

SL-3453
27.12.22



IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

Company Matter No. 83 of 2022

IN THE MATTER OF :

An Application under Section 228 read with Section 229 of the Companies Act, 1994

AND

In the Matter of

FAR Chemical Industries Limited

.....Transferee-Petitioner

S.F. Textile Industries Limited (SFTIL)

.....Transferor-Petitioner

-Versus-

The Registrar, Joint Stock Companies and Firms, Dhaka and others

.... Respondents

Mr. Mohammad Hossain with

Mr. Mohammad Imran Miah, Advocates

.....For the Petitioners

Mr. Shafiqul Kabir Khan, Advocate

.....For the Respondent No.2-BSEC

Mr. Zubair A. Bhuiyan, Advocate

.....For the Respondent No.9

The 28th November, 2022

Present:

Justice Muhammad Khurshid Alam Sarkar

This is an application under Section 228 read with Section 229 of the Companies Act, 1994 (briefly, the Companies Act) at the instance of FAR Chemical Industries Limited, being the Transferee-Company, and S.F. Textile Industries Limited (SFTIL), being the Transferor-Company, seeking approval of a Scheme of



Amalgamation of the above two Companies, whereby the entire undertaking of the Transferor-Company, as going concerns together with all assets and liabilities, are proposed to be transferred to and vested in the Transferee-Company.

The petitioner No. 1 FAR Chemical Industries Limited is a public company limited by shares and listed with stock exchange incorporated under the Companies Act, with the objectives, *inter alia*, to carry on the businesses of producing all types of textile chemical need for 100% export oriented sector, as otherwise more specifically elaborated in the MOA (Annexure-‘C’). The authorized share capital of the company is TK. 300,00,00,000.00 (Three Hundred Crore) divided into 300,00,00,00 ordinary shares of Tk. 10 each and it has paid up capital of Tk.218,09,34,230.00 divided in to 21,80,93,423 ordinary shares of Tk. 10 each. The paid-up shares of the company are being held by only 8 (eight) shareholders in the following manner:

S.L	Name of shareholders	Nos. of shares	Position
01	Md. Abid Mustafizur Rahman	80,25,930	Chairman
02	FAR Pharmaceuticals Ltd. (represented by Md. Shirazul Haque)	1,46,45,658	Managing Director
03	S.S. Energy Explosion Ltd. (represented by Mohammad Mehedi Hasan)	1,46,45,658	Director
04	Sayed Md. Tajon Islam	0	Independent Director



05	Md. Abdullah	0	Independent Director
06	Rezaur Rahman Rajon	8,345,370	Sponsor Shareholder
07	Faiaz Kader	16,637,416	Sponsor Shareholder
08	Mrs. Shirin Faruk	3,657,588	Sponsor Shareholder
	Total Shares	65,957,620	
	Total Shares of General Shareholders	152,135,803	
Total		21,80,93,423	

The petitioner No. 2 is a private limited companies incorporated under the Companies Act with the objectives, *inter alia*, to carry on the businesses of producing all types of cotton, viscose and CVC yarn of different qualifies and selling or exporting of the those products to 100% export oriented dyeing/textile garments industries; along with other objectives, as otherwise more specifically elaborated in the MOA of the e Transferor-Company (Annexures-'E'). The authorized and paid up shares capital of the petitioner No. 2 is given in Clause-5 of the Scheme of Arrangement for Amalgamation (Annexure-A). The paid-up shares of the petitioner No. 2 company are being held by only 5 (five) shareholders in the following manner:

S.L	Name of shareholders	Nos.	Position
01	Faiz Kader	36,45,800 of shares	Chairman
02	Another Life Hospital & Research Center Ltd. (Represented by Md. Jamal	1,33,00,000	Managing Director

	Hossain)		
03	Sadman Textile Mills Ltd. (represented by Mrs. Jahadha Khondoker)	1,56,36,200	Director
04	Samim Food & Beverage Inds. and Textile Mills Ltd. (represented by Md. Hamidul Haque)	1,70,00,000	Director
05	Rafiquddin Ahmed	0	Independent Director
	Total	4,95,82,000	
	Total shares of other Shareholders	10,81,13,630	
	Total	15,76,95,630	

