

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui

Judicial Company Misc. No. 45 of 2021

In the matter of  
Associated Consulting Engineers ACE Limited  
and four other petitioners

Date of Hearing: 02.02.2023  
Petitioners: Through Mr. Mikael Azmat Rahim Advocate.  
On Court notice: Security & Exchange Commission of Pakistan  
Through Mr. Ibad-ur-Rehman, Law Officer.

### **J U D G M E N T**

Muhammad Shafi Siddiqui, J.- Through this petition under section 279 read with Sections 280 to 283 and 285(8) of Companies Act, 2017, petitioners seeks sanction of Scheme of Arrangement dated 26.11.2021 proposed and approved by the respective Board of Directors. The subject scheme, which in fact for evolving a Demerged Undertaking and/or reorganization/restructuring amongst group companies, as defined in the scheme, to be carved out from petitioner No.1 with and into petitioners No.2 to 5. The statutory meeting for this Demerging Undertaking was also held.

2. By virtue of an order dated 01.12.2021, meeting of the creditors of petitioner companies and so also the meeting of member of the petitioner companies was ordered to be held in pursuance of application filed in that regard and so also advertisement of main petition to be published in official gazette and newspapers, as required under the scheme of Company Court Rules 1997 and Sindh Chief Court Rules (OS). Notice to SECP was also issued.

3. The SECP after notice have marked their appearance and have raised some formal objections with an objection as to the effective date of this Demerged Undertaking via Scheme of Arrangement.

4. I have heard the learned counsel and perused material available on record.

5. Perusal of record reveals that the Board of Directors of all petitioners i.e. petitioners No.1 to 5 have considered various options which were available with them to improve their business and have come out with the subject scheme under consideration annexed with this petition. The intent of the scheme of arrangement is that specific portions of undertaking of petitioner No.1 i.e. (i) BRP Demerged Undertaking, (ii) TSP Demerged Undertaking, (iii) KRP Demerged Undertaking and (iv) ARP Demerged Undertaking shall stand demerged from petitioner No.1 and merged into petitioners No.2 to 5. The retained undertaking shall remain with petitioner No.1.

6. In consideration for transfer of the Demerging Undertakings (a) shares of petitioner No.4 shall be issued to transferring shareholders; (b) shares of petitioner No.1 held by transferring shareholders shall stand cancelled; (c) shareholders equity including issued and paid up share capital of petitioner No.1 shall be reduced; (d) shares of petitioner No.4 held by KRP shareholders shall stand cancelled and (e) shareholders equity including issued and paid up share capital of petitioner No.4 shall be reduced. It is also stipulated that all petitioners shall continue to exist and function.

7. In compliance of order of the Court dated 01.12.2021 publication was effected in 'Daily Jang' and 'The News' in their issue of 20.12.2021 and so also gazette on 29.12.2021. Separate meetings of members of petitioners No.1 to 5 were held on 23.12.2021 in which 100% members of these companies approved the Scheme of Arrangement. Commissioners

reports in that regard are available on record. Meeting of secured creditors of petitioner No.1 was held on 24.02.2022 in which all the secured creditors have raised no objection. Such no objection certificates are placed on record.

8. Insofar as objections raised by SECP are concerned, the same have been adequately replied by the petitioners and there seems to be no cogent and material objection which could create a hurdle in the grant of this petition.

9. Above facts reveal that all the ingredients as has been held by the superior Courts i.e. statutory requirements have been complied with; the scheme as a whole has been arrived at by the majority rather in the instant case none has raised any objection; interest of whole body of shareholders is taken care of and the scheme will ultimately prove to be for the beneficial for the shareholders and the companies itself. Hence there appears to be no impediment in confirming the Scheme of Arrangement.

10. The Scheme of Arrangement/Demerger Undertaking in view of understanding of the members/directors is to redesign and restructure the companies to promote the business avenues and apparently not against the public interest or violation of law. The Scheme of Arrangement/Demerger Undertaking is found to be at par with the requirement of law and it would be unfair to sit over the wisdom of the directors to conduct the business in accordance with law. The petition as such is allowed as prayed.

Dated: 02.02.2023

**J U D G E**