
Judicial Miscellaneous Petition No.48 of 2011, decided on 24th September, 2012

Sindh

Before Aziz-ur-Rehman

Taimur Ali Mirza for Petitioners

Waqas Asad Shaikh, Assistant Director Law, SECP

[Companies Ordinance (XLVH of 1984)---Sections 94, 284(2), 287 & 288---Merger of companies---Scheme of arrangement--Approval---Court, powers of-Petitioners filed application for approval of scheme of arrangements for merger of companies--Validity---While exercising powers of Company Judge, correct approach was to ascertain whether statutory requirements had been complied with and to determine whether scheme of arrangement as a whole had been arrived at by majority shareholders and in actual fact it was for the benefit and in the interest of whole body of shareholders--Company Judge was to see whether scheme as such was fair and reasonable and shareholders had considered the scheme for benefit of companies and for themselves - Scheme of arrangement was manifestly reasonable and none of the creditors and/or members of petitioner companies had opposed the petition---Scheme of arrangement was apparently in the interest of members and seemed without prejudice to the rights of creditors"- filing/delivering of certified copy of order of sanctioning of the scheme before Registrar of Companies in terms of S.287(3) of Companies Ordinance, 1984, rendered requirement of notice in terms of S.94 of Companies Ordinance, 1984, irrelevant and unnecessary as filing of certified copy of the order sanctioning the scheme itself was notice --Court, under S.287 of Companies Ordinance, 1984, was invested with power to sanction/approve not only scheme of arrangements but also direct increase/enhancement in authorized share capital of a company--Petition was allowed accordingly.]

Messrs Omer Iqbal Solvent (Private) Limited and another 2010 CLD 1802; Regional Director and another v. Cavin Plastics and Chemicals (P) Limited [2008] 141 Camp Cas 475 (Madras) and Saboo Leasing (P) Limited [2003] 117 Camp Cas 728 Andra Pardesh, High Court ref.

ORDER

AZIZ-UR-REHMAN. J.---Through this Petition under section 284 read with sections 285 to 288 of the Companies Ordinance, 1984, the petitioners are seeking the following prayers:--

(a) Make an order under section 284(2) of the Companies Ordinance, 1984 sanctioning the Scheme of Arrangement as set forth in Annexure 'T' hereto so as to make the Scheme of Arrangement binding on the petitioners and creditors and shareholders of the petitioners Nos. 1, 2, 3 and 4.

(b) Make the following orders under section 287 of the Companies Ordinance, 1984 namely:

(i) An order under section 287(1) of the Companies Ordinance, 1984, transferring to and vesting in the petitioners Nos.1, 3 and 4, the relevant undertaking, assets, properties, liabilities, rights, benefits, powers, privileges, licenses, contracts of the petitioner No.2 as more particularly described in the Scheme of Arrangement as set forth in Annexure 'T' hereto.

(ii) Pass all necessary orders to give effect to the Scheme of Arrangement, including but not limited to order whereby the assets, business, undertaking, properties, rights and liabilities of the petitioner No.2 are transferred to and vested in the petitioners Nos. 1, 3 and 4- in terms of the Scheme of Arrangement with effect from the Effective Date being June 30, 2011 (as identified under the Scheme of Arrangement) or such date as may be specified by this Hon'ble Court.

(iii) An order under section 287(1)(c) of the Companies Ordinance, 1984 directing that all suits, appeals, arbitration, governmental investigations and other legal proceedings instituted by or against the petitioner No.2 and any judgments, orders, or directions passed in respect of the petitioner No.2 shall be treated as suits, appeals and legal proceedings by or against the petitioners Nos. 1, 3 and 4 (in accordance with the terms of the Scheme of Arrangement) and judgments orders or directions passed in respect of the petitioner No.2 may be constituted, prosecuted and enforced by or against the petitioners .Nos.1, 3 and 4 respectively (in accordance with the Scheme of Arrangement).

