

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

**J.C.M. No.48 of 2016**

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**DATE            ORDER WITH SIGNATURE    OF JUDGE**  
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**Present:-**  
**Mr.Justice Muhammad Ali Mazhar**

**TPL Trakker Limited & others.....Petitioners**

Date of hearing: 12.09.2017.

M/s.Arshad Tayyabley and Mikael Azmat Rahim,  
Advocates for the Petitioners.

Mr.Imran Shamsi, Deputy Director Law, SECP.

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**Muhammad Ali Mazhar, J:** This petition has been put forward under Section 284 read with Sections 285 to 288 of the Companies Ordinance, 1984 for an order under Section 287(1) of the Companies Ordinance for transferring to and vesting in the specific segments of the petitioner No.1 business enterprise together with petitioner No.2 by means of envisioned Scheme for Arrangement.

2. The transitory facts are that the petitioners have moved this petition for sanction of the scheme of arrangement dated 30.12.2016. The demerger of specific portions of the undertaking of Maps undertaking and Trakker undertaking as described in the Scheme of Arrangement and its merger with the petitioner No.2 and petitioner No.3 and the demerger of a specific portion of the undertaking of the petitioner No.4 as described in the

Scheme of Arrangement and merger of the same with the petitioner No.1 bearing in mind the diagram depicting the existing structure of the petitioners (as part of the group) and the proposed structure.

3. The learned counsel for the petitioners argued that petitioner No.1 is a listed company generally engaged in the business of installation and sale of tracking devices and fleet management as well as holding shares in various companies whereas the petitioner No.2 and 3 have been incorporated specifically for the purposes of the reorganization/restructuring intended to be carried out pursuant to the scheme. Upon sanction of the scheme, the petitioner No.2 will carry on the maps business, while the petitioner No.3 will carry on the business pertaining to vehicle tracking, which are both currently being carried out by the petitioner No.1. The petitioner No.4 is authorized to carry on the business of manufacturing, assembling and providing vehicle and fleet management systems, as well as acquiring and holding shares in other companies. The learned counsel demonstrated that under the court orders separate meeting of the petitioners shareholders/members were convened and the scheme was sanctioned by majority without any demur or opposition. Not a single shareholder or secured creditor objected to the Scheme of Arrangement.

4. The Additional Registrar of Companies, SECP filed comments. The Deputy Registrar, SECP argued that NOCs of the creditors with respect to charge/mortgage registered with SECP of petitioner No.2 and petitioner No.4 have not been provided. Under the Scheme the undertaking of petitioner No.1 which is a listed company

will be demerged into petitioner No.2 and petitioner No.3 which are private limited companies. Hence, effectively, the major undertaking/assets of the petitioner No.1 will be transferred to two private limited companies which fall under lower regulatory regime with no code of corporate governance and lesser regulatory supervision and scrutiny. The demerger should only be allowed subject to subsequent mandatory listing of the petitioners 2 and 3 within six months' time after the order. Through the Scheme, the petitioners also seek approval for acquisition of TPL Properties Limited (TPLP's) shares by petitioner No.1 from petitioner 4. The petitioner 1 had earlier disclosed under Note 18.1 to its Account for the year ended June, 30, 2016 that it is considering divesting its shareholding in TPLP. Therefore, acquisition of further shares for greater control of TPLP by the petitioner 1 against its own shares as envisaged in the scheme of arrangements is not in line with the disclosure given in the Accounts. Further, petitioner No.4 is already the ultimate parent company of all other petitioners and TPLP. The acquisition of TPLP's shares by petitioner No.1, which is a listed company from petitioner No.4, which is private company may affect the interest of minority shareholders.

5. In rebuttal, the learned counsel for the petitioners argued that the necessary approvals/NOCs of the creditors of the Petitioners No. 1 and 4 have already been obtained at the respective meetings of the secured creditors of the Petitioners No. 1 and 4 in accordance with the provisions of the Ordinance. The copies of the NOCs issued by the creditors are attached to the Chairman's Reports. He added that there is no legal requirement under the Ordinance or the Companies Act,

