



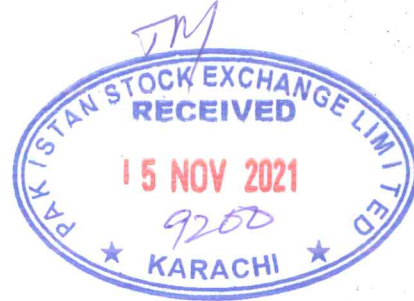
Nina
INDUSTRIES LTD.



ISO 9001 Certified

November 10, 2021

The General Manager
Pakistan Stock Exchange Limited
Stock Exchange Road,
Karachi.



Subject: **Disclosure of Material Information.**

Dear Sir,

In accordance with Sections 96 and 131 of the Securities Act, 2015 and Clause 3.6.1 (a) of the Rule Book of the Pakistan Stock Exchange Limited, we do hereby convey the following:

The Honorable High Court of Sindh at Karachi, vide its Order (copy enclosed) passed in J.C.M. No.49 of 2016, has approved/sanctioned as prayed and has sanctioned the Scheme of Arrangement between Nina Industries Limited and Specific Creditors (Secured Creditors).

In accordance with Section 279(3) and 282(7) of the Companies Act 2017, a certified copy of the order of the High Court shall also be forwarded to the Registrar, SECP.

Yours faithfully


M. Fayyaz Karim Malik
Company Secretary

Cc:
Director / HOD
Surveillance, Supervision and Enforcement Department
Securities and Exchange Commission of Pakistan
NIC Building, 63 Jinnah Avenue,
Blue Area, Islamabad.

Enclosed as above.

ORDER SHEET
HIGH COURT OF SINDH AT KARACHI

J.C.M. No.49 of 2016

Date _____ Order with signature of Judge _____

1. For Hearing of CMA No.445/2016.
2. For Hearing of CMA No.408/2017.
3. For Hearing of CMA No.212/2017.
4. For Hearing of Main Petition.

- i) Copies of publication in Daily "Jang" (Urdu) 14.02.2017, Daily "DAWN" (English), 15.02.2017, Daily "Business Recorder" dated 14.02.2017, Karachi, as flagged.
- ii) Parawise Comments by SECP filed, as flagged.
- iii) The Official Gazette of Pakistan is still awaited.
- iv) C/A to CMA No.445/2016 & 208/2017, as flagged.
- v) Statement dated 18.10.2017 filed by advocate for petitioner No.1
- vi) Objection & Statement dated 17.11.2017, filed by Saudi Pak Ind.
- vii) Objections filed by Gadoon Textile Mills.
- viii) Objections filed by State Life Insurance.
- ix) Objections filed by Bank of Punjab
- x) Statement dated 01.09.2019 filed by Objectors, as flagged.

Dates of hearing: 01.09.2021 and 07.09.2021.

Mr. Ch. Atif Rafiq advocate for the petitioner No.1.

Ms. Heer Memon advocate for the petitioner No.2 to 7.

Mr. Zeeshan Abdullah advocate for Saudi Pak Bank Ltd.

Mr. Aijaz Hussain Shirazi advocate for Pak Libya Holding Company.

Mr. Manzar Bashir advocate for State Life Insurance Corporation.

Mr. Ghulam Muhammad Advocate for Gadoon Textile Mills Ltd.
Objector/Claimant.

Mr. Abid Nasim advocate for Bank of Punjab.

M/s. Zia-ul-Haq Makhdoon and Azhar Mehmood advocates for Purchaser.

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SYED HASAN AZHAR RIZVI, J:- Petitioner No.1 was a private limited company incorporated under the Companies Ordinance, 1984 and the same was converted to a public limited company whereas the petitioners 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 petitioner No.1 availed finances from them from time to time with respect to, inter alia, its business and operations, therefore, petitioners No.2 to 7 are secured creditors of petitioner No.1.

2. Present petition was filed under Section 284 read with Sections 285 to 288 of the Companies Ordinance, 1984 wherein the petitioners prayed inter alia that if required number of shareholders and creditors of the petitioner 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 this Court on the petitioners' 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 fit."*

3. In pursuance 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).

4. For various reasons, the Petitioner 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 petitioners No.2 to 7 filed various proceedings against the petitioner No.1 including suits for recovery of finances, which are pending. Additionally, the petitioner No.1 filed proceedings against certain secured creditors which are also pending. Thereafter, on the efforts of the petitioner No.1 to settle its existing liabilities / financial obligations towards its secured creditors, during the pendency of the present petition, the petitioner No.1 has settled with the petitioners No.2 to 7 and entered into Master Settlement Agreement dated 27.06.2020.