(iv) An order that all books of accounts and other documents which would before the Effective Date have been the evidence in

respect of any matter against the petitioner No.2 shall be admissible in evidence in respect of the same matter for and against the petitioners Nos.1, 3 and 4 respectively to the extent of the relevant segments of petitioner No.2 merged with petitioners Nos. 1, 3 and 4,

(v) The petitioner No. 2 shall stand dissolved without winding up.

(vi) To direct that post amalgamation, the authorized share capital of the petitioner No.1 shall stand enhanced to Rs.4,000,000,000 (Rupees Four Billion only) divided into 400,000,000 ordinary shares of the face value of Rs.10 (Rupees Ten only) each without any performance of any further acts or deeds or payment of any costs.

(vii) To sanction the post-amalgamation shareholding in each of petitioners Nos. 1, 3 and 4 as per the details mentioned in annexure K to the Scheme of Arrangement.

2. The back grounds in brief are as under:--

"PETITIONER NO. 1

The petitioner No. 1 was incorporated vide certificate of incorporation dated 26-10-2012. The petitioner No.1 is engaged in the business of spinners, weavers, manufacturers, ginners, pressers, packers and, balers of cotton, jute, hemp, silk, wool and any other fibrous material and the cultivation thereof and the business of weaving, knitting or otherwise manufacturing, bleaching, printing and selling of yarn, cloth, linen, hosiery and other goods or merchandise made thereof and generally to carry on the business of cotton spinners and doublers, etc. etc.

PETITIONER NO. 2

The petitioner No. 2 was incorporated vide certificate of incorporation dated 17-07-1978. The petitioner No. 2 is engaged in the business of cotton spinners and doublers, jute, flex and hemp spinners, linen and cloth manufacturers, jute, flex, hemp, cotton and wool merchants, wool combers, worsted spinners, woolen spinners, yarn merchants, worsted stuff manufacturers, (bleachers dyers and manufacturers of) bleaching and dyeing materials and to carry on all sorts of manufacturing process of canvas and waterproof in all forms.

PETITIONER NO. 3

The petitioner No. 3 was incorporated vide Certificate of Incorporation dated 27-12-2007. The petitioner No. 8 is engaged in the business of manufacturer, exporters of all kinds of garments, towels, cloth, grey or finished, home textile items, including all kinds of textiles and made ups, made of all kind of yarn fiber, natural synthetic man made or any other business deemed fit for the company.

PETITIONER No. 4

The petitioner No. 4 was incorporated vide Certificate of Incorporation dated 29-6-2011. The petitioner No. 4 is a newly incorporated private limited company intended to engage in the business of ginning, spinning, open end spinning, sizing weaving, stitching, manufacturing, pressing, doubling, packing and bailing of cotton, jute, hems, silk, artificial silk, synthetic fiber, wool and any fibrous materials used for textile and the cultivation or manufacturing thereof and the business of weaving or otherwise manufacturing, bleaching, printing, stitching, etc. etc.

3. Along with the petition Scheme of Arrangement under sections 284 to 288 of the Companies Ordinance, 1984 between Feroze 1888 Mills Limited, Feroze Textile Industries (Private) Ltd., UTI Industries (Private) Limited, Friendship (Private) Ltd. and respective shareholders is also attached as annexure "I" (page 307 of the court file).

4. The object of the scheme is transfer to and vesting of the specific segments of the undertaking and business inclusive of all assets, properties, rights, liabilities and dues of the petitioner No. 2 more particularly described in the scheme of Arrangement into the petitioners Nos. 1, 3 and 4 in terms of the Scheme of Arrangement.

5. By means of the aforesaid object, the petitioners desire to restructure and merge, by way of amalgamation of the specific segments of petitioner No.2 into petitioners Nos. 1, 3 and 4.

6. Upon Sanction of the Scheme, it was further stated that petitioners Nos. 1, 2 and 4 will continue as going concerns under the name of Feroze 1888 Mills Limited. UIT Industries (Private) Limited and Friendship (Private) Limited, while petitioner No.2 will cease to exist without winding up.

