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JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

C.O No. 78664 of 2024.

In re:

*Fatima Fertilizers Company (Petitioner No.1)
and Pakarab Fertilizers Limited (Petitioner No.2)*

JUDGMENT

Date of hearing: 24.10.2025.

Petitioners by: Barrister Ahmad Pervaiz & Maryam Rasheed, Advocate for the petitioners.
M/s Mansoor Hassan Khan, Advocate and Barrister Nauman Ahmad Langrial, for objectors.
Mr. Ruman Bilal, Advocate for the SECP.
Mr. Bakhtayar Mehmood Malik, Advocate and Barrister Arhum Tariq Butt (Chairmen).

Ch. Sultan Mahmood, J. This is a joint application/petition filed under Sections 279 to 283 and 285(8) of the Companies Act, 2017 (the “Act”), read with SRO No. 840(I)/2017 dated 24.08.2017 issued by the Finance Division, Government of Pakistan, seeking the sanction of the Scheme of Compromises, Arrangements, and Reconstruction (the “Scheme”) proposed between Petitioner No. 1, Fatima Fertilizer Company Limited (“Fatima” or the “Transferor Company”), and Petitioner No. 2, Pakarab Fertilizers Limited (“PFL” or the “Transferee Company”). Under the Scheme, a portion of the manufacturing undertaking of Fatima, inclusive of all associated assets, rights, liabilities, and obligations, is proposed to be transferred/demerged to PFL against the issuance of shares by PFL in the name of Fatima. The remaining assets and liabilities of Fatima shall continue to be retained as its continuing undertaking, as defined in the Scheme. The Scheme

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envisages that the transfer of the demerged undertaking shall take effect from 01.10.2024, subject to the sanction of this Court.

2. By order dated 16.12.2024, this Court directed the issuance of public notices in the dailies *Dawn*, *Business Recorder*, and *Daily Jang* in terms of Rule 61 of the Companies (Court) Rules, 1997, to inform the general public about the Scheme and to invite objections from members, certificate holders, creditors, or any person having an interest in the affairs of the petitioners.

3. Through, order dated 16.12.2024, this Court also directed the holding of Extra-Ordinary General Meetings (EGMs) of the petitioners to ascertain the wishes of their respective members/certificate holders with reference to the Scheme. The meetings were to be held under the chairmanship of Mr. Bakhtayar Mehmood Malik, Advocate and Barrister Arhum Tariq Butt, who were further directed to preside over the meetings and submit a report thereof.

4. The Chairpersons submitted their report on 28.01.2025, supported by the relevant record. According to the report, the EGMs of the respective petitioners were convened and held on 21.01.2025 under their supervision. Notices of the meetings were duly issued to the shareholders and the attendance sheets reflecting the participation of shareholders both in person and by proxy, were placed on record.

5. As per the Chairpersons' report, the Scheme was unanimously approved by the shareholders of both petitioners. Thereafter, the office caused the publication of notices in compliance with Rule 61 of the Companies (Court) Rules, 1997, in the dailies *Business Recorder*, *Jang* and in daily *Dawn*.

6. The Securities and Exchange Commission of Pakistan ("the Commission") submitted its parawise comments on 11.03.2025 in response to the petition, raising certain observations. The petitioners companies duly submitted their replies thereto. Mr. Ruman Bilal pointed out that effective date has been changed from 01.10.2024 to

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1.01.2025, this changed should have been affirmed in the Extraordinary General Meeting and not by the Board of Directors. However, the observations made by the Commission in presence of the Article 6.1.ii of the Scheme of Arrangement approved by the EGM which permits respective Boards to change any term of the Scheme and this objection is repelled. Reliance is placed on M/s Fatima Fertilizer Company Ltd. v. M/s Fatimafert Ltd. (C.O. No. 50548/2021)

7. In order to address the observations of the Commission, the Petitioners have complied with all regulatory requirements and submitted evidence thereof. NOCs from 19 secured creditors have been placed on record and the learned counsel for the Commission has confirmed compliance. Regarding the NOCs, the learned counsel for the petitioners submits that no amount is outstanding towards the said financial institutions. Three unsecured creditors, namely Standard Chartered Bank United Kingdom, Standard Chartered Bank Pakistan and Agri Commodities & Finance FZ-LLC, filed objections to the Scheme of Arrangement, which are available on record through C.M. Nos. 1, 4 & 5/2025.

8. The objections raised are primarily by unsecured creditors. The present scheme involves a spin-off of a portion of the undertaking to create a wholly owned subsidiary. It is an admitted position that the liabilities are not being restructured under the proposed scheme. Hence, this scheme does not adversely affect the rights of any creditors. It is also pertinent to note that the objecting creditors are unsecured creditors and this issue has already been considered by superior courts. In the case of "Nina Industries Limited and 6 others" (**2022 CLD 630**), where similar objections were raised by unsecured creditors, the Hon'ble Sind High Court refused to entertain such claims and dismissed the objections. Being dissatisfied with the same, the matter reached before the Hon'ble Supreme Court of Pakistan and the Hon'ble Supreme Court in the case titled "State Life Insurance Corporation of Pakistan, Karachi vs. Nina Industries Limited,

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Karachi and others (2025 CLD 402) dealt the question in the following words.

