

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:

Mr. Justice Irfan Saadat Khan
Mr. Justice Aqeel Ahmed Abbasi

Civil Petition No.1721-K of 2021

(Against the order dated 25.10.2021 passed
By the High Court of Sindh, Karachi, in
J.C.M. No.49 of 2016)

*State Life Insurance Corporation of Pakistan,
Karachi*

... Petitioner

Versus

Nina Industries Limited, Karachi and others

... Respondents

For the Petitioner:	Mr. Khalid Mehmood Siddiqui, ASC
For Respondent No.1:	Ch. Atif Rafiq, ASC
Date of Hearing:	19.12.2024

ORDER

Aqeel Ahmed Abbasi, J.- Above Civil Petition for Leave to Appeal has been filed against the impugned order dated 25.10.2021 passed by the learned Single Judge of Sindh High Court in J.C.M. No.49 of 2016 by the petitioner i.e. State Life Insurance Corporation of Pakistan, whereby, a petition filed under Section 284 read with Section 285 of Companies Ordinance, 1984, wherein, the respondents prayed *inter alia* if required number of shareholders and creditors of Respondent No.1 i.e. M/s Nina Industries Limited (Public Company Limited by shares) approved the "Scheme of Arrangement" at their meetings called by the orders

of the Court on the respondent application made under Rule 55 of the Companies Code Rules 1997, and order under Section 284(2) of the Companies Ordinance, 1984, sanctioning the scheme of arrangement as set-forth in Annexure "D" to the petition, so as to make the scheme of arrangement binding on all person with respect to the Respondent No.1 but not limited to the shareholders and creditors of Respondent No.1 and further to pass all necessary orders under Section 287 of the Companies Ordinance, 1984, to give effect to the scheme of arrangement, was allowed vide impugned order as referred to hereinabove.

2. The petitioner being aggrieved by the impugned order passed by the learned Single Judge dated 25.10.2021 in J.C.M. No.49 of 2016 has assailed the same by filing instant Civil Petition for Leave to Appeal mainly on the ground that the Scheme of Arrangement catered only for the interest of secured creditors while ignoring the interest of minority creditors and shareholders. According to learned counsel for the petitioner, the Scheme of Arrangement was oppressive and against the interest of minority shareholders/equity investors, whereas, the price mentioned in the scheme is *mala fide* as according to petitioner, upon approval of the scheme and sale of the assets for all practical purposes the company will stand dissolved leaving no tangible property, therefore, under the facts and circumstances, instead of sanctioning the Scheme of Arrangement, the company would have been wound up for the benefit of every member on pro-rata basis. According to learned counsel for the petitioner, the impugned order passed by the learned Single Judge of Sindh High Court in

J.C.M. No.49 of 2016, inspite of objections filed on behalf of petitioner to this effect, is liable to be set-aside.

3. Briefly the facts as recorded by the learned Single Judge of Sindh High Court in the impugned order passed in J.C.M. No.49 of 2016 are that the Respondent No.1 (M/s Nina Industries Limited, Karachi) was a private limited company incorporated under the Companies Ordinance, 1984 and the same was converted to a public limited company whereas the Respondents No.2 to 7 are all banking companies as defined in the Banking Companies Ordinance, 1962, or non-banking finance companies as defined in the Companies Ordinance, 1984. The Respondent No.1 availed finances from them from time to time with respect to, inter alia, its business and operations, therefore, Respondents No.2 to 7 are secured creditors of Petitioner No. 1.

4. Above petition was filed under Section 284 read with Sections 285 to 288 of the Companies Ordinance, 1984 wherein the respondents prayed *inter alia* that if required number of shareholders and creditors of the Respondent No.1 approve the 'Scheme of Arrangement' enclosed as annexure 'D' at page-75 with the petition at their meetings called by the orders of the Court on the respondents' application made under Rule 55 of the Companies Court Rules, 1997:- with the following prayers:-

- (a) an order under Section 284(2) of the Companies Ordinance, 1984 sanctioning the Scheme of Arrangement as set forth in Annexure "D" hereto so as to make the Scheme of Arrangement binding on all persons with respect to the petitioner No.1 including, but not limited to, the shareholders and creditors of the petitioner No.1;

- (b) All necessary orders under Section 287 of the Companies Ordinance, 1984 to give effect to the Scheme of Arrangement; and
- (C) make such further order(s) as this Hon'ble Court may deem.

Record shows that pursuant to the order dated 16.01.2017 passed by this Court in this petition a meeting was held on 09.03.2017 of the secured creditors, which was attended by 94.36% of the total secured creditors through their authorized officers, only the Bank of Punjab and Pak Libya Holding Company (Pvt) Ltd chose to remain absent. However, the scheme of arrangement was approved by a majority of 84.23% of the total secured creditors being 95% of the secured creditors present and voting. Thereafter, three of the secured creditors i.e. Saudi Pak Industrial and Agricultural Investment Company Ltd., Pak Libya Holding Company (Pvt) Ltd., and Bank of Punjab filed their objections to the 'Scheme of Arrangement'. Apart from the above secured creditors, two other companies i.e. Gadoon Textile Mills Limited and State Life Insurance Corporation of Pakistan also filed their respective objections to the 'Scheme of Arrangement'. Objections of the aforementioned creditors are available at pages-1, 537, 1379, 1453 and 1681 of the Court (File Part-1).

