

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

J.C.M No. 28 of 2018

---

DATE

ORDER WITH SIGNATURE OF JUDGE

---

For hearing of Main Petition.

-----

**09.04.2019.**

**Mr. Mikael Azmat Rahim, Advocate for Petitioner.**

**Mr. Saad Abbasi, Advocate for SECP.**

-----

This is a Company Petition under Section 279 to 283 and 285(8) of the Companies Act, 2017 seeking sanctioning of the Scheme of Arrangement as set-forth in Annexure “H” to this Petition, in respect of amalgamations / mergers / demergers, so as to make the scheme of arrangement binding with Petitioners and the Shareholders of the Petitioners along with other persons.

The Petitioner No.1 (**“Lucky Holdings Limited”**), an unlisted Public Company was incorporated on 06.09.2012 and is engaged in the business of, *inter alia*, acquiring and holding any kind of interest in, or providing any form of capital for, any person or undertaking of any kind, as well as to carry on business as a holding company and to coordinate and manage the activities of, and to provide finance, services and facilities to, any company or undertaking controlled directly or indirectly by the Petitioner No.1 or in which the Petitioner No.1 is interested, whether as a shareholder or otherwise and whether directly or indirectly. On the other hand, the Petitioner No.2 (**“Lucky Cement Holdings Private Limited”**), Petitioner No.3 (**“Gadoon Holdings Private Limited”**), Petitioner No.4 (**“YB Pakistan Holdings Private Limited”**), Petitioner No.5

(**“Yunus Textile Holdings Private Limited”**) & Petitioner No.6 (**“Lucky Textile Holdings Private Limited”**) are newly incorporated private companies established for taking over the demerged undertaking(s) of Petitioner No.1 and were incorporated on 16.07.2018 except Petitioner No.6 which was incorporated on 17.07.2018 and have not commenced business as yet. The Petitioner Nos.1, 2, 3, 4, 5 and 6 are desirous to restructure and merge by way of amalgamation of specific undertakings of Petitioner No.1 with and into the Petitioners No.2, 3, 4, 5 and 6. Accordingly, specific portions of the undertaking of the Petitioner No.1 i.e. the LHL Demerged Undertaking 1, LHL Demerged Undertaking 2, LHL Demerged Undertaking 3, LHL Demerged Undertaking 4 and LHL Demerged Undertaking 5 (collectively the **“LHL Demerged Undertakings”**) shall stand demerged from the Petitioner No.1, and simultaneously be merged with and into the Petitioners No.2, 3, 4, 5 and 6 respectively. The Petitioner Nos. 1, 2, 3, 4, 5 and 6 have agreed and entered into an agreement being the Scheme of Arrangement dated 27.11.2018 (the **“Scheme of Arrangement”**) for the proposed restructuring and amalgamations / mergers, which has been duly approved by the respective Board of Directors of the Petitioners.

The Scheme of Arrangement, attached as Annexure “H” to this Petition, gives full particulars as to the benefits of the amalgamations / mergers / demergers, the purpose for the same, the details of the undertakings that will be demerged from the Petitioner No.1 and merged with and into the Petitioners No.2, 3, 4, 5 and 6 respectively (i.e. the LHL Demerged Undertakings), the consequences of the

arrangements, the effective date of the demergers / amalgamations, reduction in the shareholders equity of the Petitioner No.1 including a reduction in the issued and paid up share capital thereof, and general provisions with respect to the arrangement. Such Scheme of Arrangement is part and parcel of the Petition. The object of this Petition is to, *inter alia*, obtain sanction of this Hon'ble Court to the Scheme of Arrangement in terms of which specific portions of the undertaking of the Petitioner No.1 i.e. the LHL Demerged Undertakings, inclusive of the relevant assets, rights, liabilities, obligations and dues of the specific undertakings, as more particularly described in the Scheme of Arrangement, will be demerged from the Petitioner No.1 and shall be transferred to, stand vested in an assumed by the Petitioners No.2, 3, 4, 5 & 6 respectively, while the LHL Remainder Undertaking (as defined in the Scheme of Arrangement) shall continue to remain with the Petitioner No.1. Upon the Sanction of the Scheme of Arrangement, the Petitioners No.1, 2, 3, 4, 5 & 6 will continue as going concerns under their respective existing names, and neither shall be dissolved. Furthermore, the Petitioner No.1 seeks the confirmation of this Hon'ble Court with respect to the reduction in the shareholders equity of the Petitioner No.1, particularly the reduction in its issued and paid up share capital, as a consequence of the demergers / arrangement.

On 30.11.2018 on an application (CMA No.385/2018) on behalf of the Petitioners under Rule 55 of the Companies (Court Rules), 1997, read with Section 151 CPC, the Court had permitted to convene separate meeting(s) of the members

of the petitioners under Section 279(2) of the Companies Act, 2017 after publishing a notice in newspapers, and also inviting creditors, whereas, further directions were given for advertisement of the main Petition for publishing in terms of Rule 76 read with Rule 19 of the Companies Ordinance (Court) Rules, 1997 and notice was also ordered to Securities & Exchange Commission of Pakistan. It appears that all requisite formalities have been completed as publication has been made in daily "JANG" dated 18.12.2018 and "THE NEWS" 17.12.2018, whereas, report has been furnished by the Chairman on behalf of all the Petitioner Companies. Comments were filed by SECP and objection was raised that under the instant Scheme of Arrangement, the LHL Demerged Undertakings (as defined under the Scheme), amongst others, comprise of other liabilities representing payable in respect of income taxes amounting to Rs.391,181,000/- as per audited unconsolidated financial statements of the Petitioner No.1 for the year ended June 30, 2018, and comments be obtained from the concerned department. To this necessary response has been filed through replication on 25.03.2019, and on perusal of the objection as well as the response filed on behalf of the Petitioners, this Court is of the view that the objection of SECP is not appropriate as Petitioner No.1 has shown the said amount under the head of current liabilities and Notes to Annexure "A" (Split Balance Sheets of Petitioner No.1) describes the same as payable to LHL remainder undertakings which is receivable / payable in respect of income tax i.e. receivable from LHL Demerged Undertakings / payable to LHL Remainder Undertaking. This is otherwise in respect of the Inter-Corporate dividend arising out of the shareholding of

Petitioner No.1 in ICI Pakistan Limited, whereas, the same is yet to be adjudicated finally as the law itself is under challenge before this Court in various cases by the taxpayers. In fact the liability is yet to be crystalized; therefore, seeking any comments and or no objection from the Tax Department is unwarranted. Nonetheless as per Rules publication has been made whereas, a proper notice has also been published in the Gazette of Pakistan dated 30.01.2019, and none has objected.

In view of such position, since all formalities have been completed whereas, no objections have been received from any quarter(s), there appears to be no impediment in granting this Petition which is accordingly allowed as prayed. For further proceedings and necessary fulfillment of the requirements under the Companies Act, 2017, the Petitioner may approach SECP accordingly.

J U D G E

Ayaz P.S.