

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

COMPANIES ORIGINAL NO. 1 of 2025

1. Engro Corporation Limited.
2. Engro Connect (Private) Limited.
3. Pakistan Mobile Communication Limited

.....Petitioners

Petitioner by : **M/s Mikael Rahim and Asif Shafi,**
Advocates
(for Petitioners No. 1 and 2)
Barrister Jahanzaib Awan.
(for Petitioner No. 3)

Respondents by : **M/s Shahzad Ali Rana and Husnain**
Raza, Special Public Prosecutors,
SECP.
Mr. Saeed Ullah, Registrar, SECP.
Mr. Waseem A. Khan, Director Merger
and Restructuring Department, SECP.
Mr. Touseef Ahmad, Deputy Registrar,
Merger and Restructuring Department,
SECP.

Applicant in C.M. : **Mr. Hassan Ali Khan, Advocate.**
No.718 of 2025.

Date of Hearing : **06-5-2025.**

SAMAN RAFAT IMTIAZ, J.

1. This Petition has been filed under Sections 279 to 282 and 285(8) of the Companies Act, 2017 (“**Companies Act**”) read with the applicable rules to seek Court sanction for the Scheme of Arrangement dated 3-2-2025.

The Petitioners

2. The Petitioner No. 1 is a limited company having an authorized share capital of Rs.7,000,000,000/-, divided into 700,000,000 ordinary shares of Rs.10/- each, out of which 536,626,468 ordinary shares have

been issued, fully subscribed to and paid up as of the date of this Petition. The Petitioner No. 2 is a private limited company which is currently the wholly owned subsidiary to the Petitioner No.1, having an authorized share capital of Rs.30,000,000,000/-, divided into 3,000,000,000 ordinary shares of Rs.10/- each, out of which 2,446,500,003 ordinary shares have been issued, fully subscribed to and paid up as of the date of this Petition. The Petitioner No. 3 is a public listed company having an authorized share capital of Rs. 143,000,000,000/-, divided into 14,300,000,000 ordinary shares of Rs.10/- each, out of which 4,530,693,661 ordinary shares have been issued, fully subscribed to and paid up.

3. The respective Boards of Directors of the three Petitioner companies have approved the Scheme of Arrangement and copies of the Board Resolutions are available on record. Similarly, copies of the Petitioners' Certificates of Incorporation and Memoranda and Articles of Association have also been filed. In addition, copies of the annual audited accounts of the Petitioners No.1 and 2 for the year ending 31-12-2023 and for the period ending 30-11-2024 and of the Petitioner No.3 for the year ending 31-12-2023 and for the period ending 30-09-2024 are also part of the record.

Scheme of Arrangement

4. The Scheme of Arrangement, attached as Annexure 'I' with the Petition, gives full particulars and purpose of the proposed demergers/mergers/amalgamations.

5. Briefly stated, the corporate reorganization/restructuring that the Petitioners are desirous of undertaking pursuant to the Scheme of Arrangement involves:

- (i) demerger of specific portions of the undertaking of the Petitioner No. 1 (**"Ecorp Demerged Undertaking"**), inclusive of all assets, rights, benefits, powers, privileges, distributable reserves/un-appropriated profits, contracts, liabilities, obligations, dues etc. pertaining thereto, as more particularly identified and described in the Scheme of Arrangement, from the Petitioner No. 1 which shall be transferred to, stand vested in, and assumed by the Petitioner No. 3,

while the Ecorp Retained Undertaking (as defined in the Scheme of Arrangement) shall continue as a going concern; and

(ii) demerger of specific portions of the undertaking of the Petitioner No.3 (**“PMCL Demerged Undertaking”**), inclusive of all assets, rights, benefits, powers, privileges, contracts, licenses, liabilities, obligations, dues etc. pertaining thereto, as more particularly identified and described in the Scheme of Arrangement, from the Petitioner No. 3 which shall be transferred to, stand vested in, and assumed by the Petitioner No. 2 (being the wholly owned subsidiary of the Petitioner No. 1), while the PMCL Retained Undertaking (as defined in the Scheme of Arrangement) shall continue to remain with the Petitioner No. 3 (which shall continue as a going concern). Upon the Sanction of the Scheme of Arrangement, the Petitioners No. 1, 2, and 3 will continue as going concerns under their respective existing names, without any of the companies/Petitioners being dissolved.