7...whereas, the scheme of arrangement is for secured creditors and **not for shareholders and unsecured creditors**. It has been further held that shareholding of the company will remain the same and State Life will continue to hold the shares it has in the company. The company shall remain to be functional and the objector/unsecured creditors can file suit for recovery and their respective claims against the Respondent No.1 and to seek the appropriate legal remedies available under the law. It is pertinent to mentioned here that the claim of the Gadoon Textile Mills Limited has been denied by the petitioners being frivolous.

8. ..Even otherwise, assuming that the company was to be wound up, the secured creditors have prior claim over the assets of the company and none of the shareholders and unsecured creditor will become entitled to and part of the proceeds as none of the shareholders are included or getting any return from the instant 'Scheme of Arrangement'.”

(Emphasis supplied)

This is Scheme of Arrangement of Demerger and of not winding up in the case noted above the company was being controverted from private limited company into a public limited company and while approving that scheme of arrangement concurrently the Hon’ble Supreme Court upheld the decision of the Sindh High Court ignoring the objections of unsecured creditors. Consequently these objections meet the same fate as here only a spin-off is proposed.

9. The Competition Commission of Pakistan, vide report dated 13.02.2025, held that it regulates mergers to prevent anticompetitive conduct under the Competition Act, 2010. Petitioner No. 1 holds majority shareholding in Petitioner No. 2, establishing a parent-subsidiary relationship. Under Regulation 5(1)(ii), a merger between a holding company and its wholly-owned subsidiary is exempt from pre-merger notification. Matters beyond the Commission’s mandate are subject to applicable law; therefore, the Petition may proceed as per law.

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10. It is asserted that the Scheme will lead to more effective, efficient and cost-effective management, oversight and operation of the businesses, as outlined below:-

- i. The Boards of FATIMA and PFL have approved the Scheme for submission to the Court under Sections 279 and 282 of the Companies Act, 2017.
- ii. The Boards may, at their discretion, approve any modifications, additions, or conditions imposed by the Court and resolve issues arising during implementation.
- iii. The Scheme is subject to Court sanction and may be approved in its present form or with modifications/additions.
- iv. The Scheme becomes binding and operative on the “Sanction Date,” i.e., when a certified copy of the Court order sanctioning the Scheme is filed with the Registrar of Companies and SECP.
- v. The Demerger and transfer of the Demerged Undertaking to PFL shall be deemed effective from the “Effective Date.”
- vi. FATIMA shall maintain separate books and accounts for the Demerged and Continuing Undertakings from the Effective Date, with assets, liabilities, and obligations properly allocated.
- vii. Assets acquired after the Effective Date for the Demerged Undertaking shall form part of it, even if initially recorded in FATIMA’s books.
- viii. Post-Sanction Date, the Demerged Undertaking shall be recorded in PFL’s books at the values appearing in FATIMA’s books on the day before the Effective Date.
- ix. FATIMA and PFL shall take all necessary actions and formalities to ensure smooth transfer and vesting of the Demerged Undertaking in accordance with the Court order.
- x. The Boards may authorize any person or committee to carry out acts necessary for proper implementation of the Scheme.
- xi. The Boards may approve any modifications, amendments, or conditions required by the Court or authorities to resolve doubts or difficulties in implementing the Scheme.

11. None of the stakeholders, shareholders of Petitioner No. 1 and 2, or other interested parties has raised any objection to the Scheme. The Scheme, subject to the conditions contained in the NOCs issued by secured creditors as per C.M. No. 7/25 & 9/25, shall take effect in accordance with Section 282 of the Act with effect from 01.01.2025.

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12. It is trite law that with the requisite majority of the shareholders what is in favour of the merger it cannot be withheld unless it is shown that the same is unfair and unreasonable or against the national interest¹.

13. Before granting sanction, the Court's role is not to reassess the commercial merits but to ensure that the scheme is fair, reasonable, lawful, and consistent with public policy. Any arrangement that is illegal, unconscionable, or unfair cannot be sanctioned. Thus, the Court's jurisdiction is supervisory and protective, rather than appellate. It is well settled that the Court's task while sanctioning a scheme of arrangement is limited to watching over the regulatory and legal compliances being properly carried out for which the SECP takes the lead in its assistance to the Court. The approach is to ascertain (i) whether the statutory requirements were complied with; and (ii) to determine whether the scheme as a whole has been arrived at by the majority in the interest of the whole body of shareholders in whose interest the majority purported to act; and (iii) whether the scheme is such that a fair and reasonable shareholder will consider it to be for the benefit of the company and for himself².

14. In view of the foregoing, all statutory benchmarks and formalities have been accomplished as required under the Companies Act, 2017 and the enabling rules. The Scheme has been reinforced by the requisite majority and the Chairman's report confirms compliance with statutory obligations. The proposed Scheme appears fair, reasonable and commercially sound.

15. There is no material to suggest that the Scheme is against public interest or any law. The Petition is, therefore, allowed as prayed, and the Scheme of Arrangement is sanctioned.

16. In view of the above legal position, the objections filed by the unsecured creditors, along with their connected Civil Miscellaneous

¹ Dewan Salman Fiber v. Dhan Fiber Limited (PLD 2001 Lahore 230)

² Gadoon Textile Mills 2015 CLD 2010, Engro Corporation Ltd. 2025 CLD 1211

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Applications through which documents were filed and additional information was sought are hereby rejected and dismissed.

**(Ch. Sultan Mahmood)
Judge**

Approved for reporting

Judge

*M. Shahzad/**