7. After filing the petition, on 13-12-2011 notices of the main petition and C.M.A. No.366 of 2011 along with application under Rule 55 of the Companies (Court) Rules 1997 read with section 151, C.P.C. were issued to SECP for 13-1-2012. Upon service, Mr. Farrukh Qureshi, Support Executive, Legal Division appeared on behalf of SECP and extended his no objection to the grant of C.M.A. No.366 of 2011. Consequently, C.M.A. No.366 of 2011 was granted as prayed. Under the same order notice was also issued in terms of Rule 76 read with Rule 19 of the Companies (Court) Rules 1997. Thereafter, necessary steps i.e., meetings of the Board of Director of petitioner companies were held on 15-11-2011. Resolutions for convening the Extraordinary General Meetings of the members of petitioners companies were passed, notice of the meetings along with the statement of information accompanying the scheme of arrangement as required under section 286 of the Companies Ordinance 1984 were sent to all members of the petitioners. Notices of the meeting were also published in an English and an Urdu widely circulated daily newspapers.

8. Consequently, the meeting of the members of each petitioner company was held on 18-02-2012. In the meetings so held the following resolutions were presented before the Members of the petitioners. The resolutions read as under:--

'RESIVKED(sic.) THAT the Scheme of Arrangement dated November 15, 2011 for the amalgamation of the specific segments of the assets, undertakings and business of Feroze Textile Industries (Private) Limited with and into Feroze 1888 Mills Limited, UTI Industries (Private) Limited and Friendship (Private) Limited, placed before the meeting for consideration and approval be and is hereby approved and adopted subject to sanction by the Honorable High Court of Sindh, at Karachi, in terms of the provisions of the Companies Ordinance, 1984.'

9. Thereafter; in compliance with order dated 13-1-2012 and under direction of the Court, Reports under Rule 155 of SCCR (OS) by Mr. Khaleequr Rehman, Chairman/Director of petitioners Nos. 1 and 2 presiding the meetings, on and regarding the result of the meetings of the members of petitioners Nos. 1 and 2 were filed in court on 24-4-2012. Regarding result of the meetings of the members of petitioners Nos.3 and 4 Reports were filed on 24-04-2012 by Chairman/Director presiding the meetings viz. Mr. Shabbir Ahmed and Pervez Ahmed of petitioners Nos.3 and 4 respectively.

10. Per Reports of the Chairman, the members of the petitioners companies voted in favour of the resolution, and as required under section 284(2) of the Companies Ordinance, 1984, resolutions were passed by the majority of members of each petitioner company.

11. Apart from the above, a statement on behalf of the petitioners along with various NOCS as annexure P 1/A to P1/G, P2/A to P2/A to P2/F and P3/A was also filed on 24-4-2012. Per statement the secured creditors of the petitioners Nos. 1 to 3 have also given their no objections to the Scheme of Arrangement dated 15-11-2011.

12. The Joint Registrar of Companies, Company Registrar Office. Karachi in response to the main petition filed parawise comments on behalf of Securities and Exchange Commission of Pakistan (SECP), wherein it was asserted, that the merger of the authorized capital of the petitioners is contrary to section 92 of the Companies Ordinance, 1984. Further it was stated that the authorized capital of a company can only be increased in the mode and manner as provided in section 92 of the Companies Ordinance, 1984. Further, it was stated that whenever there is an alteration in share capital, whether in increase or decrease the company has to pass a 'special resolution'. Further section 92 of the Companies Ordinance, 1984 as alleged, requires strict and absolute compliance. The authorized capital, it was further alleged in essence is an imaginary and notional figure, up to which paid up capital of a company, can be raised, does not count, as an asset of the transferor company in terms of section 287(4)(a) of the Companies Ordinance, 1984. It was further asserted that the authorized capital is neither property nor liability, therefore, cannot be transferred. Per comments the authorized capital not being a property covered by section 287(4) of the Ordinance, 1984, is not transferable through scheme of amalgamation.

