

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

Judicial Company Misc. No. 8 of 2022

In the matter of
Amer Tex (Pvt.) Ltd. and six other petitioners

Date of Hearing: 01.09.2022

Petitioners: Through Mr. Raashid Anwar Advocate.

On Court notice: Security & Exchange Commission of Pakistan
Through Mr. Saad Abbasi, Law Officer.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Through this petition, petitioner seeks sanction of Scheme of Arrangement proposed and approved by the respective Board of Directors.

The subject scheme, which in fact for evolving a Demerged Undertaking, as defined in the scheme, to be carved out from petitioner No.1 and the monetary nucleus therefrom to be allocated to petitioners No.2 to 7. The statutory meeting for this Demerging Undertaking was also held. By virtue of an order dated 26.04.2022, calling of the meeting of the creditors of petitioner companies was dispensed with, as they have only nominal debt and have no significant activities whatsoever. The said application, vide order dated 26.04.2022 was allowed subject to all just legal exceptions and was followed by advertisement of main petition published in official gazette and newspapers, as required under the scheme of Company Court Rules 1997 and Sindh Chief Court Rules (OS).

The SECP after notice have marked their appearance and have raised some formal objections that concerns with the shareholding

pattern of petitioner No.5 to an insignificant extent i.e. 31 number of shares and also as to the effective date of this Demerging Undertaking via Scheme of Arrangement.

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

The Board of Directors of all petitioners i.e. petitioners No.1 to 7 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 Demerging Undertaking is to be carved out from petitioner No.1 as the benefits thereunder in the shape of shares is to be allocated to rest of the petitioners proportionately.

In consideration for transfer of the Demerging Undertaking to each of the shareholders' companies they shall be issued and allotted ordinary shares as per the par value of their respective shares holders in the manner and proportion in the scheme and also for cancellation of existing shareholding in the issued share capital of ATL (petitioner No.1). Petitioner No.2 i.e. Resource Corporation (Pvt.) Ltd. is an entity set up to perform the functions of a shareholding company for Shahid Family. Petitioner No.3 i.e. Channel Holdings (Pvt.) Ltd. is an entity set up to perform the functions of a shareholding company for Nadeem Family. Petitioner No.4 i.e. ATMZ Company (Pvt.) Ltd. is an entity set up to perform the functions of a shareholding company for Amer Family. Petitioner No.5 i.e. Synergy Holdings (Pvt.) Ltd. is an entity set up to perform the functions of a holding company for Yousuf Family. Petitioner No.6 i.e. SFL Corporation (Pvt.) Ltd. is a wholly owned subsidiary of SFL Ltd. and an entity formed to hold investments in shares of other associated companies. Petitioner No.7 i.e. STM Corporation (Pvt.) Ltd. is a wholly owned subsidiary of Sapphire Holding Ltd. and an

entity formed to hold investments in shares of other associated companies.

The table of the post-demerger shareholding in the respective company is also available, which is neither disputed nor questioned by the SECP in terms of enhanced shareholding to the extent of proportionate value that it has in petitioner No.1. The same is reproduced as under:-

Resource Corporation (Pvt.) Ltd. (Petitioner No.2) which corresponds to the Shahid Family

Name of shareholders	Current Shareholding in				Post-Demerger shareholding in			
	ATL		RCPL		ATL		RCPL	
	Shares	%	Shares	%	Shares	%	Shares	%
Mr. Shahid Abdullah	130,287	6.9391%	220,164	33.3340%	12,289	6.9363%	259,498	33.3340%
Mr. Shayan Abdullah			220,158	33.3330%			259,490	33.3330%
Mr. Hassan Abdullah			220,158	33.3330%			259,490	33.3330%
Total	130,287	6.9391%	660,480	100%	12,289	6.9363%	778,478	100%

Channel Holdings (Pvt.) Ltd. (Petitioner No.3) which corresponds to the Nadeem Family

Name of shareholders	Current Shareholding in				Post-Demerger shareholding in			
	ATL		CHPL		ATL		CHPL	
	Shares	%	Shares	%	Shares	%	Shares	%
Mr. Nadeem Abdullah	130,287	6.9361%	220,164	33.3340%	12,289	6.9360%	259,498	33.3340%
Mr. Nabeel Abdullah			220,158	33.3330%			259,490	33.3330%
Mr. Umer Abdullah			220,158	33.3330%			259,490	33.3330%
Total	130,287	6.9391%	660,480	100%	12,289	6.9360%	778,478	100%