2017 which mandates that a listed company's subsidiaries are also required to be listed companies. In the past, numerous demergers have taken place where a portion of a listed company merges into a private limited company for which reference can be made to 2015 CLD 2010. Since the petitioners No.2 and 3 shall be subsidiaries of the petitioner No.1, the annual audited accounts of the petitioner No. 1, which are made available to the public and submitted to the SECP are prepared on a stand-alone basis as well as a consolidated basis. Any decision in future to list the shares of the petitioner No.3 will be subject to complying with the applicable laws. He also pointed out that the shares of TPL Properties Limited which are held by the Petitioner No. 4 will vest in its subsidiary i.e. the Petitioner No. 1 that will have no impact on the market. Notwithstanding the above, subsequent to the discussions with the SECP, the minimum marketable lot size of the shares of TPL Properties Limited has been reduced by the SECP to 500 shares. The suit filed by TPL Properties Limited with respect to the lot size of the shares has been withdrawn. The proposed arrangement can validly and legally be carried out under Sections 284 to 288 of the Ordinance; accordingly, the issue of bypassing the requirements of Section 208 of the Ordinance does not arise. In response to the court query regarding the approval from Competition Commission of Pakistan, the learned counsel replied that the approval of the Competition Commission of Pakistan is not required for the subject de-mergers/mergers under the Competition Act, 2010 as the petitioners are exempt from the same. He referred to Regulation 5(1) (ii) of the Competition (Merger Control) Regulations, 2016, which provides that "*a transaction in which a holding company (whether incorporated in or*

*outside Pakistan), merges, amalgamates, combines or ventures jointly with its subsidiary or the subsidiaries thereof ...”* is exempt from filing a pre-merger notification and obtaining the approval of the Competition Commission of Pakistan. He maintained that petitioners No. 2 and 3 are wholly owned subsidiaries of the petitioner No. 1 and that the petitioner No.1 is a subsidiary of the Petitioner No.4, resultantly, the petitioners and the de-mergers/mergers envisaged under the Scheme of Arrangement fall within the ambit of exemption provided under Regulation 5(1) (ii).

6. Heard the arguments. To start with I would like to preview and foretaste the recital of the scheme of arrangements which for the ease of reference reproduced as under:-

**“1. The undertaking comprising the Assets, Liabilities and Obligations of TPLT shall be split into 3 (three) separate segments i.e. The Maps Undertaking, the Trakker Undertaking and the Retained Undertaking.**

**2. The segment comprising all the Assets, Liabilities and Obligations of the Maps Undertaking shall be carved out and, as at the Effective Date stand merged with, transferred to, vested in, and be assumed by TPLM.**

**3. As consideration for the above, it is proposed that TPLM Shares shall be issued to TPLT in accordance with this Scheme.**

**4. The segment comprising all the Assets, Liabilities and Obligations of the Trakker Undertaking shall be carved out and, as at the effective date, stand merged with transferred to, vested in, and be assumed by TPLV.**

**5. As consideration for the above, it is proposed that TPLV Shares shall be issued to TPLT in accordance with this Scheme.**

**6. Upon the merger and transfer of the Maps Undertaking and Takker Undertaking to TPLM and TPLV respectively in the manner prescribed under this Scheme, TPLT shall continue to own and operate the Retained Undertaking, TPLM shall own and operate the Maps Undertaking and TPLV shall own and operate the Trakker Undertaking, each as independent companies without any company being wound up.**

**7. Simultaneously, the undertaking comprising the Assets, Liabilities and Obligations of TPLH shall be split into 2 (two) separate segments i.e. the properties undertaking and the holdings undertaking.**

8. The segment comprising all the Assets, Liabilities and Obligations of the properties undertaking shall be carved out and, as at the effective date, stand merged with, transferred to, vested in, and be assumed by TPLT.

9. As consideration for the above, it is proposed that TPLT shares shall be issued to TPLH in accordance with this scheme.

10. Upon the merger and transfer of the properties undertaking to TPLT in the manner prescribed under this scheme, TPLH shall continue to own and operate the holdings undertaking, while TPLT shall own and operate the properties undertaking, each as independent companies without any company being wound up.

11. This scheme if approved by the respective shareholders of TPLT, TPLM, TPLV and TPLH, through a special resolution, along with the requisite majority of creditors (as may be applicable) and sanctioned by the court by an order passed in this respect, is to be binding on TPLT, TPLM, TPLV and TPLH along with all the shareholders, creditors, employees, Customers, contracting parties, tax authorities and any other regulatory/statutory bodies of or with respect to TPLT, TPLM, TPLV and TPLH respectively.