13. In response the objections raised by SECP were denied by the petitioners as being incorrect and misconceived Per petitioners assertions under Article 4.5 of the Scheme of Arrangement dated November 15, 2011 (Enclosed as Annexure 'I' to the petition), the authorized share capital of petitioner No. 1 (i.e., Feroze 1888 Mills Limited), at the time of sanction of Scheme, shall stand enhanced to PKR 4,000,000,000 (Pak Rupees Four Billion only) divided into 400,000,000 ordinary shares of the face value of PKR 10 each. The approval of the members/shareholders of the Scheme of arrangement, manifestly includes/amounts to constitute an approval by way of 'special resolution' of the shareholders to the alteration of the Memorandum and Articles of Association of petitioner No.1 regarding enhancement of the authorized share capital of petitioner No. 1 in terms of the section 92 of the Companies Ordinance, 1984. In terms of Article 4.5 of the Scheme of arrangement; it was urged, that no additional 'special resolution' is essential and/or required to be passed by the shareholders of the petitioner No.1 for the alteration of the Memorandum and Articles of Association of petitioner No.1. As far as the requisite/necessary fees for enhancement of the authorized share capital of petitioner No. 1 from Rs.1,250,000,000 (Pak Rupees One Billion two hundred and fifty million only) to Rs.4,000,000,000 (Pak Rupees four Billion only) to SECP and the objection raised to the extent is concerned, it was in crystal clear words stated that the same will be paid to the SECP, upon sanction of the Scheme.

14. Mr. Taimur Ali Mirza learned Counsel for the petitioners forcefully argued that the entire purpose of sections 284 to 287 is to reconstitute the company without its being required to make several applications under Companies Ordinance, 1984 for various

needed alteration in Memorandum and Articles of Association. Per learned counsel, enhancement of authorized share capital and the Ordinance, 1984: In the matter of Aziz-ur-Rehman, J required alteration of Memorandum and Articles of Association can be sanctioned of course, under the scheme itself. In this regard he referred to Article 4.5 of Scheme of Arrangement and vehemently contended that in view of the said Article no addition-al and/or 'special resolution' is required to' be passed by the shareholders of the petitioner No.1 Company. Being relevant Article 4.5 is reproduced as below:--

'4.5 At the time of sanction of this Scheme, the authorized share capital of F1888 shall stand enhanced to PKR 4,000,000,000 (Pak Rupees Four Billion only) divided into 400,000,000 ordinary shares of the face value of PKR 10 each and accordingly the Memorandum and Articles of Association F1888 shall stand amended. Approval of the shareholders of F1888 to this Scheme shall also include and constitute an approval by way of special resolution from the shareholders of F1888, to the alteration of the Memorandum and Articles of Association of F1888 for the purpose of the authorized share capital to PKR 4,000,000,000 (Pak Rupees Four Billion only), as required in terms of the Ordinance'.

15. Learned counsel for the petitioners while referring to the letter No.TAS/305/12 dated 16 May, 2012 of the Chartered Accountants ERNST & YOUNG, placed on record on 10-8-2012 urged that the explanation as given by the Chartered Accountants is more than enough as far as the enhancement of share capital of petitioner No.1 is concerned.

The letter of Chartered Accountants is reproduced herein as under:--

TAS/305/12
16 May, 2012

The Director
Feroze Textile Industries (Pvt.) Ltd.,
B-4/A, SITE, Karachi.

Dear Sirs,

Project Echo-Number of shares to be issued by Feroze 1888 Mills Limited.

Reference is made to the J.M. No. 48 of 0012 filed with the Hon'ble High Court of Sindh at Karachi in respect of which we understand that the Hon'ble High Court of Sindh has asked for clarity as to why the authorized capital of Feroze 1888 Mills Limited is required to be enhanced to PKR 4,000,000,000.

In this regard, it may be noted that the increase in authorized share capital of Feroze 1888 Mills Limited is required for the purposes of issuance of additional shares by Feroze 1888 Mills Limited as a result of Scheme of Restructuring that has resulted in the merger of Feroze Textile Industries (Private) Limited with and into Feroze 1888 Mills Limited.