It has been stated in the application that since both the petitioner companies are closely connected through the common shareholders and directors, and since the petitioner No.1-company (Transferee Company) is in a position to expand its production and commercial activities substantially, the Board of Directors and shareholders of the Transferee-Company decided to undertake assets and liabilities of the Transferor-Company into the petitioner No.1-company so that the same could be utilized more economically and efficiently to the benefit of the shareholders of both the companies. Accordingly, a Scheme of Amalgamation has been prepared and the same has been approved by the board of directors of both the companies in their respective meetings. It is stated that these two companies are belong to the same management group having the common shareholder-director. For the purpose of conducting their business more efficiently and



profitably as well as to reduce the ever-increasing administrative and overheads expenses, the Board of Directors of the companies decided to undertake a Scheme of Amalgamation whereby the petitioner No. 2, being the transferor-company, was proposed to be amalgamated with the petitioner no. 1 company, being the transferee-company.

Upon admission of the matter on 16.03.2022, the usual notices were published in two daily newspapers and affidavit-in-compliance was duly filed on 30.05.2022, as evident from annexures-N-Series to the said affidavit-in-compliance. The petitioner-companies were also directed to hold their respective Extraordinary General Meeting (EGM) for approval of the Scheme of Amalgamation and the same was held on 11.05.2022, as evidenced by annexures-O Series to the aforesaid affidavit dated 30.05.2022

It transpires from the minutes of the meeting that the Scheme of Amalgamation was approved in the said meeting held on 11.05.2022 approving the Scheme of Amalgamation.

By filing affidavit respondent No.2-BSEC has appeared in this matter but did not oppose this substantive application.

Mr. Mohammad Hossain, the learned Advocate for the petitioners submits that the Scheme of the Amalgamation has been



undertaken for the purpose of economical benefit of both the companies, their share holders, employees, creditors and other concern. In elaborating the above count of submissions, the learned Advocate for the petitioners submits that to keep pace with the present competitive market and to strengthen the position of the companies, the proposed Scheme of Amalgamation had been taken by the respective companies. He contends that in order to achieve their business objectives as well as to conduct their business more efficiently and profitably, the proposed Scheme of Amalgamation was approved by the shareholders of the companies.

By referring to the relevant provisions of the Memorandum and Articles of Association of the respective companies, the learned Advocate for the petitioners submits that the above legal instruments of both the companies contain provisions for such amalgamation.

The learned Advocate makes a submission in the form of making assurance before this Court that by the proposed amalgamation, no one will be prejudiced and the interest of all the shareholders and creditors will remain protected and the Scheme of Amalgamation will result in reduction of administrative and overhead expenses which will contribute to the financial growth of the company.



By referring to the statements made in paragraph No. 19 to the substantive application, the learned Advocate for the petitioners companies confirms that except respondents Nos. 7 to 9 both the companies have no loan liability with any person or body corporate and respondents Nos. 7 to 9 -Banks have already given no objection certificate and, thus, no question of being prejudiced by any third party creditors arises.

He further submits that the interest of the share holders and employees of both the companies remains protected since the transferee-company will takeover not only the assets of the company but also the liabilities of the transferor-company. In summing up of his submissions, the learned Advocate for the petitioners submits that the proposed amalgamation is truly directed at the well being of both the companies.

It is evident from the Memorandum and Articles of Association of both the companies that the shareholders directors of these two companies are common set of persons. And, there is no objection from the creditors, shareholders and employees. Upon perusal of the petition, the proposed Scheme of Amalgamation and having considered the submissions of the learned Advocate, this Court is of the view that the Scheme of Amalgamation would, no



stakeholders of the Transferee and Transferor-Company. It also transpires from the annexed papers that the present application satisfies the requirements of law laid down in the Sections 228 and 229 of the Companies Act.