The demergers contemplated under the scheme of arrangement would have significant benefits for the petitioner companies and their respective stakeholders, which are stipulated in the scheme of arrangement under the heading benefits of scheme including separation of business which are distinct in nature, fulfillment of objectives of long term growth and expansion, distribution of risk, achieving specialization, creating a larger asset base, and achieving the structure of a holding company.”

7. Article 2 of the scheme of arrangement furthermore stipulates and lay down the aspirations and objects of the scheme as follows:

2.1 The principal object of this Scheme is to give effect to the following:

- (i) separate / demerge the Maps Undertaking from TPLT and amalgamate the same with and into TPLM by transferring to, merging with and vesting in TPLM the whole of the Maps Undertaking, including all Assets, Liabilities and Obligations of the Maps Undertaking, as of the Effective Date, against the allotment and issue of TPLM Shares to TPLT in accordance with the provisions of this Scheme (the “Maps Amalgamation”);
- (ii) simultaneously, separate / demerge the Trakker Undertaking from TPLT and amalgamate the same with and into TPLV by transferring to, merging with and vesting in TPLV the whole of the Trakker Undertaking, including all Assets, Liabilities and Obligations of the Trakker Undertaking, as of the Effective Date, against the allotment and issue of TPLV Shares to TPLT in accordance with the provisions of this Scheme (the “Trakker Amalgamation”); and
- (iii) simultaneously, separate / demerge the Properties Undertaking from TPLH and amalgamate the same with and into TPLT by transferring to, merging with and vesting in

**TPLT the whole of the Properties Undertaking, including all Assets, Liabilities and Obligations of the Properties Undertaking, as of the Effective Date, against the allotment and issue of TPLT Shares to TPLH in accordance with the provisions of this Scheme (the “Properties Amalgamation”).**

- 2.2 It is hereby clarified that although all of the above steps will take place on the same date, the same shall be deemed to be effective as of the Effective Date.**
- 2.3 The Retained Undertaking shall not at any time be transferred to or vest in either TPLM or TPLV and the same shall at all times remain part of TPLT.**
- 2.4 The Holdings Undertaking shall not at any time be transferred to or vest in TPLT and the same shall at all times remain part of TPLH.**

8. Vide order dated 12.01.2017, this court directed the petitioners to hold separate meetings of the shareholders and creditors of the petitioner companies in terms of Rule 55 of the Companies (Court) Rules, 1997 and submit reports accordingly. In compliance, the Director and CEO of the petitioner No.1 submitted a report on 21.04.2017 and confirmed that the meeting was convened on 14.04.2017 with the requisite quorum present to discuss the Scheme of Arrangement and after due contemplation and consideration, the members/shareholders of the petitioner No. 1 resolved as under:

**“RESOLVED THAT the Scheme of Arrangement dated December 30, 2016, for, inter alia, (i) the bifurcation/separation of TPL Trakker Limited into three segments/undertakings i.e. the maps undertaking, the trakker undertaking and the retained undertaking; (ii) the merger, by way of amalgamation, of the maps undertaking with and into TPL Maps (Private) Limited and the trakker undertaking with and into TPL Vehicle Tracking (Private) Limited; (iii) the bifurcation/separation of TPLP Holdings (Private) Limited into 2 segments/undertakings i.e. the properties undertaking and the holdings undertaking, and merger, by way of amalgamation, of the properties undertaking with and into TPL Trakker Limited, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Ordinance, 1984.**

**FURTHER RESOLVED THAT subject to fulfilling any documentary formalities/requirements, the name of the company be altered/changed from “TPL Trakker Limited” to “TPL Corp Limited” upon the sanction of the Scheme of Arrangement by the Honorable High Court of Sindh, in the manner prescribed thereunder, and consequently the name**

be changed in the Memorandum and Articles of Association of the company.”

**The Chief Financial Officer of the Petitioner No.1, submitted a report on 16.05.2017 confirming that notices of the meeting of the secured creditors of the petitioner No.1 were dispatched to the secured creditors on 19.04.2017 while the meeting was convened on 09.05.2017. After due contemplation and consideration of the Scheme of Arrangement, the secured creditors of the petitioner No. 1 resolved as under:**

