

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 44 of 2021

In the matter of
Muhammad Shafi Tanneries (Pvt.) Ltd.
And
Shafi Gluco-Chem (Pvt.) Ltd
And
Mazhar Shafi Industries (Pvt.) Ltd.

Date of Hearing: 17.02.2023

Petitioners: Through Mr. Mikael Azmat Rahim Advocate.

SECP: Through Mr. Ibad-ur-Rehman, Law Officer.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition under section 279 read with Section 280 to 283 and 285(8) of Companies Act, 2017 pertains to demerger of specific undertakings of petitioners No.1 and 2 in petitioner No.3. The purpose of the petition is approval of the scheme of arrangement dated 23.11.2021 attached as Annexure 'D' to the petition. In substance the petitioners have proposed to restructure in terms whereof specific undertakings of petitioners No.1 and 2 i.e. Muhammad Shafi Tanneries (Pvt.) Limited and Shafi Gluco-Chem (Pvt.) Limited i.e. MSTL Demerged Undertaking and SGCL Demerged Undertaking respectively are required to be transferred and vested/amalgamated into petitioner No.3 i.e. Mazhar Shafi Industries (Pvt.) Limited. The subject scheme, which in fact for evolving a Demerged Undertaking, as defined in the scheme, to be carved out from petitioners No.1 and 2. The statutory meetings for this Demerging process were also held.

2. On presentation of the petition, in pursuance of orders dated 01.12.2021 notices were issued to SECP and so also advertised in terms of Rule 76 read with Rule 19 of the Companies Ordinance (Court) Rules,

1997. Permission was accorded to convene requisite members and secured creditors' meetings. The SECP filed its comments whereas none of the objections of any nature have been received from any quarter. The SECP has raised some formal objections that concerns with the effective date, swap ratio etc.

3. I have heard learned counsel for petitioners as well as law officer SECP and perused material available on record.

4. In terms of the Scheme of Arrangement specific portions of undertakings of petitioners No.1 and 2 named/defined as MSTL Demerged Undertaking and SGCL Demerged Undertaking respectively shall stand vested in petitioner No.3 whereas MSTL Retained Undertaking and SGCL Retained Undertaking shall continue to remain with petitioners No.1 and 2 respectively as going concerns and so also petitioner No.3 with their existing names without any of them being dissolved. Cumulative effect would be reduction in shareholders' equity of petitioners No.1 and 2 and more particularly reduction in issued and paid up share capital. In this way the shares of petitioner No.3 shall be allotted to those transferring shareholders whose shares in petitioners No.1 and 2 are cancelled owing to reduction in issued and paid up share capital. Such stipulation finds mention in the letter date 23.11.2021 issued by RSM Avais Hyder Liqauat Nauman, Chartered Accountants.

5. The annual audited financial statements of all three petitioners as on 30.06.2021 are available on record. The Scheme is determined and approved by the respective Board of Directors of the petitioners vide Resolution dated 23.11.2021 after considering all the aspects including the values and calculations by the Chartered Accountants.

6. As far as the issues raised in the parawise comments are concerned, which the Law Officer has also agitated during the course of

arguments, a perusal of the record reveals that all such objections are met and even the Law Officer has conceded to it. Hence in substance he has conceded to the Scheme of Arrangement. Only concern is that the merged entity, as it evolved i.e. petitioner No.3 would provide in its Memorandum & Articles of Association the activities being transferred by way of a portion of petitioners No.1 and 2, although Companies Act, 2017 would not oppose such adjustment.

7. It appears that the petitioners completed all necessary legal formalities, including holding separate meetings of shareholders and creditors, requisite publication and issuance of notices to the Securities & Exchange Commission of Pakistan. The publication of the instant petition was effected in Daily 'Jang' and 'The News' in their issue of 20.12.2021 and was also gazette on 29.12.2021.

8. In pursuance of order dated 01.12.2021 separate extraordinary general meetings of the members of petitioners were held on 27.12.2021 and so also of the secured creditors of petitioners No.1 and 2 on 21.03.2022 and not a single shareholder or secured creditor of any of the petitioners objected to the scheme. Minutes of these meetings are filed with reports of the Chairmen in terms of Rule 955 of SCCR and Rule 57 of Companies (Court) Rules, 1997 which reports are also available on Record. In terms of his reports, Chairman of petitioners No.1, 2 and 3, after considering all the aspects of the matter, has recommended for approval of the subject merger.

9. In view of the above, I do not see any impediment in granting this petition, which is accordingly allowed as prayed.

Dated: 17.02.2023

J U D G E