5. In due course, the petitioner 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 Gadoon Textile Mills Limited claims as unsecured creditor due to supply of textile products, the said claim is denied by the petitioners as neither Gadoon Textile Mills Limited initiated any legal proceedings against the Petitioner No.1 nor made any claim of whatsoever nature. The 'Scheme of

'Arrangement' relates only to secured creditors and the company still continues to be functional, the said objector can file its respective suit for recovery against the Petitioner No.1 and seek its appropriate legal remedies. Therefore, the objections of Gadoon Textile Mills Limited cannot be sustained under the law.

7. With regard to the objections of State Life Insurance Co. Limited [State Life] filed to the instant petition (available at pages 1453 of Part 1), the said company has raised two objections viz. (i) the objector is a minority shareholder having 20011000 shares (i.e. 8.26%) of the total shareholding; (ii) the Petitioner's 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 petitioner 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 voting voted for the sanction of the Scheme; therefore, the objections raised by the State Life are not sustainable under the law.

8. The object of this Petition is to, inter alia, obtain sanction of this Court to the 'Scheme of Arrangement' enclosed as annexure 'D' at page-75 with the petition for the compromise and arrangement envisaged between the Petitioner No.1 and its secured creditors (including the Petitioners No. 2 to 7), involving all existing liabilities of the Petitioner No 1 towards its secured creditors. Petitioner No.1, alongwith the Petitioners No. 2 to 7 have approved the 'Scheme of Arrangement' as the same would constitute a viable solution for the secured creditors of the Petitioner No. 1. The same would, inter alia, allow the secured creditors to recover certain outstanding amounts payable to them from the Petitioner No. 1, or a portion thereof, through sale of the Charged Assets, in the manner prescribed under the

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Scheme of Arrangement, as full and final settlement for all the outstanding amounts payable by the Petitioner No. 1 to its secured creditors.

9. Pursuant to order dated 16.01.2017 notice of this petition to consider scheme of arrangement proposed in between the petitioners in terms of Rule 76 r/w Rule 19 of the Companies Ordinance (Court) Rules, 1997 was issued. Notice was also issued to the Registrar, Joint Stock Companies. Publication was also effected in daily in Daily "Jang" (Urdu) 14.02.2017, Daily "DAWN" (English), 15.02.2017, Daily "Business Recorder" dated 14.02.2017 Karachi so also in the Official Gazette.

10. In terms of the order dated 16.01.2017 separate meetings of the members / shareholders and secured creditors of the Petitioner No.1 were convened on 09.03.2017. In the meeting of the shareholders and secured creditors of the Petitioner No.1 following resolution was passed:-

"RESOLVED THAT the Scheme of Arrangement dated December 30, 2016 pertaining, inter alia, to the settlement and repayment of the existing liabilities of NINA Industries Limited towards its secured creditors, along with all ancillary matters thereto, subject to being approved in accordance with the provisions of the Companies Ordinance, 1984 and the sanction of the Sindh High Court at Karachi, be and is hereby approved along with any modifications proposed / required by the Court."

11. Reports of the Chairman are available at pages-55 to 69 of the Court file and 100% of the shareholders of the petitioner No.1 and 95.097% in value (i.e. outstanding principle amounts claimed) of the secured creditors of the petitioner No.1, present and voting at the meeting of the shareholders / secured creditors of the petitioner No.1 have consented to and passed the resolution approving the scheme of arrangement.

12. Parawise comments by the Muhammad Naeem Khan, Additional Registrar of Companies, Securities and Exchange Commission of Pakistan were filed on

14.03.2017 wherein certain observations were made which are not against and inconsequential to the scheme of arrangement.

13. Upshot of above discussion is that the petitioner No.1 have 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. Two of the objectors i.e. the Gadoon Textile Mills Limited as well as State Life Insurance Co. Limited are unsecured creditors and the scheme of arrangement is for secured creditors and not for shareholders and unsecured creditors. The 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, the objector / unsecured creditors can file its respective suit for recovery against the Petitioner No.1 and seek its appropriate legal remedies. It is pertinent to mentioned here that the claim of the Gadoon Textile Mills Limited has been denied by the petitioners being frivolous.

14. 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'.

15. In the case of Gulshan Weaving Mills Limited and others reported in 2018 C L D 389 it has been observed that :-

"Where scheme of arrangement sought to take away statutory rights of non-consenting creditors of the same class or any other class, majority view of consenting creditors could prevail over minority and release guarantors only in case of variance of terms of repayment and in absence of the same, it did not interfere in any other statutory rights---High Court declined to interfere in decision of creditors who opted for approval of scheme and

observed that such decision should only be limited to said creditors and could not trespass rights and obligations arising under law and common interest of consenting creditors which distinguished them from the objector, and in absence of any commonality of interest between the objector and consenting secured creditors, scheme of arrangement in the present case would not bind on the objector---Scheme of Arrangement was approved and application was allowed, accordingly.