Meetings

6. Vide Order dated 12-2-2025 passed by this Court separate meetings of the members of the Petitioners No. 1, 2, and 3 and of the secured creditors of the Petitioners No. 1 and 3 were directed to be held.

7. The respective Chairmen of the Petitioners No. 1, 2, and 3 have filed the reports as required under Rule 57 of the Company (Court) Rules, 1997 which reflect that separate Extra-Ordinary Meetings of the members of the three Petitioners were held on 17-3-2025 with the requisite quorum and the Scheme of Arrangement was approved and adopted by votes representing one hundred percent in value of the shares held by the members present in person or by proxy and voting at the meeting. The meeting of the creditors of the Petitioners No. 1 was also held on 17-3-2025 and one hundred percent of the value of the secured creditors present and voting at the meeting consented to and passed the resolution approving the Scheme of Arrangement. Similarly, the meeting of the creditors of the Petitioners No. 3 was also held on 17-3-2025 and one hundred percent of the secured creditors gave their approval and NOC to the Scheme of Arrangement.

Public Notices

8. Vide Order dated 12-2-2025 notices were also directed to be published in the newspapers. Accordingly notices were published in the daily *Dawn* and *Nawaiwaqt* in their respective issues on 21-2-2025 (copies of which are available on the record) informing the general public about the petition for the sanction of the Scheme of Arrangement and inviting objections. No objections were received.

C.M. No. 718 of 2025

9. This C.M. has been filed by the Applicant [Naeem Hassan, Commissioner Inland Revenue, Zone IV, Large Tax Office, Islamabad] under Order I, Rule 10, Code of Civil Procedure, 1908 (“CPC”) essentially praying for this Court to:

- (a) implead (i) Commissioner Inland Revenue (Zone-IV) Large Taxpayers Office, Islamabad; (ii) Commissioner Inland Revenue (Zone-III) Large Taxpayers Office, Karachi; and (iii) Commissioner Inland Revenue (Zone-III) Corporate Tax Office, Karachi;
- (b) to direct the Petitioners to produce all record and relevant documentation evidencing compliance of Section 37(6) of the Income Tax Ordinance, 2001 and/or permission under Section 37(8) and direction to the Securities and Exchange Commission of Pakistan (“SECP”) to submit supplementary report verifying such compliance; and
- (c) to restrain the Petitioners from further processing and hearing of the scheme until tax compliance.

It has been alleged that the Scheme of Arrangement does not satisfy the statutory requirements prescribed under Sections 37(6) and 37(8) of the Income Tax Ordinance and as such cannot be sanctioned without rectification. The application further alleges that the Petitioners have neither deducted tax under Section 37(6) of the Income Tax Ordinance, 2001 nor have they applied for or obtained the requisite permission from the Commissioner Inland Revenue under Section 37(8) *ibid.*

10. The office raised objections: (i) as to how an application filed under the provisions of Civil Procedure Code (“CPC”) is maintainable in a Company Original Petition instituted under the Companies Act; (ii) how multiple prayers are maintainable in an application to implead as first application to implead is to be allowed; (iii) how the Applicant can seek to implead another person/official without being a party himself; and (iv) that requirements of Rule 29 of the Companies (Court) Rules, 1997 have not been fulfilled. I decided to take up such objections on the judicial side by way of Order dated 2-5-2025.

11. The office objection with regard to the application of the provisions of CPC in Companies Original jurisdiction is overruled as misconceived in view of Rule 7 of the Companies (Court) Rules, 1997 read with subsection (c) of Section 2 thereof, which provide that save as provided by the Companies Ordinance, 1984 and by the said rules the provisions of the CPC so far as applicable shall apply to all proceedings under the Companies Ordinance, 1984 and the said rules. Reliance is placed on the judgments reported as *Associated Consulting Engineers Ace Limited*, 2023 CLD 885; *Trek Technologies Limited Vs. Icondor Telecom (Private) Limited*, 2017 CLD 572; *Rauf Baksh Kadri Vs. M/s National Technology Development Corporation Ltd.*, 2005 CLD 747; *Rauf B. Kadri Vs. State Bank of Pakistan*, 2002 CLD 1794.

