

THE HIGH COURT OF SINDH, KARACHI
[COMPANY BENCH]

J.C. Misc. No. 35 of 2024
In the matter of the Companies Act, 2017
And
of (a) Beach Luxury Holdings (Pvt.) Ltd.
(b) Spencer & Company (Pvt.) Ltd.
(c) Physons (Pvt.) Ltd.

Petitioners : Beach Luxury Holdings (Pvt.) Ltd.,
Spencer & Company (Pvt.) Ltd and
Physons (Pvt.) Ltd. Mr. Mikael Azmat
Rahim Advocate.

On Court notice : Securities and Exchange Commission
of Pakistan through Mr. Syed Ebad-
ur-Rehman, Advocate.

Date of hearing : 24-04-2025

Date of order : 24-04-2025

ORDER OF SANCTION OF SCHEME

Adnan Iqbal Chaudhry J. - Petitioners are private companies limited by shares incorporated in Pakistan with registered offices at Karachi. They seek sanction of a Scheme of Amalgamation under section 282 read with sections 279 to 281 of the Companies Act, 2017 **[the Act]**. The Petitioner No.1 has a turnover greater than Rs. 800 million and therefore categorized as a Large Sized Company under the Third Schedule to the Act. For such a company, as per SRO 840(I)/2017 dated 17.08.2017 issued under section 285(8) of the Act, the instant petition lies before the Company Bench of the High Court.

2. Petitioners are associated companies. Out of them, Petitioner No.1 (Beach Luxury) is the leading company engaged in the hotel business. Petitioner No.2 had divested its operating business of pharmaceuticals and presently it is not carrying on any business. Petitioner No.3 was incorporated for the very purpose of the subject Scheme of Amalgamation and therefore it does not have any business thus far.

3. By order dated 04.12.2024 passed under section 282(1) of the Act, the Court ordered meetings of shareholders and secured creditors of the Petitioners to vote on the subject Scheme. The Chairmen appointed for respective meetings have filed reports under Rule 57 of the Companies (Court) Rules, 1997 which are as follows:

- (i) Meeting of shareholders of Petitioner No.1 (Beach Luxury) was attended by shareholders representing 100% (70,000) of the issued shares, all of whom voted in favor of the Scheme and passed a special resolution accordingly on 27.12.2024;
- (ii) Meeting of shareholders of Petitioner No.2 (Spencer) was attended by shareholders representing 1,538,693 shares out of 1,542,301 shares issued by the company i.e. by 99.7%. All of them voted in favor of the Scheme and passed a special resolution accordingly on 27.12.2024;
- (iii) Meeting of shareholders of Petitioner No.3 (Physons) was attended by shareholders representing 100% of the issued shares, all of whom voted in favor of the Scheme and passed a special resolution accordingly on 27.12.2024;
- (iv) Meeting of secured creditors of Petitioner No.1 was attended by 100% of them, all of whom voted in favor of the Scheme *vide* resolution passed on 18.03.2025. NoCs of the secured creditors are also on record.
- (v) Petitioner No.2 (Spencer) had only one secured creditor who also voted in favor of the Scheme *vide* resolution passed on 18.03.2025.

Thus, the Scheme of Amalgamation was approved by more than the requisite three-fourths majority of the value of shareholders of each Petitioner and the secured creditors of Petitioners 1 and 2 present and voting at the meeting called for such purpose, thereby fulfilling the requirement of section 279(2) of the Act. There are no secured creditors of Petitioner No.3 (Physons).

4. Heard learned counsel and perused the record.

5. The Scheme of Amalgamation subject matter of the petition is a transaction exempted by Regulation 5(1)(ii) of the Competition (Merger Control) Regulations 2016, and therefore the pre-merger clearance of the Competition Commission under section 11 of the Competition Act, 2010 is not required.

6. *Prima facie* the requirements of sections 281 and 282(2) of the Act were fulfilled in calling meetings of shareholders of the Petitioners and the meeting of secured creditors of the Petitioners 1 and 2 to vote on the Scheme.

