

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Shafi Siddiqui

Judicial Company Misc. No. 15 of 2019

Gulistan Spinning Mills & others

Date of Hearing: 04.10.2023

Petitioner No.1: Through M/s M. Shoaib Rashid and Shahid Iqbal Rana, Advocates.

Petitioners No.2 to 10: Through Ms. Heer Memon Advocate.

Objector PAIR Investment Company Limited: Through Mr. Waqar Ahmed Advocate.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- Petitioners includes the company (petitioner No.1), to whom finances were extended, and the creditors (petitioners No.2 to 10) who extended such finances. This petition seeks approval of certain understanding and arrangement i.e. Scheme of Arrangement dated 02.05.2019 reached between them in a meeting per requirement of applicable rules and law. This arrangement would bind all such classes of creditors encompassed in the Scheme, framed under section 280 to 283 and 285(8) of Companies Act, 2017.

2. Petitioner No.1 being a company incorporated under Companies Ordinance, 1984 (as it then was) and pursuant to its Memorandum & Articles of Association authorized to carry on businesses as defined therein. Petitioners No.2 to 10 are the banking companies, which have extended finances to petitioner No.1 (to be treated under Financial Institutions (Recovery of Finances) Ordinance, 2001), from time to time. Petition discloses that the liabilities payable by the petitioner No.1 to petitioners No.2 to 10 (a class of creditors), in respect of the finance facilities availed, under the Scheme of Arrangement, constitutes approximately 52.97% of the existing

liabilities to the extent of principal amount payable by petitioner No.1 to its secured creditors. In terms of proposed Scheme of Arrangement between petitioner No.1 and its secured creditors, the terms have been prepared and finalized with the frame of relevant laws. Initially it was approved by the Board of Directors of petitioner No.1 and by petitioners No.2 to 10.

3. The application under Rule 55 of the Companies Court Rules 1997 for permission to convene meeting of the members/shareholders of the petitioner No.1 within 21 days for the approval of scheme was ordered on 21.06.2019 and consequently notices were published in some of the leading newspapers. Notices were also ordered to be served upon SECP and were also published via advertisement in terms of Rule 76 read with 19 of the Companies (Court) Rules, 1997.

4. On 24.02.2022 some of the objections were surfaced when one of the secured creditors objected that the requisite percentage in terms of 3/4th in the value of creditors of a “class” have not sanctioned the Scheme and the Court observed that in the meeting, likely to be convened in terms of order referred above, the requisite representation of majority of the creditors would satisfy the object and the objections of the objector.

5. In terms and in compliance of order to convene the meeting, a report has been filed by the Chairman on 19.08.2019 followed by another report on 06.04.2022 which discloses the details of creditors who participated in the meeting and the vote that they have casted/ polled. Except one “PAIR Investment Company Limited, all other creditors approved/ sanctioned the Scheme.

6. The objector i.e. PAIR Investment Company Limited has filed the objections to the petition and raised some of the settled grounds. The memo of objections reveals:

- i) That the objector was not shown the assets which are under the charge of different creditors;
- ii) That the petitioners have failed to acquire consent of 75% of the majority creditors, as required under section 279(2) of the Companies Act, 2017;
- iii) That such non-disclosure is material defiance and constitutes to mislead the Court for approval of the Scheme of Arrangement;
- iv) That Sections 279 to 285 of the Companies Act recognizes various classes of stakeholders (as in this case creditors of the company) and such Scheme of Arrangement could only be valid if it treats and apply only to a class of creditors sanctioned in the scheme unless other class of creditors on his own approve the Scheme. It is only claimed that the objector does not belong to the same class and has not consented to the Scheme;
- v) That it is claimed that this Scheme of Arrangement is collusive piece of understanding to oust the objector, being largest stakeholder;
- vi) Lastly the objector added that the Scheme of Arrangement shows details of immovable properties but it is not disclosed which asset/immovable property mortgaged with which creditor and hence it is a material non-disclosure.

