

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI

J.C.M. No.09 of 2017

Date	Order with signature of Judge
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Present:

Mr. Justice Muhammad Ali Mazhar

Associated Textile Consultants (Pvt) Ltd &
ATC Technology Consultants (Pvt) Ltd.....Petitioners

Dates of Hearing 22.11.2017.

Mr. Raashid Anwer, Advocate for the Petitioners.

Ms.Amber Imran, Chief Financial Officer of
Petitioners.

M/s.Salman Salim Rajan and Syed Ibad, Law
Officers of S.E.C.P.

Muhammad Ali Mazhar, J: This petition has been brought to implore an order for sanctioning the Scheme of transferring to and vesting in the petitioner No.2, the whole of ATC Undertaking (petitioner No.1) as per Article 10.1 of the Scheme of arrangement.

2. The transitory facts are that the petitioner No.1 is a private limited company which has successfully diversified from its original textile machinery, parts and service business and evolved through innovation and entrepreneurship to focus into other business segments such as Food, Commodity Trading, Energy/Water solutions and property investments. In fact it is parent company of National Foods. The objects of petitioner No.1 and the description of business is set forth in its Articles and Memorandum of Association whereas the petitioner No.2, ATC Technology Consultants (Pvt.) Ltd, is also a

private limited company a wholly owned subsidiary of the petitioner No.1. The objects of the petitioner No.2 and the description of business is set forth in its Articles and Memorandum of Association.

3. The learned counsel for the petitioners argued that the directors of the petitioner No. 1 decided to enter into a Scheme of Arrangement whereby the petitioner No.1 will transfer all of its operational Assets and Liabilities to the petitioner No.2 in exchange of shares. The Board of Directors of the petitioner Nos.1 and 2 have considered various ways and means to improve their business with the ultimate aim of maximizing shareholder returns. The petitioners intend that the ATC Undertaking will be transferred from the petitioner No.1 to the petitioner No.2. However the share capital of the petitioner No.1 shall neither be reduced nor cancelled as a consequence of the Scheme. It was further contended that in exchange, the petitioner No.2 shall issue a number of ordinary shares to the petitioner No.1. He further invited my attention to the amended scheme through which in the interest of members/shareholders some variations were made. It was further averred that in view of the directions of this court separate meetings of the members/shareholders were convened and the scheme was approved by majority. On approval of scheme and its implementation, the balance sheets and heads of accounts shall be bifurcated as certified by the auditors to the Scheme.

4. The learned counsel for the SECP referred to their reply. He avowed that the petitioners may be directed to file latest details of the assets and liabilities as per schedule A to the scheme duly supported with certified copies of all the documents including title documents, complete working and auditors certificates etc. The post-

transfer balance sheet of petitioner Nos.1 and 2 is also required to ascertain accounting treatment and impact of transfer of assets. However, no substantial opposition was raised against the grant of petition rather the learned counsel himself pointed out a statement filed by Additional Registrar SECP which is reproduced as under:-

“STATEMENT

It is respectfully submitted for and on behalf of the Securities and Exchange Commission of Pakistan, that the subject petition along-with scheme of arrangement of Associated Textile Consultants (Pvt.) Ltd with and into ATC Technology Consultants (Pvt.) as well as subsequent reply of the petitioners to the SECP have been examined and considered by the SECP.

It is therefore, humbly apprised that SECP has no further observations/comments, this Honourable Court may kindly pass such orders as it may deem fit.