In the premises noted above, the application deserves positive consideration and, accordingly, the same is allowed.

It is ordered that the Scheme of amalgamation (Annexure-A to the substantive application), as approved at the respective EGMs of FAR Chemical Industries Limited, and S.F. Textile Industries Limited (SFTIL), held on 11.05.2022, as set out in annexures-O-Series to the affidavit dated 30.05.2022 with regard to the effective date of the Scheme of Amalgamation, is sanctioned by this Court. Hence it is ordered that-

- (1) The Transferor-Company and Transferee-Company be amalgamated in terms of terms of the scheme of amalgamation, annexed as Annexure-A, which shall form part of this Judgment and Order. The Judgment and Order shall take effect after filing of the certified copy of the same to the Registrar of Joint Stock Companies and Firm by the Transferee-Company and subject to annexing copy of this Judgment and Order to every Memorandum of the Transferee-Company issued after this Order is passed.



- (2) It is further ordered that all pending suits and proceedings, if any, henceforth shall be commenced and be continued by or against the Transferor-Company, as the case may be, as if the same is to be or has been filed by or against the Transferee-Company.
- (3) It is also ordered that the whole undertaking, properties and liabilities of the Transferor-Company shall be vested in and transferred to the Transferee-Company, subject to the compliance of the terms and conditions of the said Scheme of Amalgamation.
- (4) It is also ordered that all the shares, debenture, policies, license and other like interest in the said Transferor-Company be transferred to and vested in, appropriated and allotted to the Transferee-Company in terms of the said Scheme of Amalgamation.
- (5) It is also ordered that all mortgages, charges, undertakings, assurances, obligations, liabilities, if any, of the said Transferor-Company stand transferred to and vested in, be taken by and be enforceable by or against the Transferee-Company in the same manner and to the same extent as if all of these acts, deeds and things have been done by the Transferee-Company. The RJSC is hereby directed to record



the mortgages, debentures and charges registered in the name of the Transferor-Company with the RJSC, in the name of the Transferee-Company without any further act, deed or fees.

- (6) It is also ordered that the authorized share capital of the Transferor-Company as mentioned in Clause 2 of the Scheme of Amalgamation stand added and be part of the authorized share capital of the Transferee-Company (Petitioner No. 1) FAR Chemical Industries Limited without any further act or deed and the registration fees and stamp duties so paid for the authorized capital of the Transferor-Company shall be deemed to be the registration fees and stamp duty against the increase of the authorized capital of the Transferee-Company, FAR Chemical Industries Limited and for this purpose the stamp duties and fees paid on the authorized share capital of the Transferor-Company shall be utilized and applied to the increased authorized share capital of the Transferee-Company without any requirement for any further payment of stamp duty and/or the registration fee by the Transferee-Company for increase in the authorized share capital to that extent.



- (7) Upon this amalgamation coming into effect, as per sub-Section (3) of Section 228 of the Companies Act, the Transferor-Company shall stand dissolved without winding up and the Registrar of Joint Stock Companies and Firms is hereby directed not to register any company in the name and style of the aforesaid Transferor-Company.
- (8) Since, by virtue of this Judgment and Order, all the assets and liabilities of the Transferor-Company have been transferred to and vested in the Transferee-Company, so all the liabilities of the said Transferor-Company (if any) shall become liability of the Transferee-Company and if the properties of the Transferor-Company are encumbered, in any manner, the same shall continue and the properties of the Transferor-Company stand transferred to and be vested in the Transferee-Company subject to such encumbrance and charges, if any, to the Transferee-Company and upon amalgamation, the experiences, licenses and qualifications of the Transferor-Company shall be treated as the experiences, licenses and qualifications of the merged entity.
- (9) Upon amalgamation, the accounts of the Companies be finalized and circulated amongst the members of the said



Transferor-Company and the Transferee-Company merging the accounts with effect from the appointed date.

