

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

J.C.M. No.18 of 2019

In the case of Coastal Refinery (Private) Limited and Harmain Engineering
(Private) Limited

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of Main Petition

29.01.2020.

**Mr. Mikael Azmat Rahim alongwith Ms. Heer Memon, Advocates for
Petitioners.**

Mr. Saad Abbasi, Advocate for SECP.

This is a Petition under Section 279 to 283 and 285(8) of the Companies Act 2017 for approval of Scheme of Arrangement dated 27.05.2019 (**Annexure “D” to the Petition**). The crux of the Scheme of Arrangement is to provide for proposed demerger of specific portions of the Undertaking of Petitioner No.1 and merger of the same with and into the Petitioner No.2. The Petitioners No.1 and 2 have agreed and entered into an Agreement being the Scheme of Arrangement, which has been duly approved by the respective Board of Directors of the Petitioners, including, reduction in the issued and paid up share capital of the petitioner No.1, and general provisions with respect to the arrangement. The object of the Petition is to obtain sanction of this Court to the Scheme of Arrangement in terms of which specific portions of the undertaking of the Petitioner No.1 (i.e. the Demerged Undertaking) 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, stands vested in and assumed by Petitioner No.2, against the allotment and issue of the shares of the Petitioner No.2 to the Shareholders (as defined in the Scheme of Arrangement). The Continuing Undertaking (as defined in the Scheme of Arrangement) shall continue to remain with Petitioner No.1. Upon sanction of the Scheme of Arrangement, the Petitioner Nos.1 and 2 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 Court with respect to the

reduction in the issued and paid up share capital of the Petitioner No.1 as a consequence of the demerger.

It appears that Petitioner No.1 was incorporated on 19.08.2005 and is registered at Karachi as a public company and is carrying on the business of exporting and importing products of refinery and other merchandise, machinery, equipment, articles etc. and to act as manufacturers, auctioneers, commercial marketing agents, commission agents etc. alongwith the business of transporting crude oil and other products by rail, road and sea and to market the same. The authorized share capital of the petitioner No.1 is Rs.1,500,524,560/-, divided into 150,052,456 ordinary shares of Rs.10/- each, whereas, subscribed and paid share capital of the Petitioner No.1 is currently Rs.670,524,560/-.

The Petitioner No.2 was incorporated on 16.09.2015 and is registered at Karachi a private limited and is carrying on the business of exporting and importing products of refinery and other merchandise, machinery, equipment, articles etc. and to act as manufacturers, auctioneers, commercial marketing agents, commission agents etc. alongwith the business of transporting crude oil and other products by rail, road and sea and to market the same. The authorized share capital of the petitioner No.2 is Rs.180,000,000/--, divided into 18,000,000 ordinary shares of Rs.10/- each, whereas, subscribed and paid share capital of the Petitioner No.2 is currently Rs.1,000,000/-.

The Scheme of Arrangement has been duly approved by the respective Board of Directors of the Petitioners and such resolutions have been placed on record. The Scheme of Arrangement, also gives full particulars as to its benefits, the purpose for the same, the consequences of the arrangement, the effective date, consideration and related matters, reduction in the issued and paid up capital thereof, and general provisions with respect to the arrangement. Such Scheme of Arrangement is part and parcel of the petition. By seeking sanction of the Scheme of Arrangement through this Petition under the Companies Act, as above, the intention is to obtain approval of the terms, so stated in

the Scheme of Arrangement in which the entire details have been incorporated including the shareholding of respective Petitioners.

On 30.05.2019 on an application bearing (CMA No.136/2019) 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 (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 "The News" dated 03.06.2019 and "Jang" Karachi dated 03.06.2019. As per rules a proper notice has also been published in the Gazette of Pakistan dated 26.06.2019. It further appears that reports have been furnished by the Chairmen in respect of petitioners regarding conduct of such meetings.

Comments have been filed by SECP and it has been stated that there are no registered secured creditors of Petitioner No.2, whilst NOC of registered secured creditors of the Petitioner No.1 is required. To this, learned Counsel for the Petitioners submits that pursuant to order of this Court a meeting of all creditors has been held and none has objected, whereas, requisite NOC's have been annexed with the said report of the Chairman; hence, sufficient compliance has been made. Today learned Counsel for SECP admits that such compliance has been made. Accordingly, this objection is therefore overruled.

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

J U D G E