7. I have heard the learned counsel for petitioners as well as objector and perused the material available on record, whereas no one has turned up on behalf of SECP and Bank of Punjab who, though have filed their respect objections, which appear to be formal in nature, although Bank of Punjab voted in favour of Scheme in the meeting.

8. The only objection that requires consideration is whether the objector belongs to the same class of creditors or otherwise. At the very

outset the objector has not disclosed how and in what way objector could be identified as a class of creditors other than creditors consenting Scheme. The Scheme of Arrangement for its enforcement per requirement of Sections 279 to 283 and 285 of the Companies Act, 2017 involves parties such as Gulistan Spinning Mills, as being borrower, and the creditors of Gulistan Spinning Mills. Like all other creditors, the objector, on the request and representation based on the warranties by the petitioner No.1, granted long term loan in terms of Finance Agreement and a short term finance facility (Facility No.2) pursuant to Master Finance Agreement.

9. Such facilities are nothing more than finances extend on terms incorporated in the agreements, within the frame of Financial Institutions (Recovery of Finances) Ordinance, 2001, like any other creditors identified in the title of petition, who have advanced finances. The objector in order to secure the repayment agreed/accepted certain securities as a condition for repayment, which are equitable mortgages, vide deposit of original title deeds in favour of objector. The reason to express the finances and the assurances of the petitioner No.1 for its repayment could in no way be classified as a class other than class of rest of the creditors. The objector has miserably failed to demonstrate itself as a separate class of creditors hence cannot find itself out of the purview of Scheme of Arrangement, as approved in a meeting called pursuant to the orders of this Court with more than requisite percentage.

10. In terms of the orders of this Court dated 17.02.2022 and 24.02.2022 the petitioners were ordered to convene a meeting of secured creditors of petitioner No.1 and if found fit by them to approve it or as they deem fit and proper. All creditors participated and deliberated in the meeting. The list of secured creditors is appended as

Annexure C to this petition. Notices of meeting to secured creditors of petitioner No.1 was issued and also published by way of advertisement in some leading newspapers. The report provides that the secured creditors and their representatives were appraised of the Scheme and petitioner No.1 responded to the queries, as raised by the secured creditors. Consequently after detailed deliberations and discussion the secured creditors present in the meeting approved the Scheme of Arrangement by way of a ballot. The meeting resolved via Resolution achieved through ballot as under:-

“RESOLVED THAT the Scheme of Arrangement dated May 2, 2019 for, inter alia, the settlement and repayment of the existing liabilities of Gulistan Spinning Mills Limited towards its secured creditors, along with all ancillary matters thereto, placed before the meeting for consideration and approval, be and is hereby approved and adopted, along with any modifications/amendments required or conditions imposed by the creditors of the company or the High Court of Sindh at Karachi, and subject to sanction by the Honorable High Court of Sindh at Karachi, in terms of the provisions of the Companies Act, 2017”

11. The details of the secured creditors with their respective representative and the vote they casted are as under:-

S. No.	Name of creditor	Name(s) of representatives	Vote casted		
			In favour	Against	Abstain
1.	Faisal Bank Limited	Ghulam Nabi Shah Yahya Yousaf	✓		
2.	Habib Bank Limited	Ahmed Ghaffar Talha Bin Tamim	✓		
3.	Habib Metro Bank Limited	Asif Raza	✓		
4.	Pair Investment Limited	Faraz Ahmad Muhammad Haris		✓	
5.	First National Bank Modaraba	Ejaz Ahmed	✓		
6.	National Bank of Pakistan	Mansoor Hussain Qureshi	✓		
7.	Al-Barka Bank (Pakistan) Limited (including as the successor to Burj Bank Ltd.)	Syed Zafar Raza Khuram Al-Gohar	✓		
8.	Askari Bank Limited	Khuram Mughal Asif Haider	✓		
9.	The Bank of Punjab	Muhammad Adil Masood	✓		
10.	Bank AlFalah Ltd.	Imran Qadeer Muhammad Jawad Iqbal	✓		

11.	MCB Bank Ltd. (including as successor to NIB Bank Ltd)	Faisal Fayaz	✓		
12.	BankIslami Pakistan Ltd. (including as the successor to KASB Bank Limited)	Ahmad Hassan Muhammad Shahid	✓		
13.	United Bank Limited	Muhammad Zaman Magsi Imran Khan	✓		