Dated 7.11.2017

**Muhammad Naeem Khan
Additional Registrar of Companies”**

5. Heard the arguments. The interlocutory applications moved under Rule 953 of the Sindh Chief Court Rules (Original Side) and Rule 55 of the Companies (Court) Rules, 1997 with the petition praying for directions as contemplated in Rules 954 and 956 of the Sindh Chief Court Rules (Original Side) and Rule 56 of the Companies (Court) Rules, 1997 were allowed on 25.5.2017 for convening meetings of the members of petitioner No.1 and the members of the petitioner 2 for approving the Scheme. Both the petitioners have filed the report through their authorized representatives along with the board resolutions passed for the approval of the scheme of arrangement. The manuscripts of the resolutions passed in the meetings convened by the petitioner No.1 and petitioner No.2 are reproduced separately as under:-

**Resolution passed by the members/shareholders
of the Petitioner No.1 on 15.6.2017**

“IT IS THEREFORE RESOLVED:

That subject to the approval of the High Court, the draft amended Scheme of Arrangement under Section 284-287 of the Companies Ordinance, 1984, between Associated Textile Consultants (Pvt.) Ltd. and ATC Technology Consultants (Pvt.) Ltd, which is attached as Annexure 'B' herewith, and initialed by the Chairman of the Meeting for purposes of identification, is hereby approved, adopted and agreed."

IT IS FURTHER RESOLVED:

That ATC Technology Consultants shall issue 1,409,334/- (One Million Four Hundred Nine thousand Three Hundred and Thirty Four) ordinary shares of Rs.100/- (Hundred Rupees) each to Associated Textile Consultants and as such it is resolved that the Scheme may be amended as follows:

10.1: In consideration for the transfer of the ATC Undertaking to ATC Technology Consultants (which is the wholly owned subsidiary of Associated Textile Consultants), ATC Technology Consultants shall issue 1,409,334/- (One Million Four Hundred Nine thousand Three Hundred and Thirty Four) ordinary shares of Rs.100/- (Hundred Rupees) each to Associated Textile Consultants".

**Resolution passed by the members/shareholders
of the Petitioner No.2 on 15.6.2017**

"IT IS THEREFORE RESOLVED:

That subject to the approval of the High Court, the amended draft Scheme of Arrangement under Section 284-287 of the Companies Ordinance, 1984, between Associated Textile Consultants (Pvt.) Ltd. and ATC Technology Consultants (Pvt.) Ltd, which is attached as Annexure 'B' herewith, and initialed by the Chairman of the Meeting for purposes of identification, is hereby approved, adopted and agreed."

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6. The salient characteristics and nitty-gritties of the Scheme of arrangements are as follows:-

"SCHEME OF ARRANGEMENT

2. Object of the Scheme

2.1 The transfer of the ATC Undertaking (as defined hereinabove) from Associated Textile Consultants to ATC Technology Consultants (a wholly owned subsidiary) against the issuance of ordinary shares of ATC Technology Consultants (Pvt.) Ltd. to Associated Textile Consultants (Pvt.) Ltd, as set out in Article 10 hereunder.

4. Transfer of Assets & Liabilities

4.1. From the Effective Date the ATC Undertaking shall be transferred to and vest in (or be deemed to be transferred to and vested in, as the case may be) ATC Technology Consultants, and Associated Textile Consultants' balance sheet, and heads of account, shall be bifurcated as mentioned in the Bifurcated Management Accounts.

4.2. Insofar as the ATC Undertaking (or any part thereof) is subject to any Liabilities immediately prior to the Effective Date, the ATC Undertaking (or such part thereof) shall be deemed to have been transferred subject to such Liabilities.

4.3. By virtue of approval of this Scheme by the Court, on the Effective Date, without any further act, deed, matter or thing, all Liabilities in relation to the ATC Undertaking, shall be deemed to have been created by the transferee on that day.

4.4. Upon the transfer of the ATC Undertaking on the Effective Date under Article 4.1 hereinabove, the charges (if any) recorded in the register of charges by Associated Textile Consultants in relation to the ATC Undertaking or any part thereof, shall be released and discharged simultaneously with the registration of the same charges by ATC Technology Consultants on the Effective Date under Section 122 of the Ordinance in the same amount and for the benefit of the same charge-holders.

4.5. From the Effective Date, the ATC Undertaking (inclusive of all Liabilities) shall be deemed to be and assumed by ATC Technology Consultants as its own. Simultaneously with the assumption by ATC Technology Consultants of Liabilities in relation to the ATC Undertaking, Associated Textile Consultants shall stand released from all obligations in respect of such Liabilities.