12. The learned counsel for the Applicant relied upon Section 37(6) and (8) of the Income Tax Ordinance, 2001 to argue that the proposed Interveners are necessary and proper parties to the instant proceedings as the proposed Scheme of Arrangement does not satisfy the statutory requirements under the aforementioned provisions of law.

13. The learned counsel for the Petitioners waived notices and submitted that the office objections are valid and liable to be sustained. First and foremost the learned counsel for the Petitioners No. 1 and 2 highlighted that the withholding liability, if any, under Section 37(6) of the Income Tax Ordinance would accrue to the Petitioner No.2 whose registered office is located in Karachi whereas the relevant Commissioner Inland Revenue, Karachi has not filed any application to implead him. He

argued that the Applicant is not authorized to pray to implead parties not before this Court on their behalf.

14. The learned counsel for the Petitioner No. 3 pointed out that the Applicant has not served notice as required under Rule 29 of the Companies (Court) Rules, 1997 nor has he sought leave of this court to appear despite such non-compliance. On merits the learned counsel for the Petitioner No. 3 pointed out at the very outset that the taxing event, if any, under Section 37(6) of the Income Tax Ordinance has not yet occurred and cannot occur till the sanction of the Scheme of Arrangement. Therefore, it was argued that any action on the part of the Applicant is premature. He submitted that even otherwise the Federal Bureau of Revenue (“FBR”) has ample powers to recover any alleged short payment of tax but for which appropriate proceedings must be initiated under the Income Tax Ordinance, 2001 if and when such short payment occurs and which can certainly not be undertaken by this Court in Company jurisdiction. In this regard he relied upon Section 161 of the Income Tax Ordinance which relates to failure to pay tax collected or deducted and Section 162 of the Income Tax Ordinance which deals with the recovery of tax from the person from whom tax was not collected or deducted, which have been incorporated expressly by virtue of sub-section (9) of Section 37.

15. Perusal of Section 37(6) of the Income Tax Ordinance clearly shows that the obligation to deduct advance adjustable tax on the gross amount paid for the acquisition of capital assets being shares of the company arises at the time of payment or at the time of registration of shares by the SECP, whichever is earlier at the rate of 10% of the fair market value of the shares which is payable within fifteen days of payment. Upon query of this Court, the learned counsel for the Applicant candidly conceded that neither of the two eventualities has occurred as of now. In fact neither of the two events *can* take place until and unless the Scheme of Arrangement is approved by this Court as prayed for vide the instant petition.

16. However, the learned counsel for the Applicant argued that under Section 37(6) the advance adjustable tax is to be deducted at the rate of 10% of the Fair Market Value of the shares but the Fair Market Value of the shares has not been ascertained properly as per the Scheme of Arrangement which will result in shortfall of tax, hence the instant application. First of all it may be noted that this ground has not been taken by the Applicant in his application. Be that as it may, the burden of proof is upon the person who alleges that the scheme is unfair¹. Nevertheless, the Applicant was unable to establish that the valuation of shares as per the Scheme of Arrangement is not as per the law. Neither any violation of law has been identified by the Applicant nor any other basis given for challenging the valuation.

17. On the other hand, no other party has raised any objection to the valuation of the shares as per the Scheme of Arrangement particularly the minority shareholders of any of the Petitioners whose interests the Court is bound to protect in proceedings such as the instant one². In *Dewan Salman Fibre Ltd. Vs. Dhan Fibres Ltd.*, PLD 2001 Lahore 230, the Court held with regard to share valuation that the shareholders are the best judges of their interests and are far better informed with the market trends than the court. Similarly, the Lahore High Court in *Presson-Descon International (Private) Limited Vs. Joint Registrar of Companies*, PLD 2020 Lahore 869 held that valuation of shares is a complex and technical problem, which must be left to the experts in the field of accountancy. In the case of *Kohinoor Raiwind Mills Limited Vs. Kohinoor Gujar Khan Mills*, 2002 CLD 1314 the Lahore High Court refused to sanction the Scheme of Arrangement by finding that the valuation of the shares of the petitioner had been made on a basis which was materially disadvantageous to the shareholders when compared to the basis of valuing the shares of the transferee company for the purpose of calculating the swap ratio. However in such case objection was raised by minority shareholders as well as the SECP on the basis of which the court found that the Board of Directors failed to take into account an important