The number of shares to be issued by Feroze 1888 Mills Limited is based on the computations in our report dated 27 July, 2012 ref Project Echo - Determination of Swap ratio, but subject to requisite approval by the shareholders and directors of the merging entities and the Honorable High Court of Sindh.

The table below is an extract from the aforementioned report, it shows the number of shares that are required to be issued and the resultant issued share capital as a result of the merger.

We hope that this letter meets with your requirements.

	Amount in PKR
Current Capital position	1,250,000,000
Authorized share capital	1,175,876,320
Issued share capital	
 Restructuring results	
Share swap ratio	1:437.2
Additional shares to be issued based on swap ratio of 1:437.2	259,213,336
Issued share capital post restructuring.	3,768,009,680

Since the authorized share capital of Feroze 1888 Mills Limited is only PKR 1,250,000,000 (125,000,000 ordinary shares of PKR 10 each) of which issued share capital is PKR 1,175,876,320 (117,587,632 ordinary shares of PKR 10 each), issuance of 259,213,336 ordinary shares as indicated above would require the authorized share capital to be increased to a minimum of PKR 3,768,009,680 (376,800,968 ordinary shares of PKR 10 each).

In view of the above the authorized capital of Feroze 1888 Mills Limited may be enhanced to Rs.4,000,000,000 to adequately cover the increase in the issued share capital of Feroze 1888 Mills Limited due to the issuance of 259,213,336 ordinary shares as indicated above and leave room for issuance of any further share capital by Feroze 1888' Mills Limited during the course of its business after the completion of the merger.'

16. Learned counsel for the petitioners further argued that petitioner No. 1 company is ready and willing to pay the requisite fees to SECP regarding enhancement of authorized share capital of petitioner No.1 viz. 'Feroze' 1888 Mills Limited, upon sanction 'of the Scheme of Arrangement. Learned counsel in support of his arguments placed reliance on the case of Messers OMER IQBAL SOLVENT (PRIVATE) LIMITED AND ANOTHER (2010 CLD 1802 SB LHC).

17. In contra Mr. Waqas Asad Shaikh, Assistant Director Law, SECP contended that authorized capital of a company can only be increased in the manner as provided in sections 92 and 94 of the Companies Ordinance 1984. He further contended that sections 284 and 287 of the Companies Ordinance 1984 grant no exception as far as compliance of section 92 of the Ordinance is concerned. Besides he further argued that under section 94 of the Ordinance 1984, the petitioner No.1 company is required to pass a 'resolution' authorizing such increase and also to notify the same to the Registrar of Companies SECP.

18. To properly appreciate the objections raised by the representative of Securities Exchange Commission of Pakistan, it would be appropriate to reproduce sections 92 and 94 of the Companies Ordinance, 1984:-

"92. Power of company limited by shares to alter its share capital.--(1) a company limited by shares, if so authorized by its articles, may alter the conditions of its memorandum so as to--

- (a) increase its share capital by such amount as it thinks expedient;
- (b) consolidate and divide the whole or any part of its share capital into shares of larger amount than its existing shares;
- (c) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum; or
- (d) cancel shares which, at the date of the passing of the resolution in that behalf; have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Provided that, in the event of consolidation or sub-division of shares, the rights attaching to the new shares shall be strictly proportional to the rights attaching to the previous shares so consolidated or sub-divided.

Provided further that, where any shares issued are of a class which is the same as that of shares previously issued, the rights attaching to the new shares shall be the same as those attaching to the shares previously held.

(2) The new shares issued by a company shall rank pari passu with the existing shares of the class to which the new shares belong in all matters, including the right to such bonus or right issue and dividend as may be declared by the company subsequent to the date of issue of such new shares.

The powers conferred by subsection (1) shall be exercisable by the company only in a general meeting.