16. In another case of the Paramount Spinning Mills Limited And Others reported in 2020 C L D 1443 it was observed that :-

"13. The analogous provision of section 279 of the Act is contained in Section 391 of the Companies Act, 1956 in India and a learned Single Judge of the Karnataka High Court in the case reported as *In Re: Kirloskar Electric Co. Ltd.* [2003] 116 Comp Case 413 (Kar) had the occasion to dilate upon the said provision and so also to the fact that whether in such a situation the Scheme of arrangement and compromise entered into by the consenting secured creditors would also be binding on the objecting secured creditor(s) or not. It was held by the Court that firstly the Company Court does not have unlimited powers like a Court of plenary jurisdiction to examine the Scheme as the jurisdiction is limited in scope. Secondly, once such a compromise is sanctioned by the Court, it would be binding on all the creditors or class of creditors, as the case may be, which means that even upon dissenting creditors, such scheme would remain binding. The relevant findings of the learned Judge are as follows:

35. Before I deal with the aforesaid points for determination, it is necessary to keep in view the limited scope of the jurisdiction of the Company Court which is called upon to sanction the scheme of amalgamation as per the provisions of section 391 read with section 393 of the Act. The aforesaid provisions of the Act provides that compromise or arrangement can be proposed between a Company and its creditors or any class of them, or between a Company and its members or any class of them. When a scheme is put forward by a Company for the sanction of the Court, in the first instance the Court has to direct holding of meetings of creditors or class of creditors, or members or class of members who are concerned with such a scheme. Once the majority in number representing three-fourths in value of the creditors or class of creditors or members or class of members, as the case may be, present or voting either in person or by proxy at such a meeting accord their approval to any compromise or arrangement the Court gets jurisdiction to sanction the scheme. Once such a compromise is sanctioned by the Court, it would be binding on all the creditors or class of creditors, or members or class of members, as the case may be, which would also necessarily mean that even to dissenting creditors or class of creditors or dissenting members or class of members, such sanctioned scheme would remain binding.

36. Before sanctioning such a scheme even though approved by a majority of the concerned creditors or members, the Court has to be satisfied that the Company or any other person moving such an application for sanction under subsection (2) of section 391 has disclosed all the relevant matters mentioned in the proviso to subsection (2) of the section. So far as the meetings of the creditors or members, or their respective class for whom the scheme is proposed are concerned, it is enjoined by section 391(1)(a) that the requisite information as contemplated by the said provision is also required to be placed for consideration of the concerned voters so that the parties concerned before whom the scheme is placed for voting can take an informed and objective decision whether to vote for the scheme or against it.

37. The Company Court, which is called upon to sanction such a scheme is not merely to go by the Ipse Dixit of the majority of the shareholders or creditors or the respective classes who might have voted in favour of the scheme with the requisite majority but the Court has to consider the pros and cons of the scheme with a view to find out whether the scheme is fair, just and reasonable and is not contrary to any provision of law and it does not violate any public policy. No Court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is a unconscionable or an illegal scheme or is otherwise unfair and unjust to the class of shareholders or creditors for whom it is meant. The Court is not to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme being approved by the majority.

38. However, the question remains whether the Court has jurisdiction like an Appellate Authority to minutely scrutinize the scheme and arrive at an independent conclusion whether the scheme should be sanctioned or not when the creditors and members have approved the scheme as required by section 391(2). The Court has to keep in view the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority. The Court certainly would not act as a Court of appeal and sit in judgment over the informed view of the concerned parties to the compromise as the same would be in the realm of corporate and commercial wisdom of the parties. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the Company who have ratified the scheme by the requisite majority. To that extent the jurisdiction of the Company Court is peripheral and supervisory and not appellate. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act. The propriety and the merits of the compromise and arrangement have to be judged 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 reasonable judgment and agree to be bound by such a compromise or arrangement."

17. In view of foregoing reasons, I am of the opinion that all the indispensable statutory benchmarks and formalities have been accomplished and adhered to by the petitioners as envisioned under the relevant provisions of Companies Act, 2017 and the enabling rules. The Scheme set up for sanction has been reinforced and fortified by the requisite majority their decision seems to be just and fair. Report of Chairman unequivocally convey that all essential and fundamental characteristics and attributes of scheme were placed before the voters in the separate meetings to live up to statutory obligations. The proposed scheme as a whole looks like evenhanded and serviceable from the point of view of prudent men of business, taking a commercial decision. Once the requirements of a scheme for getting sanction of the court are found to have been met, the court will have no further jurisdiction to sit over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme.

18. There is no material on record to suggest that the scheme of arrangement would be against public interest or in violation of any law. The petition is, therefore, allowed as prayed for and Scheme of Arrangement (Annexure "D" at page-75 to the Petition) is sanctioned.

All pending applications stand disposed of in the above terms.