10. Consideration**(In old scheme clause 10)**

10.1. In consideration for the transfer of the ATC Undertaking to ATC Technology Consultants (which is the wholly owned subsidiary of Associated Textile Consultants), ATC Technology Consultants shall issue 634,000 (Six Hundred and Thirty Four Thousand) ordinary shares of Rs.100/- (Hundred Rupees) each to Associated Textile Consultants and Rs.77,533,350 (Seventy Seven Million Five Hundred and Thirty Three Thousand Three Hundred and Fifty Rupees) shall be credited to the Share Premium Account of ATC Technology Consultants”.

Amended Scheme for modifying the swap ratio**10. Consideration****(Amended scheme)**

10.1. In consideration for the transfer of the ATC Undertaking to ATC Technology Consultants (which is the wholly owned subsidiary of Associated Textile Consultants), ATC Technology Consultants shall issue 1,410,334/- (One Million Four Hundred Ten thousand Three Hundred and Thirty Four) ordinary shares of Rs.100/- (Hundred Rupees) each to Associated Textile Consultants”.

7. It is significant to note that in terms of consideration jot down previously in the scheme of arrangement, the ATC Technology Consultants agreed to issue 634,000 ordinary shares of Rs.100/- each to Associated Textile Consultants and Rs.77,533,350 was to be credited in the

Share Premium Account of ATC Technology Consultants which was not found feasible or practicable. Then again by means of an amended scheme of arrangement predominantly the portion germane to consideration corollary to the amalgamation was duly vetted by the Chartered Accountant and after burdensome and arduous exercise now ATC Technology Consultants (petitioner No.2) has agreed to issue 1,410,334/- ordinary shares of Rs.100/- each to Associated Textile Consultants (petitioner No.1) and give up the idea of crediting the amount in the Share Premium Account. Bearing in mind the reply of SECP including the statement filed in the court it is translucent and discernable that the fundamentals of the scheme were considered by SECP meticulously and comprehensively and they have no objection to grant this petition.

8. In the case of **IGI Insurance Limited and others [J.C. Misc. No. 01 of 2017], (order authored by me)**, I have discussed in detail 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. 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 a method of corporate streamlining and restructuring by dint of which business operations are segregated into one or more components. The demerged company connotes and exemplifies a conglomerate (transferor company) whose undertaking is transferred pursuant to demerger to a resulting company (transferee company) whereas the resulting company (transferee company) means a company to which the undertaking of the demerged company is transferred in a demerger and the resulting company in consideration of such transfer of undertaking issues shares to the shareholders of the demerged company. The transfer pursuant to a scheme of arrangement becomes the property of the resulting company and by virtue of the demerger, all the liabilities relating to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company. The assets and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger and the resulting company issues in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis.

9. 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.

10. 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.

11. 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. Where all the requisite formalities were complied with including shareholders' approval, the court would not question the commercial wisdom behind the scheme. One of the effects of the sanction of the court is that it becomes binding upon the company and its members including those who voted against the scheme once the scheme of compromise and arrangement is approved by statutory majority it binds the dissenting minority and the company. 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 of arrangement.

12. Being a sanctioning court, I have noticed that all indispensable statutory benchmarks and formalities have been accomplished and adhere to by the petitioners as envisioned under the relevant provisions of Companies Ordinance 1984 and the enabling rules. The schemes set up for sanction have 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 schemes were placed before the voters in the separate meetings to live up to statutory

obligations including. The swap ratio was determined by the Chartered Accountant and their reports are placed on the record. The proposed scheme as a whole looks like evenhanded and serviceable from the point of view of prudent men of business taking a commercial decision. 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 to the scheme.

13. In the wake of foregoing discussion, the Scheme of Arrangement is sanctioned as prayed by the petitioners. The petition is disposed of.

Judge