

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

Judicial Misc. No.29 of 2015

In the matter of

Total Parco Pakistan Ltd.
And
Total Oil Pakistan (Pvt.) Ltd.

Date	Order with signature of Judge
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For hearing of CMA 219/2020

Date of hearing: 20.09.2022

Mr. Abraiz Ali Khan for petitioner.
Mr. Munawar Ali for respondent.

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Muhammad Shafi Siddiqui, J.- This Judicial Miscellaneous petition was filed under Companies Ordinance, 1984 for giving effect to the Scheme of Arrangement pursuant to the provisions of Companies Ordinance, 1984 for transfer of undertakings of petitioner No.2 to petitioner No.1. In this petition, orders for convening separate meeting of the members of petitioner No.1 and 2 in a set schedule was passed, enabling them to approve the Scheme, which they did. Notices were published in leading newspapers. This petition was then heard and allowed on 29.02.2016 and the subject matter of this petition was conclusively decided.

The petitioners then filed contempt application that the contemnors, who are Manager Estates, Industrial Managing Department, and the Chairman, Port Qasim Authority, have refused to accord such Scheme of Arrangement as approved by this Court and to give effect thereto by not changing the record of the property being Plot No.A-6 (LPG/Oil Area) measuring 5-0 Acres (henceforth plot).

This contempt application was treated as an application under section 151 CPC and report was called from the Manager Estates,

Industrial Managing Department, Port Qasim Authority and through an advocate a reply was submitted on their behalf under heading of rejoinder of alleged contemnor, though it is counted as a statement/report in terms of order dated 25.11.2020.

In paragraph 3 of it, it is stated that the change of name of said plot in the records of PQA from Total Atlas Lubricants Pakistan (Pvt.) Ltd. (first lessee/allottee) entails a payment of the change of name of company under Sr. No.13 of Annexure-3 of PQA's Land Allotment Policy. (This is first transfer, before Scheme of Arrangement). In paragraph 5 counsel on behalf of Manager Estates Industrial, Managing Department, Port Qasim Authority stated that mutation of the said plot in the record of PQA from the name of petitioner No.2 to petitioner No.1, per learned counsel, is also not tenable as the same are two different entities and this process further entails a transfer fee under Sr. No.4 of Annexure-3 of PQA's Land Allotment Policy.

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

In this petition under section 284 read with 285 and 287 and allied provisions of Companies Ordinance, 1984, this Court accorded the approval of a Scheme of Arrangement and the petitioner No.2 under the Scheme was then merged with petitioner No.1. Initially the said plot was allotted to Total Atlas Lubricants Pakistan (Pvt.) Limited as a lessee which name was subsequently changed to Total Oil Pakistan (Pvt.) Limited in terms of certificate of incorporation of change of name dated 21.09.2011. It is neither a transfer of property from one entity to another nor any conveyance or sale deed was/is involved so as to apply the provisions of Transfer of Property Act or Land Allotment Policy of Port Qasim Authority. This change of name was under special law i.e. Companies Ordinance, 1984 to which no exception could be taken. This

is past and closed transaction. Present issue concerns with the Scheme of Arrangement accorded under the orders of this Court in this petition.

The Scheme of Arrangement between petitioner No.2 and petitioner No.1 was approved in the instant petition and all assets and properties of Total Oil Pakistan (Pvt.) Limited stood vested with Total Parco Pakistan Limited in terms whereof all property rights and powers of the “transferor company” specified therein stood transferred without “further act or deed” to the “transferee company” and accordingly the same, in pursuance of Section 287(2) of Companies Ordinance, 1984 stood transferred to and vest in “transferee company” for all the estate and interest of the “transferor company” therein however it was subject nevertheless to all charges now affecting. The term “now affecting” does not mean and include that such transfer would entail the transfer charges, as is applicable in a case where property is being transferred under an act or deed between parties which may require registration and stamping before the concerned Sub-Registrar in terms of provisions of Registration Act 1908 and Stamp Act 1899. The merged entity shall, for the purposes of any charges which could have been affected, levied to transferor, “prior to such Scheme”, could be applied but not transfer fee in lieu of Scheme of Arrangement. That clarifies that dues on plot, if any, on transfer could be recovered but under no stretch of imagination it include transfer fee for mutating and transferring the plot in the name of merged entity.