¹ *Brooke Bond Pakistan Limited Vs. Aslam Bin Ibrahim*, 1997 CLC 1873

² *Presson-Descon International (Private) Limited (Supra); Kohinoor Raiwind Mills Limited (Supra)*

factor for determining the value of shares which is not the case in the matter at hand.

18. In any event, in so far as the Applicant is concerned, the FBR's interest in the valuation of shares, if any, is limited to the tax payable under Section 37(6) of the Income Tax Ordinance, 2001. However, it has to be seen whether Section 37(6) of the Income Tax Ordinance is attracted at all in view of Section 97A³ which provides that no gain or loss shall be taken to arise on disposal of an asset from one company to another by virtue of operation of a Scheme of Arrangement under the relevant provisions of a Companies Act, 2017 subject to the satisfaction of the stipulated conditions therein. It is clarified that the aforesaid observation is not a finding lest any party be prejudiced in any subsequent proceedings. The point is that the matter is of assessment of the tax liability, if any, of the concerned Petitioners, which can be taken up by the tax department at the relevant time by initiating proceedings as per law. The present proceedings can certainly not be converted into assessment proceedings. Therefore, the question of issuing directions and restraining orders to the Petitioners and/or the SECP pursuant to Section 37 of the Income Tax Ordinance as prayed for by the Applicant is premature and beyond the scope of the instant proceedings.

19. Thus the Applicant failed to establish that it is a necessary and proper party for the adjudication of the instant matter. Even otherwise, every person intending to appear at the hearing of a petition is required to send notice in Form No. 6 to the Court and the Petitioners or their advocate two days prior to the hearing pursuant to Rule 29(1) and (2) of the Companies (Court) Rules, 1997. No such notice was sent by the Applicant to the Court or the Petitioners despite which no application for obtaining leave of the Court has been filed as per Rule 29(3) of the Companies (Court) Rules, 1997.

20. For all the foregoing reasons, the objections raised by the Office as summarized at serial Nos. (ii) to (iv) in paragraph 10 hereinabove are valid and as such sustained therefore the instant Application to implead the proposed Interveners is dismissed as not maintainable.

³ *Commissioner Inland Revenue, Zone-II, LTU, Lahore Vs. Messrs Shezan International Ltd.*, 2024 PTD 758

Approval of Competition Commission of Pakistan (“CCP”)

21. The Petitioners filed a pre-merger application on 6-01-2025 under Section 11 of the Competition Act, 2010 read with Regulation 6 of the Competition (Merger Control) Regulations, 2016 with the CCP seeking authorization for the proposed transaction under the Scheme of Arrangement. The CCP passed Order dated 25-03-2025 and approved the application by concluding that the proposed transaction does not create or strengthen a dominant position in the relevant market and as such transaction was authorized under Section 3(1)(d)(i) of the Competition Act, 2010.

SECP Observations

22. Vide Order dated 12-2-2025 of this Court, the SECP was directed to ensure that a preliminary review of this Petition and the proposed Scheme of Arrangement is carried out and a concise preliminary report identifying red flags, if any, is placed before the Court and the Petitioners were directed to establish contact with the relevant division of SECP and to make themselves available for any information that SECP may require for its report aforesaid.

23. Following such Order, the SECP wrote a Letter dated 25-2-2025 to the Petitioner No.1 requesting certain clarifications/documents. The Petitioner No.1 responded vide its Letter dated 19-3-2025. Thereafter, the SECP filed its Preliminary Report dated 22-4-2025 before this Court along with para-wise comments to the petition and the Special Public Prosecutor submitted that no objection has been taken therein. Yet on 6-5-2025 the SECP has filed a Revised Report reiterating the same observations. The Court’s findings in respect of the SECP observations in light of the explanation rendered by the Petitioners are given herein below as follows:

(i) Non-impleading of Deodar (Private) Limited (“Deodar”)

24. The SECP inquired as to why Deodar was not made party to the Scheme of Arrangement despite the fact that it is Deodar, a subsidiary of the Petitioner No. 3, which is being transferred to Petitioner No.2 pursuant to the scheme.

