

# THE HIGH COURT OF SINDH KARACHI

J.C. Misc. No. 33 of 2023  
[Lucky Textile Mills and Fashion Textile Mills (Pvt.) Ltd.]

Petitioners : Lucky Textile Mills Limited and Fashion Textile Mills (Private) Limited through Mr. Mikael Azmat Rahim, Advocate.

S.E.C.P. : Through Syed Ebad-ur-Rehman, Advocate.

Date of hearing : 11-09-2024

Date of order : 25-09-2024

## ORDER

**Adnan Iqbal Chaudhry J.** - The Petitioners are companies limited by shares incorporated in Pakistan with registered offices at Karachi. They seek amalgamation under section 282 read with sections 279 to 281 of the Companies Act, 2017 [the Act]. The Petitioner No.1 is classified in the Third Schedule to the Act as a Large Sized Company. Therefore, in view of SRO 840(I)/2017 dated 17.08.2017 issued under section 285(8) of the Act, the petition is before the Company Bench.

2. It is stated that both Petitioners are wholly owned subsidiaries of Y.B. Holdings (Pvt.) Ltd., and that the individual shareholders are nominees of that holding company (under sections 164 and 200 of the Act). The auditor's report affirms the same. In that background, the Scheme of Amalgamation proposes that the Petitioner No.2 will merge/amalgamate with the Petitioner No.1 such that the entire undertaking and business of the Petitioner No.2, including all assets, rights, liabilities and obligations, will stand transferred to and vest in the Petitioner No.1; that all shares of the Petitioner No.2 shall stand cancelled; and that the Petitioner No.2 shall stand dissolved without winding-up.

3. By order dated 28.11.2023 passed under section 282(1) of the Act, the Court ordered separate meetings of shareholders of the Petitioners and the class of secured creditors of the Petitioner No.1 to vote on the Scheme of Amalgamation. The Chairman appointed for each meeting has filed his report under Rule 57 of the Company Court Rules, 1997. As per said reports, a meeting of shareholders of each Petitioner was held on 22.12.2023, and that of the secured creditors of the Petitioner No.1 on 28.12.2023; that the meeting of shareholders was attended by 100% shareholders of each Petitioner, either in person or by proxy, and the meeting of secured creditors of the Petitioner No.1 was attended by 100% of the value of those creditors; that all of them voted in favor of the Scheme of Amalgamation without proposing any modification and passed a special resolution accordingly.

4. Heard learned counsel and perused the record.

5. At the outset learned counsel for the Petitioners submitted that the Petitioners were not required to file a pre-merger notification with the Competition Commission of Pakistan under the Competition (Merger Control) Regulations 2016, inasmuch as the subject Scheme is exempt from the same by virtue of Regulation 5(1)(ii) thereof. He appears to be correct.

6. *Prima facie*, codal formalities were fulfilled in calling and holding the meeting of shareholders of each Petitioner to vote on the Scheme of Amalgamation, so also the meeting of the secured creditors of the Petitioner No.1. The comments of the SECP verify that the Petitioner No.2 does not have secured creditors.

7. The reports of the Chairmen of the respective meetings affirm that the Scheme of Amalgamation was approved without modification by 100% of the shareholders of each Petitioner, and by 100% of the value of secured creditors of the Petitioner No.1, which fulfils the requirement of three-fourths prescribed by section 279(2) of

the Act. NoCs of the secured creditors of the Petitioner No.1 are also on the record.

8. The Petitioner No.1 is a public company, and the principal line of its business is “to establish, set-up an industrial undertaking of textile mills and manufacturer of textile from cotton, denim, linen, wool, silk, flex, jute, coir, and the business of spinning, weaving manufacturers, doublers, combers, printers, mercers, ginners, pressers, packers, balers and cultivators of fibrous, cloths, yarns, hosiery goods and allied products”. The Petitioner No.2 is a private company and the principal line of its business is “to carry on the business of line of its manufacturers of and dealers in specialized Textile Products, including weaving and spinning of cotton and allied products”. Therefore, the Petitioners have similar business objectives.