Form 21 of the Companies (Court) Rules, 1997 provides that all liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly same was pursuant to Section 287(2) of Companies Ordinance, 1984 transferred to and became liabilities and duties of transferee company. Alleged transfer fee of the plot in favour of merged entity was neither liability

nor duty of either transferor or transferee. The order under section 287 of Companies Ordinance, 1984, as was applicable at the relevant time, was to be made in the format as depicted in Form 21 with such variation as the circumstances may require. The Form 21 for affecting the orders of merger of the two companies is clear in this regard that all such properties and powers of the transferor company, on the day of approval of the scheme, stood transferred to the transferee company without any further act or deed. Rule 65 and Form 21 for the convenience sake are reproduced as under:-

“65. Order under section 287,---An order made under section 287 shall be in Form No. 21 with such variation as the circumstances may require.

FORM NO. 21

Company Petition No.....of 19.....

Application No.....of 19.....

.....Applicant.

Before the Hon'ble Mr. Justice.....

Dated.....

Order under section 287

Upon the above petition and application coming on for further hearing on..... upon reading, etc., and upon hearing etc.

(1) That all the property, rights and powers of the transferor company specified in the First, second and third parts of the Schedule hereto and all the other property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 287(2) of the Companies Ordinance 1984 be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same other than (here set out any charges which by virtue of the compromise or arrangement are to cease to have effect); and

(2) That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to section 287(2) of the Ordinance, be transferred to and become the liabilities and duties of the transferee company ; and

(3) That all proceedings now pending by or against the transferor company be continued by or against the transferee company; and

(4) That the transferee company do without further application allot to such members of the transferor company as have not given such notice of dissent as is required by clause.....of the compromise or arrangement herein the shares in the transferee company to which they are entitled under the said compromise or arrangement ; and

(5) That the transferor company do within days after the date of this order cause a certified copy of this order to be delivered to the Registrar of companies for registration and on such certified copy being so delivered the transferor company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company, and registered with him on the file kept by him in relation to the transferee company and the files relating to the said two companies shall be consolidated accordingly ; and

(6) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

SCHEDULE

PART I

(Insert a short description of the freehold property of the transferor company).

PART II

(Insert a short description of the leasehold property of the transferor company).

PART III

(Insert a short description of all stock, shares, debentures and other choses in action of the transferor company).

Dated this.....day of.....19.....(By the Court)."

By virtue of orders of this Court a merged entity under Form 21 is presented to the authority.

Reliance was placed by learned counsel for respondent on the Land Allotment Policy of 2000 and modifications as undertaken in 2005. This by no means applicable to the facts and circumstances of this case as it is neither a transfer under Land Allotment Policy, as framed by the Ministry of Ports & Shipping, nor by virtue of any conveyance or sale deed under the Transfer of Property Act, 1882. The procedure for

transfer of plots as envisaged in Land Allotment Policy has some prerequisites before it could be applied which are as under:-

“12. Procedure for transfer of plots

Procedure for transfer of the leased holds rights of the plot/land, the following formalities to be completed for the purpose.

- (a) Application for transfer from purchaser.
- (b) Consent from allottee (seller)
- (c) Copies of public notices published in three dailies/ newspapers i.e. English, Urdu and Sindhi for notifying (as per Annexure-10)
- (d) Indemnity Bond from Seller/Transferor (as per Annexure-11)
- (e) Indemnity Bond from purchaser/transferee (as per Annexure-12)
- (f) Copy of Sale Agreement
- (g) Attested copy of original allotment letter
- (h) Transfer fee at prescribed rates fixed from time to time (as per Annexure-3)
- (i) Dues clearance.

This is not a conveyance or sale deed under Transfer of Property Act which requires registration and stamping under Registration Act and Stamp Act *ibid*, before Sub-Registrar; rather it is a Scheme of Arrangement not required to be registered under the two *ibid* enactments before the Sub-Registrar. It is approved by a Court of law as an instrument confirming scheme and forwarded to any authority concern in the format as defined in Form ‘A’ *ibid*. Since the aforesaid transfer under Scheme of Arrangement is not in pursuance of Land Grant Policy, therefore, the charges as being claimed for the transfer of plot are not applicable on this count also.

Since this application was only considered as an application under section 151 CPC, I therefore dispose this of with the observation that the claim of the transfer fee from merged entity i.e. petitioner No.1 in respect of the said plot by Port Qasim Authority is unjustified and unlawful. Thus, if now this order with above clarity is violated, then

perhaps appropriate proceedings which may include contempt proceedings shall be initiated against the contemnors.

Dated: 28.09.2022

J U D G E