

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

J.C.M. No.19 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE
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Present:-

Mr.Justice Muhammad Ali Mazhar

**Total Parco Pakistan Ltd.
& another**

.....**Petitioners**

Date of hearing: 16.01.2018

Mr.Taha Alizai, Advocate for the Petitioners.

Mr.Ammar Yasir, Manager Legal of the Petitioners.

Mr.Imran Shamsi and Syed Hafiz Ibad, Law Officers,
SECP.

Muhammad Ali Mazhar, J: This petition has been brought under Section 279, 282 to 285 of the Companies Act, 2017 read with Rules 777 to 780 of Sindh Chief Court Rules (O.S) for sanctioning the Scheme of Arrangement to transfer Oil Marketing (OM) Business of petitioner No.2 to the petitioner No.1.

2. The learned counsel for the petitioners argued that the petitioner No.1 is a public unlisted company which has an authorized capital of Rupees two billions divided into 200 million ordinary shares of Rs.10 each. The petitioner No.2 has been incorporated under the laws of the Commonwealth of the Bahamas. The petitioner No.2 is a transferor company within the meaning of Section 282(9) of the Companies Act, carrying on business in Pakistan through its registered branch office under Section 434 of the Companies Act. The petitioner No.2 has an authorized capital of US\$4,000,000 divided into 40,000

ordinary shares of US\$ 100 each. The petitioner No.2 is a wholly owned subsidiary of the petitioner No.1. The petitioner No.2 commenced oil marketing business in Pakistan in the year 1948 as Caltex Oil (Pakistan) Limited. However its name was changed in the year 2006 to Chevron Pakistan Limited thereafter it was acquired by the petitioner No.1 and presently it is known as Total Parco Marketing Limited. It was further contended that the transfer and amalgamation of the OM Business would be beneficial to the petitioners and their members and in this regard, all statutory compliances have been made as required for approving the scheme by this court.

3. The learned counsel for the SECP, argued that under the Companies Act, 2017 (Section 279 to 283 and 285) the powers are vested in the Commission to enforce compromise and arrangement. However, under Section 285(8) of the Companies Act, 2017 the powers of Commission can be exercised by the court for such companies or class of companies as may be notified by the concerned Ministry. He also referred to S.R.O. 840(I) 2017 dated 17.8.2017 issued in exercise of powers conferred under Sub-section (8) of Section 285 of the Companies Act 2017. It was further contended that under aforesaid SRO, the powers of the SECP conferred by Sections 279 to 283 and 285 of the said Act in respect of public interest companies, large sized companies and medium sized companies classified under the Third Schedule to the said Act shall be exercised by the Company Bench of this court. The learned counsel also referred to their reply and confirmed that the petitioner No.2 is a wholly owned subsidiary of petitioner No.1 and it is engaged in the business of oil marketing in Pakistan. It was further confirmed that the petitioner No.2 was

previously known as Caltex Oil (Pakistan) Limited and then its name was changed to Chevron Pakistan Limited and at present it is Total Parco Marketing Limited. It was further averred that the value and location wise list of assets and liabilities of petitioner No.2 along with the carve out proportion of the OM Business of petitioner No.2 duly certified by its Auditors to be transferred into the petitioner No.1 and Annual Audited Accounts of petitioner No.2 should be brought on record by the petitioners. It was further alleged that copies of no objection certificates of some of the creditors have not been supplied to SECP. Subsequently, the SECP filed a statement to show that petitioners have complied with all requirements and conceded to no objection for the grant of petition. The statement is reproduced as under:-

“STATEMENT

It is respectfully submitted for and on behalf of Securities and Exchange Commission that the Petitioners have addressed the major observations raised initially by the Securities and Exchange Commission of Pakistan.

It is submitted further that the Securities and Exchange Commission of Pakistan has no objection if the Hon’ble Court allows this Scheme of Arrangement.

Prayed accordingly.

**Karachi:
Dated. 13.12.2017**

**Sd/-
Muhammad Naeem Khan
Additional Registrar Companies
Incharge Company Registration
Office Karachi, Securities and
Exchange Commission of
Pakistan”**

4. Heard the arguments. The petitioners made much emphasis that after amalgamation of the OM Business of the petitioner No.2 with and into the petitioner No.1 the administrative costs incurred by each of the petitioners will be considerably reduced as only one Board of Directors will be required to administer the OM Business of the petitioners; only one Chief Executive and

one management will be required as regards the OM Business; the Scheme will allow the petitioners to use their capital more efficiently; the Scheme will allow the petitioners to benefit from a stand-alone platform for their respective oil marketing undertakings which are already being marketed under a common brand; the Scheme will enable the petitioners to combine their expertise and resources in the business of oil marketing in order to streamline and improve coverage throughout the country and strengthen their market position; the amalgamation of the petitioners No.2's OM Business with and into the petitioner No.1 will also be advantageous to the members, creditors and employees of the petitioners No.1 and 2; amalgamation of the OM Business will provide not only greater financial strength for the business involved but a bigger and better brand of retail network and also a better organizational framework within which the business can grow. The gist of the Scheme of Arrangement has engrossed and converged certain arrangements between TPPL and PARCO inter alia that TPPL would acquire 100% of the shares of TPML thereafter, the assets of TPML would be reorganized and distributed in such manner so that TPPL would ultimately obtain and amalgamate TPML's entire OM Business.

5. The record reflects that both the petitioners had convened their separate meetings of the members and creditors. The no objection certificates issued by the creditors are on record. The Chairmen of both the meetings filed separate reports along with copy of board resolution to show that the members of both the petitioners by majority approved the scheme of arrangement. Fundamentally the aspiration and nucleus

of mergers and acquisitions look forward a philosophy and raison d'être to shield and bourgeoning the strength and or profitability of domineering venture which comes to pass when business enterprises wish for diversification and augmentation. If a large company contemplates that it has intense exposure to jeopardy for the reason of extravagant investment in one particular business activity, it may acquire a business in another industry that obviously a farsightedness of diversification. In other words, the acquiring firm no longer has all its eggs in one basket. The amplification and expansion as a result of merger may empower of late enlarged organization to dress in debt and equity financing that in earlier times was outside its reach. If two companies are amalgamated that are in the uniform compass of business and industry, then working economies including cost-cutting measure may also result. Doubling of assigned roles and job descriptions within each firm may be reorganized and restructured to the benefit of the combined firm predominantly in the genre of Accounts, Purchases, Human Resource and marketing.

6. At this juncture I would like to recapitulate and regurgitate the bottom line of an order **authored by me** in the case of **IGI Insurance Limited and others [J.C. Misc. No. 01 of 2017]**, that the Mergers and acquisitions are the businesses in which the ownership of companies or their operating units are conveyed or conjoined which means an amalgamation and integration 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.

7. In the identical matter 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.

8. In the case of **Miheer H. Mafatlal, Vs. Mafatlal Industries Ltd**, reported in **AIR 1997 Supreme Court 506**, it was held that the court certainly would not act as a court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the concerned parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The propriety and the merits of the compromise or arrangement have to be judged by the parties who as *sui juris* with their open eyes and fully informed about the pros and cons of the Scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement. The Court cannot, therefore, undertake the exercise of scrutinizing the scheme placed for its sanction with a view to finding out whether a better scheme could have been adopted by the parties.

9. 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. However 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 and the court would not question the commercial wisdom of the 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.

10. The petitioners have complied with all statutory touchstones. The scheme has been exhilarated and fortified by the indispensable majority. The report/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.

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

Judge