9. The report of the respective auditors of the Petitioners affirms that the shares issued by each Petitioner are fully paid-up.

10. The Scheme of Amalgamation is for viable reasons, *inter alia* that the amalgamation would increase the asset base of the surviving company and would reduce administrative costs of the surviving company.

11. No shareholder has come forth to object to the proposal that no shares of the Petitioner No.1 will be issued in lieu of the cancelled shares of the Petitioner No.2. A plausible reason for such proposal has been given by the consultant to the Scheme in his report as follows:

*“As per the Form A and as of the date of this letter, the entire issued and paid up share capital of each of Fashion Textile and Lucky Textile is beneficially wholly owned by Y.B. Holdings (Private) Limited (the ‘Holding Company’) (i.e. by the Holding Company and its nominees); hence, Fashion Textile and Lucky Textile are wholly owned subsidiaries of the Holding Company.*

*Accordingly, in respect of the Amalgamation, no shares of Lucky Textile are required to be issued since Fashion Textile and Lucky Textile are wholly owned subsidiaries of the Holding Company. Issuance of any shares of Lucky Textile to the Holding Company in respect of the Scheme shall not change this relationship.”*

12. It is settled law that where a Scheme of Amalgamation approved by the requisite majority appears to be fair, just, reasonable and *prima facie* fulfils statutory requirements, then the Court does not sit in appeal over the commercial wisdom of the Scheme.<sup>1</sup>

13. The petition was advertised pursuant to Rule 19 of the Companies Court Rules, 1997. No objection has come forth from any quarter.

14. The annual accounts of both Petitioners placed on the record relate to a financial year within 180 days of the meetings summoned by them for approving the Scheme, and therefore a supplementary audited financial statement of the Petitioners is not required as per section 282(2)(e) of the Act.

15. As per the auditor's report on the financial statements of the Petitioners for the year ended 30-06-2023, the books of accounts of the Petitioners are properly maintained, and the financial statements are in accord with the books of accounts.

16. The Petitioners affirm that there are no investigation proceedings pending against them under sections 256 to 258 of the Act. The SECP does not dispute that fact. The compliances highlighted by the SECP in its comments have been addressed. Learned counsel for the SECP does not oppose the sanction.

17. Therefore, the Scheme of Amalgamation filed with the petition as **Annexure 'D'** is hereby sanctioned without modification with the following order:

- (i) That all the property, rights and powers of Fashion Textile Mills (Pvt.) Ltd. [FTML] as per the audited financial statement of FTML as at June 30, 2023, and all the other property, rights and powers of FTML, be transferred without further act or deed to Lucky Textile Mills Ltd. [LTML], and accordingly the

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<sup>1</sup> *Paramount Spinning Mills* (2020 CLD 1443); *IGI Insurance Ltd.* (2018 CLD 572); *Gadoon Textile Mills Ltd.* (2015 CLD 2010).

same shall pursuant to section 282(3) of the Companies Act, 2017 be transferred to and vest in LTML for all the estate and interest of the FTML therein but subject nevertheless to all charges now affecting the same; and

- (ii) That all the liabilities and duties of FTML be transferred without further act or deed to LTML, and accordingly the same shall pursuant to section 282(3) of the Act, be transferred to and become the liabilities and duties of LTML; and
- (iii) That all proceedings now pending by or against FTML be continued by or against LTML; and
- (iv) The shares issued by FTML shall be delivered over to LTML for cancellation without the need to issue shares in lieu thereof; and
- (v) That LTML do within 7 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration, and on such certified copy being so delivered FTML shall stand dissolved without winding-up and the Scheme shall be effective on start of business on July 1, 2024. The Registrar of Companies shall place all documents relating to FTML and registered with him on the file kept by him in relation to LTML, and the files relating to the said two companies shall be consolidated accordingly; and
- (vi) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

Petition allowed as above.

**JUDGE**

Karachi:  
Dated: 25-09-2024