

THE HIGH COURT OF SINDH, KARACHI
[COMPANY BENCH]

J.C.M. No. 27 of 2024
In the matter of the Companies Act, 2017
And
of (a) Union Fabrics (Pvt.) Ltd.
(b) Union Apparel (Pvt.) Ltd.

Petitioners : Union Fabrics (Pvt.) Ltd. and Union Apparel (Pvt.) Ltd., through Mr. Mikael Azmat Rahim Advocate.

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

Date of hearing : 15-05-2025

Date of order : 15-05-2025

ORDER OF SANCTION OF SCHEME

Adnan Iqbal Chaudhry J. - The Petitioners are private companies limited by shares incorporated in Pakistan with registered offices at Karachi. The Petitioners seek sanction of a Scheme of Amalgamation under section 282 read with sections 279 to 281 of the Companies Act, 2017 [**the Act**]. The Petitioners fall in the category of Large Sized Companies under the Third Schedule to the Act. Therefore, in view of 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. Petitioner No.2 is a wholly-owned subsidiary of Petitioner No.1 and the principal line of business of the Petitioners is similar.
3. The Scheme of Amalgamation dated 06.11.2024 proposes to merge/amalgamate Petitioner No.2 with Petitioner No.1 such that:
 - (a) the entire undertaking and business of Petitioner No.2, including all assets, rights, liabilities and obligations, shall stand transferred to and vest in Petitioner No.1;

- (b) authorized share capital of Petitioner No.1 shall be increased to Rs. 2,000,000,000/- divided into 200,000,000 ordinary shares of Rs. 10/- each;
- (c) since Petitioner No.1 holds all shares of Petitioner No.2, the amalgamation does not entail allotment of any shares by Petitioner No.1;
- (d) Petitioner No.2 shall stand dissolved without winding-up.

4. By order dated 25.11.2024 passed under section 282(1) of the Act, the Court ordered separate meetings of shareholders and secured creditors of the Petitioners to vote on the Scheme of Amalgamation. The Chairman appointed for each meeting has filed his report under Rule 57 of the Companies (Court) Rules, 1997.

5. Heard learned counsel and perused the record.

6. Since Petitioner No.2 is a wholly-owned subsidiary of Petitioner No.1, the proposed merger/amalgamation is exempt from Competition Commission's pre-merger clearance by virtue of Regulation 5(1)(ii) of the Competition (Merger Control) Regulations 2016.

7. *Prima facie* the requirements of section 282(2) of the Act were fulfilled in calling the meeting of shareholders of the Petitioners and secured creditors of the Petitioner No.1 to vote on the Scheme of Amalgamation.

8. Reports by Chairmen of the respective meetings, submitted under Rule 57 of the Companies (Court) Rules, 1997, reflect the following:

- (i) meeting of shareholders of Petitioner No.1 and Petitioner No.2, held separately on 23.12.2024, was attended by shareholders representing 100% of the shares issued, all of whom voted to approve the Scheme and passed a special resolution accordingly;

- (ii) meeting of secured creditors of Petitioner No.1 and Petitioner No.2, held separately on 26.02.2025, was attended by 100% of them, all of whom voted in favor of the Scheme. NoCs of those secured creditors are also on record.

Thus, the Scheme of Amalgamation was approved by more than three-fourths majority of the value of shareholders and secured creditors of each Petitioner present and voting at the meeting, thereby fulfilling the requirement of section 279(2) of the Act.

9. To the extent the amalgamation of Petitioners results in increase in the authorized share capital of Petitioner No.1, Article 4.3 of the Scheme provides that the Memorandum & Articles of Association of Petitioner No.1 shall also stand amended accordingly, and that the special resolution passed by it's shareholders to approve the Scheme shall also constitute special resolution to alter the Memorandum & Articles of Association. Such measure finds support in the cases of *Joint Registrar of Companies, SECP v. Omer Iqbal Solvent (Pvt.) Ltd.* (2016 CLD 902) and *Kings Food (Pvt.) Ltd & Hilal Confectionary (Pvt.) Ltd.* (2014 CLD 961) which held that where an increase in authorized share capital of the transferee company was automatic by virtue of an amalgamation under sections 284 and 287 of the erstwhile Companies Ordinance, 1984, separate provisions of the Ordinance for increasing the authorized capital were not attracted.

10. As per the auditor's report on the financial statements of the Petitioners for the period ended 30-06-2024, books of accounts of the Petitioners are properly maintained, and the financial statements are in accord with the books of accounts.

11. The Scheme of Amalgamation is for viable reasons, *inter alia* that the amalgamation would increase the asset base of the surviving company, reduce administrative costs, consolidate operations capacity, increase risk absorption capacity and rationalize tax reporting. 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

12. 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. The petition was advertised pursuant to Rule 19 of the Companies (Court) Rules, 1997, however, no one has come forth to oppose sanction of the Scheme. Comments filed by the Securities & Exchange Commission of Pakistan [SECP] had highlighted that penalty of Rs. 10,000/- imposed on Petitioner No.1 was outstanding. Today, Petitioners' counsel files a statement to enclose a receipt to show that such penalty has now been paid. Therefore, there remains no impediment to accord sanction.

13. Therefore, the Scheme of Amalgamation dated 06.11.2024 filed with the petition as **Annexure 'E'** is hereby sanctioned without modification with the following order:

- (i) That all the property, rights and powers of Union Apparel (Pvt.) Ltd. [Union Apparel] as per the audited financial statement of Union Apparel as at June 30, 2024, and all the other property, rights and powers of Union Apparel, be transferred without further act or deed to Union Fabrics (Pvt.) Ltd. [Union Fabrics], and accordingly the same shall pursuant to section 282(3) of the Companies Act, 2017 be transferred to and vest in Union Fabrics for all the estate and interest of the Union Apparel therein but subject nevertheless to all charges now affecting the same; and
- (ii) That all the liabilities and duties of Union Apparel be transferred without further act or deed to Union Fabrics, and accordingly the same shall pursuant to section 282(3) of the Act, be transferred to and become the liabilities and duties of Union Fabrics; and
- (iii) That all proceedings now pending by or against Union Apparel be continued by or against Union Fabrics; and
- (iv) That the authorized capital of Union Fabrics stands increased to Rs. 2,000,000,000/- divided into 200,000,000 ordinary shares of

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

Rs. 10/- each, and Memorandum & Articles of Association of Union Fabrics stand amended accordingly; and

- (v) That Union Fabrics 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, Union Apparel shall stand dissolved. The Registrar of Companies shall place all documents relating to Union Apparel and registered with him on the file kept by him in relation to Union Fabrics, and the files relating to the said two companies shall be consolidated accordingly; and
- (vi) 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 in above terms.

JUDGE

Karachi:
Dated: 15-05-2025