5. It has been further noted by the learned Single Judge that for various reasons, the Respondent No.1 has faced significant difficulties in meeting of its financial obligations towards its creditors in respect of its financial indebtedness and financing facilities availed by it. Resultantly, numerous creditors, including from amongst the Respondents No.2 to 7 filed various

proceedings against the Respondent No.1 including suits for recovery of finances, which are pending. Additionally, the Respondent No.1 filed proceedings against certain secured creditors which are also pending. Thereafter, on the efforts of the Respondent No.1 to settle its existing liabilities / financial obligations towards its secured creditors, during the pendency of the present petition, the Respondent No.1 has settled with the Respondents No.2 to 7 and entered into Master Settlement Agreement dated 27.06.2020. In due course, the Respondent No.1 has entered into settlement agreements with the Bank of Punjab on 26.07.2019, Saudi Pak Industrial and Agricultural Investment Company Limited on 06.03.2020, Pak Libya Holding Company (Pvt) Limited on 01.09.2019, therefore, said secured creditors have already settled their liabilities with the petitioner No.1 and have filed their 'no objections' to the grant of instant petition which are available at pages-425, 435-A and 437 in the Court file (main file).

6. With regard to the objections of the petitioner before us i.e. State Life Insurance Corporation of Pakistan filed to the petition before the learned Single Judge (available at pages 1453 of Part 1), it has been observed that the said company raised two objections viz. (i) the objector is a minority shareholder having 20011000 shares (i.e. 8.26%) of the total shareholding; (ii) the Respondent No.1 directors back in 1995 defrauded State Life by convincing it to purchase the shares; and iii) in the Scheme there is no relief available to the State Life Insurance Company Ltd. The scheme of arrangement is for secured creditors and not for shareholders and the shareholdings of the company will remain

the same and State Life will continue to hold the shares it has in the company. Moreover, State Life Insurance Company Ltd., when the business of the Respondent No.1 was going well, was benefited from the shareholding in the company. Even State Life did not attend the shareholders meeting and 100% members present and voted for the sanction of the Scheme; therefore, the objections raised by the State Life are not sustainable under the law.

7. Perusal of the impugned judgment reflects that the Respondent No.1 has already entered into settlement agreements with the objectors i.e. Bank of Punjab, Saudi Pak Industrial and Agricultural Investment Company Limited and Pak Libya Holding Company (Pvt) Limited, who have after settling their liabilities with the petitioner No.1 have filed their no objections to the grant of instant petition. The learned Single Judge after examining the entire record, scheme of arrangement and the relevant provisions of law, has been pleased to hold that two of the objectors i.e. the Gadoon Textile Mills Limited as well as State Life Insurance Co. Limited who are admittedly minority shareholders and unsecured creditors, 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'.

9. From perusal of the provision of Section 284 read with Section 285 of the Companies Ordinance, 1984, it can be safely concluded that a company can enter into compromise or arrangement with its creditors or any class of them, and its members or any class of them, subject to meeting of creditors or members of the company to be called, held and conducted in such manner as the Court may direct. It further provides that if the majority in number representing three-fourth (3/4th) in value of the creditors or class of creditors, or members, as the case may be, present and voting either in person or, where proxies are allowed, by proxy at the meeting, agreed to any compromise or arrangement, then such compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or the class of creditors, or, on all the members or class of members, and also on the company. However, such sanctioning of any compromise or arrangement between the company and its creditors and/or members is subject to satisfaction of the Court, submission of the relevant documents and compliance of the provisions of law as referred to hereinabove. In the instant case,

all the codal formalities appears to have been complied with, whereas, the objectors before the learned Single Judge, who are admittedly minor share holders and unsecured creditors, could not point out any illegality or violation of the provisions of the Companies Ordinance, 1984, in the 'Scheme of Arrangement' between the company and its creditors, nor could refer to any legal defect or procedural irregularity in the impugned order passed by the learned Single Judge while sanctioning the 'Scheme of Arrangement' in the instant case. It will not be out of place to observe that pursuant to Court's order the meeting of all the stakeholders including the creditors and members was held, wherein, 100% share holders of Respondent No.1 and 95.09% in value of the secured creditors pursuant to vote at the meeting, consented to and also passed a resolution approving the 'Scheme of Arrangement', which fact alone is sufficient to reflect upon the will of the majority creditors/share holders while considering the Scheme of Arrangement as in the best interest of the company and its share holders. We have further observed that the interest of the petitioner company before us, has also been protected by the learned Single Judge in para-13 of the impugned order, whereas, in the scheme of arrangement sanctioned by the Court in the instant case, there seems no clause, which may adversely affect the right or interest of the petitioner in any manner.

10. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that the impugned order passed by the learned Single Judge in J.C.M. No.49 of 2016, while sanctioning the 'Scheme of Arrangement' between the Respondent

No.1 and its secured creditors, who are admittedly majority share holders, does not suffer from any legal infirmity or procedural defect, whereas, no substantial question of law has been raised through instant Civil Petition for Leave to Appeal, which may require this Court to interfere with the impugned order. Accordingly, we do not find any merits in instant Civil Petition for Leave to Appeal, which is hereby refused. This petition stands dismissed.

Judge

Judge

Karachi:
19.12.2024
(Nadeem)

'Approved for Reporting'