12. It appears that 77% in value (i.e. outstanding principal amount claimed) of the secured creditors of petitioner No.1 present and voted at the meeting of creditors of petitioner No.1. The meeting was convened and conducted in accordance with law and under the directions of this Court, and have consented to and pass the resolution approving the Scheme. This Scheme includes list of creditors such as United Bank Limited, Faysal Bank Limited, Habib Bank Limited, Askari Bank Limited, Bank Alfalah Limited, MCB Bank Limited, Al-Baraka Bank (Pakistan) Limited, Habib Metropolitan Bank Limited, BankIslami Pakistan Limited, PAIR Investment Company Limited, The Bank of Punjab, National Bank of Pakistan and First National Bank Modaraba.

13. Although at the time of preparation of Scheme, nine creditors have consented but when the meeting was convened via notice of this Court all creditors have participated and voted in favour of the scheme except one (PAIR) who has separately filed the objections. The Scheme also shows details of existing liabilities vis-à-vis the creditors i.e. a particular class of creditors. Schedule 'D' to the Scheme are details of the charged assets and Schedule 'E' are the details of legal proceedings pending.

14. Section 279 of the Companies Act, 2017 enables the companies to compromise all the creditors and members. The Commission may, on the application of the company or of any creditor or member of the company or, in the case of a company being wound up, of the liquidator, order a meeting of the creditors or class of creditors, or of the members of the company or class of members, as the case may be, to be called, held and conducted in such manner as the Commission directs, however, such

exercise was ordered to be carried out by this Court instead of Commission. In an appropriate case, I may take up the issue as to why it was not initiated before the Commission as in this case substantive time has lapsed. Subsection (2) of *ibid* section 279 provides the minimum cap of 3/4th in the value of creditors or class of creditors to be available.

15. In *Gulistan Weaving Mills' case*¹ the Court ruled that while dealing with such nature (i.e. approval of the Scheme of Arrangement), it is settled law that the Court will not sit and act as Court of Appeal over and above wisdom disclosed by the borrower and creditors while agreeing to certain terms of repayment, provided it is within the frame of Company Law and within contours of Financial Institutions (Recovery of Finances) Ordinance, 2001 and to such an extent only the Court is bound to watch and the commercial wisdom of the participant of the Scheme cannot be pierced by a Bench who may have its own opinion. The company jurisdiction is thus in such matter is peripheral and supervisory and not of an appellate authority.

16. *Gulistan Mills' case* (Supra) is a case wherein originally a class of dispute, which includes criminal proceedings, were ousted from such arrangement, which part of understanding was reviewed by the learned Division Bench and was streamlined, which has its binding effect.

17. A perusal of Scheme of Arrangement would reveal that by taking into confidence all the stakeholders, a policy has been devised to settle and pay the liabilities of all secured creditors in a befitting manner. In order to achieve this goal the charged assets of the petitioner No.1 company are being put to sale through Asset Sale Committee consisting of the representatives of the banks. In consequence thereof, all the pending legal proceedings would be withdrawn which would save the parties and/or banks from the ordeal of litigation. The sale proceeds of

¹ *Gulistan Weaving Mills Ltd. v. Al Baraka Bank (Pakistan) Limited* (2018 CLD 737)

charged assets would be accepted by the banks as full and final settlement of the liabilities which would result in reduction of principal liabilities and so also the markup and the left over amount will be at the disposal of the Asset Sale Committee.

18. Thus, insofar as the formal grounds, as raised by the objector, are concerned these appear to be just for sake of objection as all material information are available in the Scheme of Arrangement such as assets under the charge of creditors etc. whereas the requisite percentage of majority creditors reached beyond 75% in the final meeting, as could be seen in the report of the Chairman filed in pursuance of orders of this Court. The only substantive ground of the objector that it is a separate class of creditors has not been made out, as discussed above, and hence the objections are discarded and the petition is allowed as prayed.

Dated:

J U D G E