25. The Petitioner No. 1 explained vide its reply that Deodar is a wholly owned subsidiary of the Petitioner No.3. The Scheme of Arrangement envisages the transfer of Petitioner No.3's entire shareholding in Deodar, in favour of the Petitioner No.2. Since the shareholding in Deodar is the property of the Petitioner No.3 which is being transferred pursuant to the Scheme of Arrangement as such Deodar is not required to be impleaded as a party to the Scheme of Arrangement or the instant petition. The learned counsel for the Petitioner No. 1 explained that though the merger could have been structured to take place between the Petitioner No. 2 and Deodar there is no legal compulsion to do so and the SECP cannot object to the Scheme of Arrangement or second guess the commercial decisions of the Petitioners unless any violation of law could be pointed out.

26. Indeed, Section 282 of the Companies Act envisages making of an application which shows that the compromise of arrangement is proposed for, *inter alia*, amalgamation of a division of a company into one or more companies and that the whole or any part of the undertaking or property or liabilities of any company concerned in the scheme ("a transferor company") is to be transferred to another company ("the transferee company"). In the instant case Deodar is an undertaking of Petitioner No.3, being its wholly owned subsidiary. In such view of the matter, it becomes apparent that it is the Petitioner No.3 i.e. the transferor company which is a necessary party as it is the company concerned in the scheme whose undertaking is being transferred while Deodar is merely the undertaking of the Petitioner No.3 that is being transferred to Petitioner No.2 as part of the Scheme of Arrangement, hence, not a necessary party.

27. It is also emphasized that the Court while according approval in respect of a scheme of arrangement does not question the commercial wisdom behind the scheme⁴. No violation of law has been identified by the SECP to have been committed by the Petitioners in structuring the Scheme of Arrangement so as to merge Deodar into Petitioner No. 2 as an undertaking of Petitioner No. 3 rather than a merger between Deodar and the Petitioner No. 2.

⁴ *Presson-Descon International (Private) Limited (Supra)*

(ii) Repayment of Deodar's Debt

28. The SECP required clarity as to why repayment of Deodar's debt to Petitioner No. 3 amounting to PKR 104 billion has not been mentioned as part of the consideration for the transfer of Deodar from the Petitioner No.3 to Petitioner No.2. The Petitioner No.1 explained vide its reply that repayment of Deodar's preexisting obligations towards Petitioner No.3 are not affected in any manner by this Scheme of Arrangement which shall continue to be payable by Deodar to the Petitioner No.3 notwithstanding the transfer of Petitioner No.3's shareholding in Deodar to Petitioner No.2 and therefore such settlement of debt is not the subject matter of the Scheme of Arrangement.

29. Section 282(4) of the Companies Act provides that the property and liabilities stand transferred to and vest in or become the liabilities of the transferee company by virtue of the order of transfer of property or liabilities under this section. Thus the property and liabilities of the transferor company vest in the transferee company by operation of law⁵. It follows that any liability of Deodar including its debt to the Petitioner No.3 need not be mentioned specifically in the Scheme of Arrangement as it will stand transferred to the Petitioner No. 2 by operation of law upon the merger. This is also covered under Article 7.3 of the Scheme of Arrangement which provides that as of the Effective Date, all the liabilities and obligations, to the extent relevant to the PMCL Demerged Undertaking, excluding any liabilities and obligations towards any secured creditors of the Petitioner No. 3 shall immediately and without any further act or deed be assumed by and become the liabilities and obligations of Petitioner No. 2.

(iii) Valuation of the Assets of Deodar

30. The SECP has pointed out that despite the fact that Deodar owns 10,500 towers the Scheme of Arrangement shows that the Petitioner No.3's investment in Deodar is valued at a nominal Rs.100,000/-. The SECP is of the opinion that a valuation of Deodar's assets is imperative to ensure fair valuation for the sake of transparency.

