

IN THE HIGH COURT OF SINDH AT KARACHI

J.C.M. NO.51/2022

IN THE MATTER OF:

- 1. ENGLISH BOOT HOUSE (PRIVATE) LIMITED**
 - 2. FREEDOM FOOTWEAR (PRIVATE) LIMITED**
- **PETITIONERS**

Date of hearing and order: 21.12.2023.

Petitioners: Through Mr. Akbar Sohail advocate for petitioner No.1
Mr. M. Yousuf Nasim advocate for petitioner No.2.

SECP on Court notice: Through Syed Ehad Hussain advocate.

J U D G M E N T

SALAHUDDIN PANHWAR, J: This petition under section 279 to 283 of the Companies Act, 2017 seeks sanction of subject Scheme of Arrangements (Annexure-C). In substance the petitioners have proposed to restructure, in terms whereof petitioner No.1 intends to transfer assets and liabilities as detailed in the Scheme of Arrangement to petitioner No.2 against cancellation of ordinary shares held by the Kamil Family in petitioner No.1 as defined in the Scheme and issuance of shares of equal value to Kamil Family by petitioner No.2.

2. By order dated 12.12.2022 on application under section 279(1) of the Act of 2017 meetings of the members of petitioners were directed to be convened. Publication of advertisement of the petition in official gazette and newspapers were ordered; notice was issued to SECP as required under the Act of 2017 and Sindh Chief Court Rules (OS). The counsel for SECP after notice has marked his appearance and has raised some formal objections.

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

4. Terms of the Scheme of Arrangement *inter alia* contains that petitioner No.1 is a family owned company held by three

families, the Jawed Family, Anwar Family and Kamil Family, due to certain disputes between them they have formulated the scheme whereby agreeing that properties listed in Portion 1 of the Scheme shall remain in the name of petitioner No.1 and properties listed in Portion 2 thereof shall be transferred to petitioner No.2. Such scheme was accepted by board of directors of both petitioners.

5. As far as the issues raised in the parawise comments, which learned counsel has also agitated during the course of arguments, perusal of the record reveals that all such objections are met and even learned counsel has conceded to it. Hence in substance he has conceded to the Scheme of Arrangement. The basic requirement of Section 279 of the Companies Act 2017 is as follows:-

- (i) there must be a compromise / arrangement/ Scheme
- (ii) proposed between a company and its creditors
- (iii) application to be made to the Commission, now the High Court, as defined above;
- (iv) supported by meetings
- (v) mandatory filing of material facts relating to the company which is;
 - (a) financial position
 - (b) auditor's report
 - (c) latest accounts of the company
 - (d) the pendency of any investigation proceedings
 - (e) supported by the affidavits

6. In Case of Sidhpur Mills Co. Ltd. (AIR 1962 Gujrat 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.

7. By examining sections 279 to 284 of the Companies Act it is clear 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.

8. The publication of instant petition was effected in Daily Jang and Daily Dawn Karachi in their issue of 15.12.2022 and official gazette dated 14.12.2023 which are available on record. Reports of respective Chairmen in terms of Rule 955 of SCCR are also available on record with approval/adoption of the scheme of arrangement.

9. On 13.05.2023 petitioner No.2 filed an application (CMA No.1125/2023) seeking amendment in petition; on 27.09.2023 it was observed that since petitioner No.2 is seeking amendment not only in petition but also in the scheme of arrangement thus direction was issued that members of petitioner No.2 who had approved the scheme prior to filing of the petition, shall have to either submit their

affidavit of no objection or call a meeting for approval of the proposed amendment; as well SECP was directed to submit its response on referred application. Pursuant to above direction, shareholders of petitioner No.2 and also that of petitioner No.1 have filed affidavits of no objection affirming that in the meeting of board of directors of the two company, such amendments have been approved. Counsel for SECP does not raise any objection to referred application.

10. As explained above, 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. There does not remain any objection to the scheme of arrangement and no mistake, conspicuous, detectable shortcoming or flaw has further been pointed out in the present matter.

11. For the foregoing reasons, there remains no impediment to grant and sanction of the Scheme of Arrangements as amended. Accordingly, this petition is allowed and the amended Scheme of Arrangements is hereby sanctioned in terms thereof.

J U D G E