ATMZ Company (Pvt.) Ltd. (Petitioner No.4) which corresponds to the Amer Family

Name of shareholders	Current Shareholding in				Post-Demerger shareholding in			
	ATL		ATMZ		ATL		ATMZ	
	Shares	%	Shares	%	Shares	%	Shares	%
Mr. Amer Abdullah	130,287	6.9361%	170,160	25.0000%	12,289	6.9363%	199,658	24.9997%

Mr. Ali Abdullah			170,160	25.0000%			199,660	25.0001%
Mr. Tayyab Abdullah			170,160	25.0000%			199,660	25.0001%
Mr. Mustafa Abdullah			170,160	25.0000%			199,660	25.0001%
Total	130,287	6.9361%	680,640	100%	12,289	6.9363%	798,638	100%

Synergy Holdings (Pvt.) Ltd. (Petitioner No.5) which corresponds to the Yousuf Family

Name of shareholders	Current Shareholding in				Post-Demerger shareholding in			
	ATL		SHPL		ATL		SHPL	
	Shares	%	Shares	%	Shares	%	Shares	%
Mr. Yousuf Abdullah	130,286	6.9360%	220,160	33.5006%	12,289	6.9363%	262,049	35.5004%
Mr. Salman Abdullah			200,000	32.2497%			238,054	32.2498%
Mr. Ismael Abdullah			200,000	32.2497%			238,054	32.2498%
Total	130,286	6.9360%	620,160	100%	12,289	6.9363%	738,157	100%

SFL Corporation (Pvt.) Ltd. (Petitioner No.6)

Name of shareholders	Current Shareholding in				Post-Demerger shareholding in			
	ATL		SFLC		ATL		SFLC	
	Shares	%	Shares	%	Shares	%	Shares	%
SFLL	790,428	42.0800%	21,000	100%	74,552	42.0793%	92,588	100%
Total	790,428	42.0800%	21,000	100%	74,552	42.0793%	92,588	100%

STM Corporation (Pvt.) Ltd. (Petitioner No.7)

Name of shareholders	Current Shareholding in				Post-Demerger shareholding in			
	ATL		STMC		ATL		STMC	
	Shares	%	Shares	%	Shares	%	Shares	%
SHL	566,817	30.1757%	21,000	100%	53,462	30.1755%	72,336	100%
Total	566,817	30.1757%	21,000	100%	53,462	30.1755%	72,336	100%

The question that relates to respondent No.5 that correct shareholding pattern has not been provided, suffice it to say that shareholding pattern as per SECP record depict a picture as per last return that was filed with them. However, a gift of 31 shares was made by Salman Abdullah and Yousuf Abdullah which is not reflected in the last record of SECP and is likely to be reconciled in the next year return.

Mr. Raashid Anwar, learned counsel appearing for petitioners, has pointed out that this is insignificant change and in terms of Section 265(4) of Companies Act, 2017 and Regulation 14 of Companies (General Provision of Forms) Rules, 2018, a company other than a listed company is required to inform the Registrar about any change of more than 25% in its shareholding or membership or voting rights and hence the number of shares being transferred i.e. 31 does not attract aforementioned provision.

In the light of Section 465(4) read with Rule 14 of above enactments the objection of this insignificant number of shares for the present controversy of Demerging Undertaking is insignificant and is likely to be reconciled in the next return.

Since the Demerging Undertaking is subject to any liability immediately prior to the effective date hence for the purposes of this Demerging Undertaking the effective date is the date of this order and the Demerging Undertaking is deemed to have been transferred from this date subject to any liability prior to this date, over petitioner No.1. From the effective date of the approval of the Scheme by virtue of this order without any further act or deed, all charges or liabilities in relation to Demerging Undertaking shall be deemed to have been created by and vested with the petitioners No.2 to 7. The Demerging Undertaking (inclusive of liabilities) shall be deemed to be assumed by the petitioners No.2 to 7 as their own and consequently by assumption of such liabilities, the petitioner No.1 has been relieved from all obligations in respect of such liabilities as being assumed under the scheme. Consequently rights and securities of the creditors of petitioner No.1, if any, though not disclosed, will not be affected on account of subject scheme.

The Scheme of Arrangement/Demerger Undertaking in view of understanding of the directors is 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 in the above terms.

Dated: 01.09.2022

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