⁵ *Messrs Omer Iqbal Solvent (Pvt.) Ltd., 2010 CLD 1802*

31. On the other hand the Petitioner No.1 has explained vide its reply that the paid-up capital only reflects the face value of the issued share capital of Deodar and not its overall financial standing including assets and liabilities. They pointed out that the SECP has not identified any specific provision of law where under valuation of the assets and liabilities of Deodar being the undertaking of Petitioner No. 3 that is being transferred to Petitioner No.2 as part of the Scheme of Arrangement would be mandated. In this regard the learned counsel for the Petitioner No. 3 relied upon Section 282(2)(d) of the Companies Act whereby merging companies or the company in respect of which a division is proposed shall also be required to circulate for the meeting of creditors and members ordered under Section 282(1) a report of the expert with regard to valuation, if any. The learned counsel for the Petitioner No.3 stressed upon the words, “if any” to argue that such valuation is not mandatory under the law. He further pointed out that if the SECP’s concern is to protect the interest of minority shareholders of the Petitioners it may be noted that the Scheme of Arrangement was duly published in the newspaper as required under Rule 19 of the Companies (Court) Rules, 1997 pursuant to this Court’s order dated 12-2-2025. Therefore if any minority shareholder had any objection in this regard they were free to raise objection but no objection was received from any quarter and the lack of objection in this regard shows that the Scheme of Arrangement has been unanimously approved by all the shareholders of each of the Petitioners.

32. The SECP has not been able to point out any mandatory requirement of law for valuation of the assets of the undertaking or division to be amalgamated. One of the effects of the Court’s sanction of a scheme of arrangement approved by the statutory majority is that it becomes binding upon the company and its members including those who voted against the scheme⁶. Thus the Court is required to ensure that the minority shareholder’s interests are protected by the Scheme of Arrangement. However, in the instant case not a single shareholder of any of the Petitioners has raised any objection.

⁶ *Presson-Descon International (Private) Limited (Supra)*

(iv) Transfer of Reserves

33. Initially, the SECP contended that the transfer of reserves does not strictly fall within the ambit of a compromise or arrangement under Section 279, Companies Act which involves a restructuring of share capital, debit, or financial reorganization. However, by way of the Revised Report and written arguments the concern highlighted by the SECP was that the treatment of the 'distributable reserves' of the Ecorp Demerged Undertaking pursuant to Article 6.4 of the Scheme of Arrangement will be used for distribution of dividends by the Petitioner No. 3 despite the fact that dividends can only be distributed out of profits pursuant to Section 241 of the Companies Act whereas a reserve arising as a consequence of scheme of arrangement is a 'capital reserve' which is not regarded free for distribution by way of dividend as per clause IV of Part I of the Fourth Schedule of the Companies Act read with clause 17 of the Fifth Schedule.

34. In this regard Mr. Waseem A. Khan, Director Mergers, SECP who appeared before this Court suggested that the opinion of an international accounting expert may be obtained as to whether or not the Distributable Reserves of the Ecorp Demerged Undertaking transferred to the Petitioner No. 3 would qualify as profit from which dividends can be paid out by the Petitioner No. 3. The SECP also expressed its apprehension that the shareholders of the Petitioner No. 1, which is a listed company, will be deprived of their share in the distributable reserves.

35. The learned counsel for the Petitioners highlighted at the very outset that no violation of law has been pointed out by the SECP. Rather only an apprehension has been shown with regard to the possible treatment by Petitioner No.3 of the Distributable Reserves received as a consequence of the Scheme of Arrangement and even in such regard the SECP is unsure as to whether or not the possible treatment would be legal or not and has instead sought the opinion of an international expert. Thus he submitted that this cannot serve as reason for not approving the Scheme of Arrangement particularly when no shareholder has objected to the same.