- (10) It is further directed that all regulatory bodies, utility service providers and Government Authorities including Registrar of Joint Stock Companies & Firms, the National Board of Revenue, Titas Gas Transmission & Distribution Company Limited, Sundarban Gas Company Limited, Bangladesh Investment Development Authority, Department of Agricultural Extension, Bangladesh Road Transport Authority, Department of Inspection for Factories and Establishment, Power Development Board, Bangladesh Rural Electrification Board, Northern Electricity Supply Company Limited, Fire Service and Civil Protection Department, Bangladesh Energy Regulatory Commission, Deputy Commissioner of the relevant district, Assistant Commissioner (Land) and Sub-registrar of the concerned area as well as lending institutions including Banks, Non-banking Financial Institutions, leasing companies and insurance companies shall give effect to this Scheme of Amalgamation without any further act, petition or order whatsoever. Registrations, Certificates, Agreements, licenses, Permissions and/or deeds including property deeds



shall be deemed to have been transferred from the said Transferor-Company- S.F. Textile Industries Limited (SFTIL) to the Transferee-Company, namely, FAR Chemical Industries Limited from the effective date. The relevant office of the Assistant Commissioner (Land) and/or Sub-registrars are hereby directed to mutate the land owned by the Transferor-Company in the name of the Transferee-Company, namely, FAR Chemical Industries Limited as the land properties owned by the Transferor-Company stand vested in the name of the Transferee-Company by operation of law.

- (11) This Judgment and Order shall not affect the personal guarantee or similar other obligations, if any, of the directors, shareholders and third-party guarantors of the Transferor-Company.
- (12) It is also ordered that Transferee-Company shall cause certified copy of this Judgment and Order be delivered to the Registrar of Joint Stock Companies and Firms, for registration within 14 days as required by sub-Section (3) of Section 229 of the Companies Act, from the date of receiving certified copy of this Judgment and Order.

(13) The entire costs in respect of the Scheme of Amalgamation shall be borne out by the Transferee-Company, namely, FAR Chemical Industries Limited.

(14) This Judgment and Order shall be effective subject to compliance of the directions, given herein below, as regards the donation. The Transferee-Petitioner Company has expressed its willingness to spend an amount of Taka 10,00,000 (Ten Lac) only as part of companies' CSR expenditure, through Pay Order (which is to be deposited to the concerned company section), out of which (i) BDT 100,000/- (one lac) to Chaluva Bazar Jame Masjid, Fulchari, Gaibandha, (ii) BDT 2,00,000/- (two lacs) to Fulchari Jame Masjid, Fulchari, Gaibandha, (iii) BDT 3,00,000/- (three lacs) to Fulchari Kendrio Eidgah Math Jame Masjid (iv) BDT 400,000/- (four lacs) to Baulia Alhaj Moslemuddin Barir Koborsthan, Sagatha, Gaibandha. On furnishing receipt of payment, the order may be drawn up, if so prayed for.

Let a copy of this Judgment and Order be sent to the Registrar of Joint Stock Companies and Firms, Dhaka.

Muhammad Khurshid Alam Sarkar

Composed by: Mahfujur Rahman

Read by: 27.12.22


Exam. by: 27.12.22


১.সই মহরী নকলের দরখাস্তের তারিখ	২৭.১২.২২
২. অনুলিপির হিসাব শিফটনের তারিখ	২৭.১২.২২
৩. কোর্ট ফি স্ট্যাম্প জমা দানের তারিখ	২৭.১২.২২
৪. নকল প্রস্তুত হওয়ার তারিখ	২৭.১২.২২
৫. নকল সরবরাহের তারিখ	২৭.১২.২২

প্রত্যায়িত অবিকল প্রতিলিপি

By ২৭.১২.২২

সহকারী রেজিস্ট্রার
বাংলাদেশ সুপ্রীম কোর্ট, হাইকোর্ট বিভাগ
(১৮-৭-ইং সেকশন ১নং আইনের
ধারা ৩৬ অনুযায়ী কামতাজ প্রাপ্ত)


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