

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

J.C.M. No.13 of 2017

Date	Order with signature of Judge
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Present:

Mr. Justice Muhammad Ali Mazhar

1. Amer Tex (Pvt.) Ltd.....Petitioner No.1

2. Four Strength (Pvt.) Ltd.....Petitioner No.2

For hearing of Main Petition.

Date of Hearing: 17.04.2018.

M/s. Raashid Anwer & Ovais Sarki, Advocates for the petitioners.

M/s. Ziaur Rasheed Abbasi, Special Public Prosecutor, Saad Abbasi & Hafiz Ibad, Law Officers SECP.

Muhammad Ali Mazhar, J: This petition has been brought to get hold of an order under Section 287(1)(a) of the Companies Ordinance, 1984 for transferring to and vesting in the petitioner No.2, the whole of '***Abdullah Family Undertaking***', as defined in the Scheme and bifurcation of the petitioners' assets and accounts as per the Accountants' Bifurcation. The petitioners have also applied for an order under Section 287(1)(b) of the Companies Ordinance directing petitioner No.2 to allot 901,673 ordinary shares to each of the Abdullah Brothers (i.e. a total of 3,606,692) shares of par value of Rs.10/- as per Article 10.1 of the Scheme;

2. The learned counsel for the petitioners argued that the petitioner No. 1 is a private company limited by shares. Its directors have decided to enter into a Scheme of Arrangement whereby the petitioner No.1 is going to

transfer the Abdullah Family Undertaking to petitioner No.2 against the issuance of ordinary shares in equal proportion whereas the petitioner No.2, is also a private company limited by shares. The petitioner No.2 has been set up for the express purpose of taking over the Abdullah Family Undertaking however, currently it has a nil balance sheet and it has not undertaken commercial operations as yet. It was further contended that scheme has been approved by the board of directors of each of the petitioner Nos.1 and 2. The Abdullah Family Undertaking is not subject to any liabilities. From the effective date, the Abdullah Family Undertaking (inclusive of all liabilities) shall be deemed to be and assumed by petitioner No.2 as its own. Simultaneously, with the assumption by petitioner No.2 of liabilities in relation to the Abdullah Family Undertaking, petitioner No.1 shall stand released from all obligations in respect of such liabilities.

3. The learned counsel for SECP confirmed that as per scheme of amalgamation, the Abdullah Undertaking will be transferred from petitioner No.1 to petitioner No.2, the shareholding of (11) members of Abdullah Family in petitioner No.1 will be cancelled and same number of shares will be issued by petitioner No.2 to only (4) out of (11) members of Abdullah Family. However, the NOC or consent of (7) members who will forego their shareholding, have not been provided with the petition. However on 26.3.2018, Mr. Muhammad Naeem Khan, Additional Registrar of Companies, In-charge Company Registration Office, Karachi, Securities & Exchange Commission of Pakistan filed a statement the learned counsel of the petitioners provided NOCs of 7 members of Abdullah Family hence Securities and Exchange

Commission of Pakistan (SECP) has no objection if this petition is allowed.

4. Arguments heard. It is deducible from the Scheme of arrangement that the Board of Directors of the petitioner Nos.1 and 2 have considered various options, ways and means available to improve their business with the ultimate aim of maximizing shareholder returns. The petitioners intend to transfer the Abdullah Family Undertaking (assets and shares) as specified and identified in the Accountants' Bifurcation Letter attached with the scheme. In consideration of the ATL Undertaking to FSL, FSL shall issue 901,673 ordinary shares to each of the Abdullah Brothers. It appears from the record neither the petitioner No.1 nor the petitioner No.2 have any secured creditors or trade creditors. The learned counsel has also filed the Board Resolutions approving the Scheme of arrangement by the members of the petitioners.

5. In the case 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 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.

6. Where the scheme is found to be reasonable and fair, at that moment in time it is not the sense of duty or province of the court to supplement or substitute its judgment against the collective wisdom and intellect of the shareholders of the companies involved. Nevertheless, it is the duty of the court to find out and perceive whether all provisions of law and directions of the court have been complied with and when the scheme seems like in the interest of the company as well as in that of its creditors, it should be given effect to. However the court has to satisfy and reassure the accomplishment of some foremost and rudimentary stipulations that is to say, the meeting was appropriately called together and conducted; the compromise was a real compromise; it was accepted by a competent majority; the majority was acting in good faith and for common advantage of the whole class; what they did was reasonable, prudent and proper; the court should also satisfy itself as to whether the provisions of the statute have been complied with; whether the scheme is reasonable and practical or whether there is any reasonable objection to it; whether the creditors acted

honestly and in good faith and had sufficient information; whether the court ought in the public interest to override the decision of the creditors and shareholders. Where all the requisite formalities were complied with including shareholders' approval, the court would not question the commercial wisdom behind the scheme. One of the effects of the sanction of the court is that it becomes binding upon the company and its members including those who voted against the scheme once the scheme of compromise and arrangement is approved by statutory majority it binds the dissenting minority and the company. The court has the power to give effect to all the incidental and ancillary questions in the effort to satisfy itself whether the scheme has the approval of the requisite majority. It is not the function of the court to examine whether there is a scope for better scheme. However, where the court finds that scheme is patently fraudulent, it may not respond or function as mere rubber stamp or post office but reject the scheme of arrangement.

7. The petitioners have complied with all statutory benchmarks. The scheme has been exhilarated and fortified by the majority. The minutes of meetings discernably communicate that the manuscript of scheme was tabled to the voters at the meetings for approval. The scheme is not found to be violative of any provision of law.

8. In the wake of foregoing discussion, the Scheme of Arrangement is sanctioned as prayed. The petition is disposed of accordingly.

Judge