36. Article 6.4 of the Scheme of Arrangement envisages that the Distributable Reserves of the Petitioner No. 1 up to and immediately preceding the Effective Date (as per the Scheme of Arrangement) to the extent allocated to the Ecorp Demerged Undertaking shall be treated as Distributable Reserves of a corresponding nature in the books of the Petitioner No. 3 who shall have the same rights, entitlements and interests with respect to the same as the Petitioner No. 1 prior to the Effective Date including the right to utilize them for distribution to its members in the form of a dividend. 'Distributable Reserves' have been defined under Article 1.1 of the Scheme of Arrangement to mean un-appropriated profits or any amount which has been transferred to reserves and which may be distributed by way of dividend. Thus, the Scheme of Arrangement simply contemplates that the un-appropriated profits of the Petitioner No. 1 up to the Effective Date as are allocated to the Ecorp Demerged Undertaking shall be treated as reserves of a corresponding nature and shall be accounted for on that basis in the books of the Petitioner No. 3. There is no denial that the Distributable Reserves of the Petitioner No. 1 comprise the un-appropriated profits and as such qualify as Revenue Reserves. The SECP was unable to explain as to why the un-appropriated profits of the Petitioner No. 1 prior to the Effective Date to the extent allocated to the Ecorp Demerged Undertaking should not retain their character in the books of the Petitioner No. 3 pursuant to the Scheme of Arrangement after the Effective Date.

37. These Distributable Reserves transferred to the Petitioner No. 3 pursuant to the Scheme of Arrangement as contemplated in Article 6.4 cannot be confused with the 'capital reserve' as per clause IV of Part I of the Fourth Schedule that arises as a consequence of a scheme of arrangement and which are not regarded as free for distribution. The latter represents the difference between the face value of shares issued and the value of assets acquired, if any, which is required to be recorded for the limited purpose of balancing the accounts based on the double entry system employed thus cannot give rise to any benefit.

38. In any event, upon the Court's query the SECP conceded that the SECP has ample powers to take action against the Petitioner No.3 in case

of distribution of dividends from anything other than profits at the appropriate time. Thus no violation of law has been pointed out by the SECP. As held by the Sindh High Court in *Gadoon Textile Mills Limited*, 2015 CLD 2010 the Court while sanctioning a scheme of arrangement is not required to scrutinize the scheme the way a meticulous accountant would, trying to find out the loopholes present in the scheme, what technical mistakes have been committed, or what accounting errors have crept in.

39. Insofar as the shareholders of the Petitioner No. 1 being deprived of their share in the distributable reserves are concerned, it may be noted that only so much of the distributable reserves of the Petitioner No. 1 will be transferred to the Petitioner No. 3 which were allocated to the Ecorp Demerged Undertaking. The demerger of the Ecorp Demerged Undertaking from the Petitioner No. 1 and the merger thereof with the Petitioner No. 3 has been validly approved by the members of the Petitioner No. 1 and it is reiterated that not a single member of the Petitioners has objected to the Scheme of Arrangement or any part thereof. The propriety and merits of the compromise and arrangement have to be adjudged by the parties who as *sui juris* with their open eyes and fully informed about the pros and cons of the scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement⁷. It is not the duty of the Court to substitute its opinion in place of that of the shareholders who are the sole judge of their interests in the Petitioners⁸.

Sanction

40 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 Court⁹. 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

⁷ *Dilsons (Private) Limited Vs. Securities and Exchange Commission for Pakistan*, 2021 CLD 1317

⁸ *Novatex Limited*, 2023 CLD 1161

⁹ Order dated 18-7-2024 passed in *Dawood Hercules Corporation Limited*, Companies Original No. 7 of 2024

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 himself¹⁰.

41. In the instant case the Petitioners have completed all necessary legal formalities, including holding separate meetings of secured creditors, shareholders and board of directors, requisite publication, CCP approval, and issuance of notices to the Securities and Exchange Commission of Pakistan. No objection whatsoever has come forward from any shareholder while all the requisite formalities have been fulfilled hence no exception can be taken.

42. In view of the above, I do not see any impediment in granting sanction to the Scheme of Arrangement. Accordingly this petition is accordingly **allowed** as prayed and the Scheme of Arrangement attached as Annexure-A is hereby sanctioned in terms thereof.

43. Before parting with the judgment, I would like to acknowledge the research assistance provided by Mr. Usama Bin Zafar, Law Clerk, which I found to be most beneficial.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the Open Court on the 19th day of May, 2025.

JUDGE

JUNAID

Approved for Reporting
Blue Slip added.

¹⁰ *Gadoon Textile Mills Limited (Supra)*