

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

JCM No. 28 of 2017

Date	Order with signature of Judge
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Present:

Mr. Justice Muhammad Ali Mazhar

- (1) Medipharm (Private) Limited
- (2) Chemdyes Pakistan (Private) Limited
- (3) Bayer Pakistan (Private) Limited.....Petitioners

Date of Hearing: 04.05.2018.

M/s. Abdul Sattar Pirzada, Mamoon N. Chaudhry & Qazi Umair Ali,
Advocates for the Petitioners.

Syed Ibad & Mr. Saad Abbasi, Law Officers, SECP.

Muhammad Ali Mazhar; J: This petition has been brought to get hold of an order of this court for sanctioning the Scheme of Arrangement dated 28.09.2017 devised and conceived for amalgamation of petitioners under Section 279 to 282 of the Companies Act 2017 and further seeks to obtain certain orders for transfer to and vesting in the Petitioner No.3 of the whole of undertakings of each of the Petitioner No. 1 and the Petitioner No.2 together with all the properties, assets, rights, liabilities and obligations of every description.

2. The learned counsel for the petitioners argued that the Scheme has been adopted by the Boards of Directors of the Petitioners. He also filed certified copies of the board resolutions passed by the members of the Petitioners separately for approving the Scheme. It was further contended that the petitioner No. 1 presently carries on the business of manufacturing, importing, marketing and selling pharmaceutical products, the petitioner No.2 carries on business of formulation and sale of agriculture pesticides and household hygiene products whereas the petitioner No.3 carries

on the business of manufacturing, selling, importing and exporting pharmaceutical healthcare and consumer products. The petitioner No. 3 additionally deals in synthetic, rubber chemicals, insecticides, pesticides and healthcare products. He has also attached balance sheet, profit and loss account, statement of cash flow, statement of changes in equity and the notes to the financial statements to demonstrate the financial position of the petitioners separately. The amalgamation of the petitioner No.1 and the petitioner No.2 with the petitioner No.3 in accordance with the Scheme involves the transfer to and vesting in the petitioner No.3 of the whole of the undertakings of each of the petitioner No. 1 and the petitioner No.2, together with all their respective properties, assets, rights, liabilities and obligations of every description including those described in paragraphs 1, and 2 of the Scheme. He further argued that the Scheme and the amalgamation of the petitioners does not diminish or in any way affect the position of the creditors of the petitioner No.1, petitioner No. 2 and petitioner No. 3.

3. The learned counsel for SECP submitted that Securities and Exchange commission of Pakistan has no objection to the subject merger petition except that the NOC from the secured creditors of the petitioner No. 1 have not been provided therefore the petitioner No.1 and petitioner No.3 may be directed to solicit NOC from the secured creditors. However on 2.5.2018, Muhammad Naeem Khan, Additional Registrar of Companies, In-charge Company Registration Office, Karachi, Securities & Exchange Commission of Pakistan, filed a statement that the counsel of petitioners filed NOC's through statement dated 23.1.2018 which have been examined by SECP. In last, SECP has conveyed no objection if the petition is allowed.

4. Arguments heard. The principal object of this scheme is to effect a merger between Bayer Pakistan (Private) Limited (BPPL), Medipharm (Private) Limited (MPL) and Chemdyes Pakistan (Private) Limited (CPPL) through the transfer to and vesting in BPPL of the

whole undertaking of each of MPL and CPPL, the allotment of fully paid ordinary shares of BPPL to the MPL Qualifying Shareholders and the CPPL Qualifying Shareholders in accordance with their entitlements determined under this Scheme on the basis of the shares held by them in MPL and CPPL, and the dissolution of MPL and CPPL in each case without winding up. As a consequence of the amalgamation of MPL with BPPL and within the time hereinafter specified, BPPL shall issue at par and allot ordinary shares of Rs.100/- each of BPPL credited as fully paid up to the MPL. As a consequence of the amalgamation of CPPL with BPPL and within the time, BPPL shall issue at par and allot ordinary shares of Rs.100/- each of BPPL credited as fully paid up to the CPPL.

5. In the case of **IGI Insurance Limited and others [J.C. Misc. No. 01 of 2017]**, (order authored by me), reported in **SBLR 2018 Sindh 650**, I have discussed in detail that the Mergers and acquisitions are the businesses in which the ownership of companies or their operating units are conveyed or conjoined which means an amalgamation and integration of two entities into one entity. This represents and epitomizes in accordance with which one company takes over one or more company's assets, rights and obligations as a whole in return for the shareholders of the latter company receiving a consideration in the form of shares in the transferee company.

6. In the identical matter of **International Complex Projects Limited & another**, reported in **2017 CLD 1468**, (authored by me) I have conversed and delineated that the role and character of the court is reminiscent of supervisory nature which is also close to judicial review of administrative action. However, in case court finds that the scheme is fraudulent or intended to be cloak to recover the misdeeds of the directors, the court may reject the scheme in the beginning. The court can lift the corporate veil for the purpose of ascertaining the real motive behind the scheme. In the case of

Sidhpur Mills Co. Ltd. (AIR 1962 Guj. 305), the learned Judge while pointing out the correct approach for sanctioning of scheme held that the scheme should not be scrutinized in the way a carping critic, a hairsplitting expert, a meticulous accountant or a fastidious counsel would do it, each trying to find out from his professional point of view what loopholes are present in the scheme, what technical mistakes have been committed, what accounting errors have crept in or what legal rights of one or the other sides have or have not been protected but it must be tested from the point of view of an ordinary reasonable shareholder acting in a business-like manner taking with his comprehension and bearing in mind all the circumstances prevailing at the time when the meeting was called upon to consider the scheme in question.

7. Where the scheme is found to be reasonable and fair, at that moment in time it is not the sense of duty or province of the court to supplement or substitute its judgment against the collective wisdom and intellect of the shareholders of the companies involved. Nevertheless, it is the duty of the court to find out and perceive whether all provisions of law and directions of the court have been complied with and when the scheme seems like in the interest of the company as well as in that of its creditors, it should be given effect to. However the court has to satisfy and reassure the accomplishment of some foremost and rudimentary stipulations that is to say, the meeting was appropriately called together and conducted; the compromise was a real compromise; it was accepted by a competent majority; the majority was acting in good faith and for common advantage of the whole class; what they did was reasonable, prudent and proper; the court should also satisfy itself as to whether the provisions of the statute have been complied with; whether the scheme is reasonable and practical or whether there is any reasonable objection to it; whether the creditors acted honestly and in good faith and had sufficient information; whether the court ought in the public interest to override the decision of the creditors

and shareholders. Where all the requisite formalities were complied with including shareholders' approval, the court would not question the commercial wisdom behind the scheme. One of the effects of the sanction of the court is that it becomes binding upon the company and its members including those who voted against the scheme once the scheme of compromise and arrangement is approved by statutory majority it binds the dissenting minority and the company. However, where the court finds that scheme is patently fraudulent, it may not respond or function as mere rubber stamp or post office but reject the scheme of arrangement.

8. Being a sanctioning court, I have noticed that all indispensable statutory benchmarks and formalities have been accomplished and adhere to by the petitioners. The schemes set up for sanction have been reinforced and fortified by the requisite majority which decision seems to be just and fair. The report/minutes of meetings unequivocally convey that all essential and fundamental characteristics and attributes of schemes were placed before the voters in the separate meetings to live up to statutory obligations. No issue of swap ratio was raised. 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 in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme.

9. In the wake of foregoing discussion, the Scheme of Arrangement is sanctioned as prayed by the petitioners. The petition is disposed of.

Judge