[3A) Notwithstanding anything contained in this Ordinance or any other law for the time being in force or the memorandum and articles, where the authorized capital of a company is fully subscribed, or the unsubscribed capital is insufficient, the same shall lie deemed to have been increased to the extent necessary for issue of shares to a schedule bank of financial institution in pursuance of any obligation of the company to issue shares to such scheduled bank or financial institution.]

(4) A cancellation of shares in pursuance of subsection (1) shall not be deemed to be a reduction of share capital within the meaning of this Ordinance, The company shall file with the registrar notice of the exercise of any power referred to in subsection (1) within fifteen days from the exercise thereof.

94. Notice of increase of share capital or of members.--(1) Where a company having a share capital has resolved to increase its share capital beyond the authorized capital [or such capital is increased under subsection (3A) of section 92] and where a company not having a share capital has resolved go increase the number of its members beyond the number previously registered, it shall file with the registrar, within fifteen days after the passing of the resolution, a notice of the increase of capital or

members, as in case may be, and the registrar shall record the increase.

(Provided that where default is made by a company in filing a notice of increase in the authorized capital under subsection (3A) of section 92, the scheduled bank or the financial institution to whom shares have been issued may file notice of such increase with the registrar and such notice shall be deemed to have been filed by the company itself and the scheduled bank or financial institution shall be entitled to recover from the company the amount of any fee property paid by it to the registrar in respect of such increase.)

(2) The notice to be given under subsection (1) shall include particulars of the shares to be affected and the conditions, if any, subject to which the new shares are to be issued.

(3) If a company makes default in complying with the requirements of subsection (1), it shall be liable to a fine which may extend to one hundred rupees for every day during which the default continues, and every officer of the company who knowingly and willfully authorizes or permits the default shall be liable to the like penalty.

(4) No resolution referred to in subsection (1) shall take effect unless the notice required by that subsection to be filed with the registrar is duly sent to him.

19. The objections raised in the present petition by SECP are similar to the objections what were raised in case of MESSRS OMER IQBAL SOLVENT (PRIVATE) LIMITED AND ANOTHER REPORTED IN (2010 CLD 1802 SB LAHORE). The objections, so raised, were seemingly considered and rejected. For ready reference the objections raised by SECP in the aforesaid case are reproduced herein as follows:--

'5. The Securities and Exchange Commission of Pakistan (SECP) has filed its para-wise comments. It has raised a technical objection to the effect that the petitioner/Companies may be directed to modify the analysis pertaining to merger of authorized capital and instead follow the procedure laid down in sections 92 of the Companies Ordinance, 1984 (the Ordinance). It is submitted on behalf of SECP that in clause vi (7) of the Scheme of Merger regarding petitioner No.1 into petitioner No.2, it has been stated that upon merger the authorized capital of petitioner No.1 and petitioner No.2 shall be merged. The authorized capital of a company can only be increased in the mode and manner provided in section 92 of the Ordinance. There is nothing in sections 284 and 287 of the Ordinance to grant an exemption from compliances with the provisions of section 92 of the Ordinance. Section 92 is absolute in its effect and clearly lays down that whenever there is alteration in share capital, whether increase or decrease, the company is required to pass a special resolution authorizing such increase and must notify such increase to SECP. It is further submitted that merger of authorized capital is beyond the scope of sections 284 and 287 of the Ordinance. Section 287 of the Ordinance provides that upon merger, the assets and liabilities of the transferor company shall be transferred to the transferee company. The authorized capital is in essence an imaginary and notational figure upon which paid up capital of the transferor company as contemplated in section 287(4) of the Ordinance which can be transferred to the assets of the transferee company. The authorized capital being neither a property nor a liability cannot be transferred just as an object clause of the transferor company cannot be added to be objects clause of the transferee company upon amalgamation. It is also contended that merger of authorized capital of the companies is being sought only to avoid payment of fee applicable to an enhancement of the authorized capital in terms of section 92 of the Ordinance which does not furnish a lawful reason to create a mechanism for enhancement of the authorized capital not envisaged by law.'