7. The Scheme of Amalgamation is between the Petitioners and their respective members and then between the Petitioners *inter se*. The Scheme proposes as follows:

(a) The undertaking comprising the assets, liabilities and obligations of Petitioner No.2 (Spencer) will be split into three segments i.e. 'Spencer Demerged Undertaking-1', 'Spencer Demerged Undertaking-2' and 'Retained Undertaking'.

(b) Spencer Demerged Undertaking-1 will be amalgamated with Petitioner No.1 (Beach Luxury); Spencer Demerged Undertaking-2 will be amalgamated with Petitioner No.3 (Physons); and the Retained Undertaking will remain with Petitioner No.2 (Spencer) which is not being dissolved.

(c) The effect of the aforesaid demerger and then merger will be as follows:

(i) paid-up share capital of Petitioner No.2 (Spencer) will be reduced by Rs. 196,900/-

(ii) excepting shares of Petitioner No.1 (Beach Luxury) in Petitioner No.2 (Spencer), 19,690 shares of Rs. 10 each issued by Petitioner No.2 as per Annexure-E to the Scheme, will be cancelled, and in lieu thereof the effected shareholders will be allotted an aggregate of 1,369,046 shares of Rs. 10 each of

Petitioner No.3 (Physons) at a swap-ratio of 69.53 shares of Petitioner No.3 for every 1 share of Petitioner No.2;

(iii) Petitioner No.2 (Spencer) shall become a wholly owned subsidiary of the Petitioner No.1 (Beach Luxury).

8. The reduction in paid-up share capital of the Petitioner No.2 as a consequence of the Scheme was an aspect highlighted to the shareholders of the Petitioner No.2 in the statement under section 134(3) of the Act which was incorporated in notice dated 05.12.2024 issued for holding the extraordinary general meeting of the company. Resolution of the shareholders approving the Scheme also approved therewith *“all ancillary and incidental matters thereto, placed before the meeting for consideration and approval.”* In my view, such resolution also constitutes a resolution for the purposes of section 89 of the Act for reduction in share capital. Such reduction does not involve either diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital. The aspect of reduction in the share capital was also placed in the meeting called for the secured creditors of the Petitioner No.2 who were entitled to object in view of section 90 of the Act. However, none objected.

9. It is noticed that the secured creditor of Petitioner No.2, *viz.* Silk Bank had given its NoC dated 24.01.2025 subject to the condition that the running finance extended by it to the Petitioner No.2 should either be taken over by Petitioner No.1, or that the Petitioner No.2 should settle the same before execution of the Scheme. Today, learned counsel for the Petitioners files NoC's dated 15.04.2025 issued by UBL, as successor of Silk Bank, which acknowledge that the said condition has been satisfied.

10. Comments filed by the Securities & Exchange Commission of Pakistan [SECP] do not bring forth any material objection to the Scheme.

11. As per the auditor's report on the financial statements of each Petitioner for the period ended 30-06-2024, the books of account are properly maintained and give a true and fair view of each company's state of affairs. The Petitioners affirm that there are no investigation proceedings pending against them under sections 256 to 258 of the Act. The SECP does not dispute that fact.

12. As per the Scheme, the benefits of the demerger and merger are that the Petitioners 1 and 2 will be classified as 'group' companies and entitled to group tax benefits; and that the shareholders demerging from Petitioner No.2 will be removed from undertaking risks associated with the operation of the Retained Undertaking by the Petitioner No.2. Therefore, the scheme is for viable reasons. The swap ratio of shares worked out by the Chartered Accountant appears to be reasonable. 99.7% of shareholders of Petitioner No.2 and 100% shareholders of Petitioners 1 and 3 have voted in favor of the Scheme. All secured creditors of the Petitioners 1 and 2 have also voted in favor of the Scheme. The petition was advertised pursuant to Rule 19 of the Companies (Court) Rules, 1997 but no one has come forth to oppose sanction of the Scheme. It is settled law that where a Scheme of Amalgamation approved by the requisite majority appears to be fair, just, reasonable and *prima facie* fulfils statutory requirements, then the Court does not sit in appeal over the commercial wisdom of the Scheme.¹