**“RESOLVED THAT the Scheme of Arrangement dated December 30, 2016, for, inter alia, (i) the bifurcation/separation of TPL Trakker Limited into three segments/undertakings i.e. the maps undertaking, the trakker undertaking and the retained undertaking; (ii) the merger, by way of amalgamation, of the maps undertaking with and into TPL Maps (Private) Limited and the trakker undertaking with and into TPL Vehicle Tracking (Private) Limited; (iii) the bifurcation / separation of TPLP Holdings (Private) Limited into 2 segments/ undertakings i.e. the properties undertaking and the holdings undertaking, and merger, by way of amalgamation, of the properties undertaking with and into TPL Trakker Limited, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Ordinance, 1984.”**

**The Director of the petitioner No. 2, submitted the report on 16.05.2017. He also confirmed that notices were dispatched to the members and that the meeting was held on 15.05.2017. The members/shareholders of the Petitioner No. 2 resolved as under:**

**“RESOLVED THAT the Scheme of Arrangement dated December 30, 2016, for, inter alia, the bifurcation / separation of TPL Trakker Limited into three segments / undertakings i.e. the maps undertaking, the trakker undertaking and the retained undertaking, and the merger, by way of amalgamation, of the maps undertaking with and into TPL Maps (Private) Limited, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications / amendments required or conditions imposed by the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Ordinance, 1984.”**

**The Director of the petitioner No. 3, submitted the report on 16.05.2017. He also confirmed that notices were dispatched to the members of the petitioner No. 3 and the meeting was held on 15.05.2017 where the members/shareholders of the petitioner No. 3 had resolved as under:**

**“RESOLVED THAT the Scheme of Arrangement dated December 30, 2016, for, inter alia, the bifurcation/**



separation of TPL Trakker Limited into three segments/undertakings i.e. the maps undertaking, the trakker undertaking and the retained undertaking, and the merger, by way of amalgamation, of the trakker undertaking with and into TPL Vehicle Tracking (Private) Limited, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Ordinance, 1984.”

The Director of the petitioner No. 4 submitted the report on 16.05.2017. He confirmed that notices were dispatched to the members of the petitioner No. 4 on 24.04.2017, The meeting was convened on 15.05.2017 with the requisite quorum and after due contemplation and consideration, the members/shareholders of the Petitioner No. 4 resolved as under:

“RESOLVED THAT the Scheme of Arrangement dated December 30, 2016, for, inter alia, the bifurcation/separation of TPLP Holdings (Private) Limited into two segments/undertakings i.e. the properties undertaking and the holdings undertaking, and merger, by way of amalgamation, of the properties undertaking with and into TPL Trakker Limited, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Ordinance, 1984.”

He also submitted a report confirming that notice of the meeting of the secured creditor of the petitioner No.4 was also dispatched to the secured creditor who resolved as under:

“RESOLVED THAT the Scheme of Arrangement dated December 30, 2016, for, inter alia, (i) the bifurcation/separation of TPL Trakker Limited into three segments/undertakings i.e. the maps undertaking, the trakker undertaking and the retained undertaking; (ii) the merger, by way of amalgamation, of the maps undertaking with and into TPL Maps (Private) Limited and the trakker undertaking with and into TPL Vehicle Tracking (Private) Limited; (iii) the bifurcation/separation of TPLP Holdings (Private) Limited into 2 segments/undertakings i.e. the properties undertaking and the holdings undertaking, and merger, by way of amalgamation, of the properties undertaking with and into TPL Trakker Limited, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the High Court of Sindh at Karachi, subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Ordinance, 1984.”

9. The Mergers and acquisitions are the businesses in which the ownership of companies or their operating

units are conveyed or conjoined which is an amalgamation of two entities into one entity. This represents and epitomizes in accordance with which one company takes over one or more company's assets, rights and obligations as a whole in return for the shareholders of the latter company receiving a consideration in the form of shares in the transferee company whereas demerger connotes and designates some or all of the transferor company's assets, rights and obligations which are to be divided between one or more transferee companies in return for the shareholders in the transferor company receiving consideration in the form of shares in the company. The de-merger is a business stratagem in which a single business is broken into components. This allows a conglomerate to split off its different varieties to invite or prevent an acquisition, to raise capital by selling off components that are no longer part of the business's fundamental merchandise line or to generate distinct lawful entities to manage diverse managements. It is in fact is a method of corporate streamlining and restructuring by dint of which business operations are segregated into one or more components.

10. 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.

11. Where the scheme is found to be reasonable and fair, at that juncture 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. 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.

12. 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.

13. As a result of above discussion, the Scheme of Arrangement is sanctioned as prayed. The petition is disposed of accordingly.

**Judge**