20. Relevant and useful regarding the objections raised in the present petition by SECP re-increase of the authorized share capital, a learned Division Bench of Madras - High

Court, in the case of Regional Director and another v. Cavin Plastics and Chemicals (P) Limited [2008] 141 Camp Cas 475 (Madras) while dilating upon the aforesaid aspect of the matter in hand held as follows:--

'The scope of sections 391 to 394 of the Act was construed in the judgment of the Gujrat High Court in Maneck chowk and Ahmedabad Manufacturing Co. Ltd., In re (1970) 40 Camp Cas 819, in respect of a proposed scheme for reorganization of the share capital including a reduction of capital. An objection was received to the effect that the Companies Act, 1956, envisaged a distinct procedure for effecting a reduction of capital or the case may be for increase of share capital, which was required to be independently followed. Hence, it was argued that it was not open to the court to sanction a scheme involving a reduction or increase of share capital in the exercise of powers under section 394 of the Act. The court held that section 391 was a complete code, which provided for the sanctioning of a scheme of compromise and arrangement. Rule 85 of the Companies (Court) Rules, 1959, specifically prescribes, the procedure required to be followed where a proposed compromise involved a reduction of capital.

Save and except for a situation envisaged in Rule 85, section 891 was constituted as a separate and completed code in itself The learned, therefore, concluded that:-

"If section 391.uJas subject to other provisions of the Act, every time the scheme of compromise and arrangement is put forth for the' sanction of the court, if it includes things for which specific provisions are made and that will have to be gone through before the scheme is sanctioned. It would result in unnecessary duplication of procedure and would be cumbersome. On the contrary, it

appears that the creditors and members of the company arrive at a certain compromise which the court sanctions, it can be sanctioned under section 391 despite the fact that for some of those things included in the compromise another procedure is prescribed in the Companies Act and which has not been carried out. It, therefore, appears that section 391 is a complete code which provides for sanctioning of the scheme of compromise and arrangement

21. The main objections raised by the Joint Registrar of Companies, Company Registration Office, Karachi is that the authorized capital of the petitioners company can only be increased in terms of sections 92/94 of the Companies Ordinance 1984. However, contrary to this in the case of Messrs Omer Iqbal Solvent (Private) Limited and another (supra) on this aspect of the matter the observations made by a learned single judge of LHC and referred to by the learned counsel for the petitioners during the course of arguments are summarized as below:--

(a) Section 287 invests the court with powers to approve and sanction a scheme which is for the benefit of the company. In doing so, if there are any other procedural requirements which, for the effectuation require special procedure to be followed; then the court has powers to sanction them while sanctioning the scheme itself It would not be necessary for the company to resort to other provisions of the Companies Ordinance or to follow other procedures prescribed to bring about the changes requisite for effectually implementing the scheme which is sanctioned by court.

(b) Section 287 is a complete code, and it is intended to be in the nature of a single window clearance system to ensure that the parties are not put to unnecessary procedures for making applications for various changes which might be needed to implement the sanctioned scheme which has been examined, adjudged and approved by the court.

(c) The terms, 'property' and liabilities have been defined in very wide terms in section 287(4) of the Companies Ordinance, 1984 and include property, Rights and power of every description. The rights and property and the liabilities of the transferor company becomes the rights and property of the transferee company.

(d) The right of the company to increase its paid-up capital up to the limit fixed as the authorized capital (on which a fee has already been paid) represents a tangible right and a power of the transferor company to do so and would, therefore, fall within the wide definition of property given in section 287(4) *ibid*. This right and power is transferable in consequence of which the right which the transferor has to issue further share capital stands transferred to and vests in the transferee company on sanction of the scheme by the court.

(e) The authorized capital of the transferor which is transferred to and stands vested in the transferee since already been subject to payment of the prescribed fee, requiring the transferee to again seek approval of the SECP and go through the procedure prescribed in section 92 of the Companies Ordinance 1984, or to pay fee all over again is neither logical nor appears to be the intent of law.