13. Therefore, the Scheme of Amalgamation filed with the petition as **Annexure 'H'** is hereby sanctioned without modification with the following order:

- (i) That all property, rights and powers of Petitioner No.2 (Spencer) in **Spencer Demerged Undertaking-1** as per Annexure 'A' to the Scheme read with the audited financial statement of Petitioner No.2 as at June 30, 2024, and all the other property, rights and powers of Petitioner No.2 related to

¹ *Paramount Spinning Mills* (2020 CLD 1443); *IGI Insurance Ltd.* (2018 CLD 572); *Gadoon Textile Mills Ltd.* (2015 CLD 2010).

Spencer Demerged Undertaking-1, be transferred without further act or deed to Petitioner No.1 (Beach Luxury), and accordingly the same shall pursuant to section 282(3) of the Companies Act, 2017 be transferred to and vest in Petitioner No.1 for all the estate and interest of Petitioner No.2 therein but subject nevertheless to all charges now affecting the same; and

- (ii) That all property, rights and powers of Petitioner No.2 (Spencer) in **Spencer Demerged Undertaking-2** as per Annexure 'A' to the Scheme read with the audited financial statement of Petitioner No.2 as at June 30, 2024, and all the other property, rights and powers of Petitioner No.2 related to Spencer Demerged Undertaking-2, be transferred without further act or deed to Petitioner No.3 (Physons), and accordingly the same shall pursuant to section 282(3) of the Companies Act, 2017 be transferred to and vest in Petitioner No.3 for all the estate and interest of Petitioner No.2 therein but subject nevertheless to all charges now affecting the same; and
- (iii) That all liabilities and duties of Petitioner No.2 (Spencer) related to **Spencer Demerged Undertaking-1** be transferred without further act or deed to Petitioner No.1 (Beach Luxury), and accordingly the same shall pursuant to section 282(3) of the Act, be transferred to and become the liabilities and duties of Petitioner No.1; and
- (iv) That all liabilities and duties of Petitioner No.2 (Spencer) related to **Spencer Demerged Undertaking-2** be transferred without further act or deed to Petitioner No.3 (Physons), and accordingly the same shall pursuant to section 282(3) of the Act, be transferred to and become the liabilities and duties of Petitioner No.3; and
- (v) That all proceedings now pending by or against Petitioner No.2 (Spencer) in relation to **Spencer Demerged Undertaking-1** be continued by or against Petitioner No.1 (Beach Luxury); and
- (vi) That all proceedings now pending by or against Petitioner No.2 (Spencer) in relation to **Spencer Demerged Undertaking-2** be continued by or against Petitioner No.3 (Physons); and
- (vii) That Petitioner No.3 (Physons) do without further application, allot to the members of Petitioner No.2 mentioned in Annexure E of the Scheme (excepting the Petitioner No.1), shares in the Petitioner No.3 (Physons) to which they are entitled under the

Scheme, and the shares allotted by Petitioner No.2 (Spencer) to those shareholders shall be cancelled as per the Scheme; and

- (viii) That the consequential reduction in the paid-up share capital of Petitioner No.2 (Spencer) by an amount of Rs. 196,900 i.e. from Rs. 15,423,010 (comprising 1,542,301 shares of Rs. 10 each) to Rs. 15,226,110 (comprising 1,522,611 shares of Rs. 10 each) is hereby also confirmed; and
- (ix) That for registering the reduction in its share capital as required by section 93 of the Act, the Petitioner No.2 (Spencer) shall deliver a certified copy of this order including the special resolution dated 27.12.2024 passed by it to the Registrar of Companies within 7 days of this order
- (x) That Petitioner No.1 (Beach Luxury) do within 7 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 Scheme shall be effective; and
- (xi) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

Petition allowed as above.

JUDGE

Karachi:

Dated: 24-04-2025