies of scale, reduction in administrative expenses which is likely to enhance

profitability and prospect of higher dividend yield to shareholders. Vide order dated 07.04.2017, application moved under Rule 953 of the Sindh Chief Court Rules (Original Side) was disposed of with the directions to convene separate meeting of the petitioner No.1 and petitioner No.2 for the approval of merger scheme. what's more directed that the Secretary will file the minutes/report of the meeting separately and the creditors shall also be allowed to participate in the meeting.

3. After subpoenaing and convening the meeting of both the petitioners, the Chief Executive of the petitioner No.1 Mansoor Rashid unambiguously conveyed in his report that the board of directors approved the scheme of arrangement with swap ratio calculated by Chartered Accountants which was also approved and sanctioned by the members. The report further indicates that the members of the petitioner No.1 with 100% majority approved the scheme and creditors have also given their no objection of the scheme. The petitioner No.2 likewise filed the report through their director Umair Malik in which also he unequivocally expressed that the members with 100% majority approved the scheme and their creditors have also conceded to their no objection.

4. The learned counsel for the SECP contended that nevertheless they raised some objections in their comments but afterwards the petitioners have complied with these objections. However, he invited my attention and concentration to the Auditor's Report (*available at Page No.201 of court file*) wherein Paragraph No.5 deals with deferred cost against different entries/items which need clarity and lucidness. On comeback, Mr.Naveed-ul-

Haq advocate articulated that at the time of making financial statement of the merged company following the sanction of scheme, this deferred cost will be rationalized as per requirement of the International Accounting Standard (IAS) on which learned counsel for the SECP shown his due contentment. So far as the swap ratio is concerned, learned counsel for the SECP argued that that has already been evaluated and verified by the Chartered Accountant and accepted by the members.

5. A deferred cost is a cost that has already incurred but cannot be charged to expense until a later reporting period. In the meantime, it appears on the balance sheet as an asset. The reason for deferring recognition of the cost as an expense is that has not yet consumed the item. From a practical perspective, it is customary to charge all smaller costs to expense at once, since they would otherwise require too much effort to track on a long-term basis. Immediate charge-off is only practiced when the impact on the financial results of a business is immaterial. The costs of some expenditure may be deferred when generally accepted accounting principles or international financial reporting standards require that they be included in the cost of a long-term asset, and then charged to expense over a long period of time.

[Ref:<https://www.accountingtools.com/articles/what-is-a-deferred-cost.html>]

6. In the proceedings of **International Complex Projects Limited & another** reported in **2017 CLD 1468**, (*authored by me*) I have conversed and delineated that the role and character of the court in identical matter is reminiscent of supervisory nature which is also close to

judicial review of administrative action. However, in case court finds that the scheme is fraudulent or intended to be cloak to recover the misdeeds of the directors, the court may reject the scheme in the beginning. The court can lift the corporate veil for the purpose of ascertaining the real motive behind the scheme. In the case of Sidhpur Mills Co. Ltd. (AIR 1962 Guj. 305), the learned Judge while pointing out the correct approach for sanctioning of scheme held that the scheme should not be scrutinized in the way a carping critic, a hairsplitting expert, a meticulous accountant or a fastidious counsel would do it, each trying to find out from his professional point of view what loopholes are present in the scheme, what technical mistakes have been committed, what accounting errors have crept in or what legal rights of one or the other sides have or have not been protected. But it must be tested from the point of view of an ordinary reasonable shareholder acting in a business-like manner taking with his comprehension and bearing in mind all the circumstances prevailing at the time when the meeting was called upon to consider the scheme in question.

7. Being a sanctioning court, I have noticed that all requisite statutory procedure and formalities have been complied with by the petitioners including the holding/convening the requisite meetings as contemplated under the relevant provisions and rules of Companies Ordinance 1984. The scheme set up for sanction has been reinforced and fortified by the requisite majority which decision seems to be just and fair. The report/minutes of meetings unequivocally convey that all essential and fundamental characteristics

and attributes of scheme of arrangement were placed before the voters at the concerned meetings to live up to statutory obligations. The proposed scheme of compromise and arrangement is not found to be violative of any provision of law and or contrary to public policy. The scheme as a whole look like evenhanded and serviceable from the point of view of prudent men of business taking a commercial decision beneficial to the class represented by them for whom the scheme is meant. Once the requirements of a scheme for getting sanction of the court are found to have been met, the court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval of the scheme.

8. As a result of above discussion, the Scheme of Arrangement is sanctioned as prayed in terms of Section 287 of the Companies Ordinance 1984. The petition is disposed of accordingly.

Judge