22. Regarding compliance of section 94 of the Companies Ordinance, 1984 which mainly speaks about notice I would like to reproduce herein from the case of SABOO LEASING (P) LIMITED, re [2003] 117 Camp Cas 728 the ANDRA PARDESH, HIGH COURT, the relevant portion which reads as under:--

'When the certified copy of the orders sanctioning the scheme by this court is required to be filed before the Registrar for the purpose of its registration, there is no reason as to why it shall not be treated as a notice to the registrar as envisaged under sections 95 and 97 of the Companies Act. As discussed hereinabove, the object being the same, the necessary changes are required to be made in the concerned register by the Registrar of Companies can be effected after receiving the certified copy of the order of this court sanctioning the scheme. The sanction of the scheme, by this court has its own effect. It is not a mere act of the parties individually and volitionally. The scheme upon being sanctioned by this court, becomes operational by virtue of the orders passed by this court. In other words, by operation of law, such changes would come into effect. Therefore, it has statutory genesis and statutory character, but not mere individual acts of the companies. In that view of the matter, no separate notice informing the Registrar under sections 95 and 97 of the Companies Act need be given, unlike the other cases which do not require the sanctions of the court, in my considered view, inasmuch as the scheme is required to be sanctioned by this court and such sanction is required to be registered with the Registrar of Companies by filing the certified copy of the order of this court.'

23. In the present case it is worth to mention that the petitioners have already obtained no objection certificates from the respective creditors. The scheme prima facie is in the interest of the shareholders of all the petitioners. Nobody has appeared to contest this petition except SECP. The members of the petitioners Companies have also extended their no objections to the scheme of arrangement and the resolution as mentioned hereinabove were passed by majority. Besides there is no allegations whatsoever that the scheme of arrangement is unfair and or otherwise, is inequitable. Further there seems no malice and/or mala fides on the part of the petitioners.

24. I have heard the learned counsel for the petitioners and Mr. Waqas Ahmed Shaikh, Assistant Director, Law of SECP and have perused the record and the relevant provisions of law.

25. While exercising the powers of a Company Judge, the correct approach is (a) to ascertain whether the statutory requirements have been complied with, and (b) to determine whether the scheme of arrangement as a whole has been arrived at by the majority shareholders and in actual fact, it is for the benefit and in the interest of the whole body of shareholders (c) to see whether the scheme as such is fair and reasonable (d) shareholders consider the scheme for the benefit of the company(ies) and for themselves. In the present case in hand, the scheme of arrangement seems manifestly reasonable. None of the creditors and/or members of the petitioners Companies have opposed the present petition. Besides the scheme of arrangement, is apparently, in the interest of the members and seems without prejudice to the rights of creditors.

26. Besides considering the arguments advanced, at bar have gone through the scheme of arrangement including Article 4.5, resolutions passed by the petitioners Companies, letter of the Chartered Accountants produced hereinabove. the relevant provisions of law and the record available before me. I have reached the conclusion that (a) No 'special resolution' in presence of Article 4.5 of the scheme of arrangement is necessary much less under circumstances of the present case, because in my view, the approval of the scheme of arrangement by the shareholders includes/amounts to constitute an approval by way of a 'special resolution' regarding enhancement of the authorized capital of F-1888. (b) The filing/delivering of the certified copy of order of sanctioning of the scheme before the Registrar of Companies in terms of section 287(3) renders requirement of notice in terms of section 94 of Ordinance, 1984, irrelevant and unnecessary as the filing of certified copy of the order sanctioning the scheme itself is a notice. (c) Section 287 of the Companies Ordinance 1984, invest the court with powers, inter alia, to sanction/approve not only the scheme of arrangements but also direct increase/enhancement in, the authorized share capital of a Company.

In view of the foregoing facts, reasons and circumstances, the petition is allowed as prayed. however, prayer clause (vi) is subject to payment of the requisite fees to be paid to the Securities and Exchange Commission of Pakistan (SECP) by Feroze 1888 Mills Limited on account of enhancement of its authorized share capital; The petition stands disposed of in the above terms.

Order accordingly