

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

J.C.M. No. 29 of 2018

DATE ORDER WITH SIGNATURE OF JUDGE

For hearing of Main Petition

07.05.2019.

Ms. Hassan Mandiwala, Advocate for Petitioner.
Mr. Imran Shamsi alongwith Mr. Saad Abbasi and Syed Ebad,
Advocates for SECP.

This is a Petition for rearrangement, reorganization and restructuring of the Petitioners and has been filed under Section 279 read with Sections 280 to 283 and 285(8) of the Companies Act 2017, seeking sanction from this Court in terms of the said Act.

The Petitioner No. 1 was incorporated on April 11, 2008, the Petitioner No. 2 was incorporated on November 29, 2007, the Petitioner No.3 was incorporated on September 20, 2016 and the Petitioner No. 4 was incorporated on November 8, 2007. All Petitioners are engaged in the business of manufacturing, marketing and sales of pharmaceuticals and healthcare products in the domestic and export market.

Now the Petitioners are desirous of reorganizing their businesses in order to divest / introduce a new investor/ strategic partner by way of sale of shares in a specific undertaking comprised in one legal entity without affecting other undertakings which shall be comprised in other legal entities, post Sanction of the Scheme of Arrangement, and the Scheme of Arrangement for such purposes has been annexed with this Petition as Annexure "A". It is further stated that Scheme of arrangement is in accordance with its terms of which do not diminish or in any way affect the rights and securities of the creditors and the same in no way will be diminished or materially affected on account of the Scheme of Arrangement. The Scheme further provides that it shall be subject to existing encumbrances, if any, as may be subsisting and agreed to be modified / created by the relevant banks,

financial institutions or other creditors and shall as of the effective date. The Scheme of Arrangement, attached as Annexure “A” to this petition gives full particulars as to the benefits of the scheme of arrangement, the purpose for the same, the consequences of the arrangement, its effective consideration and related matters, and general provisions with respect to the arrangement. It also provides the mechanism of shareholdings of respective petitioners before and after the sanction of scheme. Such Scheme of Arrangement is part and parcel of the petition. It further provides, in addition to the other conditions mentioned in the Scheme (Annexure “A”) which is part of this whole arrangement, as follows:

- a. Transfer of Excluded Undertaking 1 from Petitioner No. 1 with and into Petitioner No. 3 against cancellation of shares in Petitioner No. 1 of Mr. Tarek Khan (who is the ultimate owner of the Petitioner companies)
- b. Transfer of Excluded Undertaking 2 from Petitioner No. 1 with and into Petitioner No. 4 and subsequently transfer or entire shareholding of Petitioner No. 1 held by Petitioner No. 2 into Petitioner No. 4.

On 12.12.2018 on an application (CMA No.386/2018) on behalf of the Petitioners under Rule 55 of the Companies (Court Rules), 1997, read with Section 151 CPC, the Court had permitted to convene separate meeting(s) of the members of the petitioners under Section 279(2) of the Companies Act, 2017 after publishing a notice in newspapers, and also inviting creditors, whereas, further directions were given for advertisement of the main Petition for publishing in terms of Rule 76 read with Rule 19 of the Companies Ordinance (Court) Rules, 1997 and notice was also ordered to Securities & Exchange Commission of Pakistan. It appears that all requisite formalities have been completed as publication has been made in daily “JANG” dated 20.12.2018 and “THE NEWS” dated 19.12.2018, whereas, report has been furnished by the Chairman. Comments were filed by SECP on 17.1.2019 and various objections were raised in respect of the Scheme of Arrangement and fulfillment of regulatory requirements, including but not limited to, pre and post-merger balance sheets etc.; the concrete benefits of the Scheme; the restriction on sale of shares held by the Sponsors of Petitioner No.1 and owners as per Regulation 5(1) of the Public Offering Regulations 2017. There were similar type of other objections as well; however, the Petitioners

responded to such objections on 6.3.2019 and in response to that through Statement dated 06.05.2019 filed today in Court, SECP has stated as follows;

1. That SECP through its comments on the main petition has raised few preliminary submissions on the scheme of merger (hereinafter referred to as the Scheme)
2. The Petitioner in response to the preliminary submissions of SECP has submitted a Reply dated 6.3.2019 to address the same.
3. That SECP in para (ii) to (vii) of its preliminary submission highlighted requirements of the Securities Act, 2015 and the Public Offering Regulations, 2017 ("the Regulations 2017") to be followed by the Petitioners and suggested in para (vii) thereof that Petitioner No.1 being one of the sponsors of AGP Limited must obtain approval of the Pakistan Stock Exchange (PSX) whereas Petitioner No.4 must provide an undertaking to that effect that it shall comply with the conditions imposed by the SECP at the time of grant of approval to AGP Limited for issue, circulation and publication of offer for sale documents and shall indemnify compensate AGP Limited for any financial loss incurred by the Company.
4. Therefore, the Petitioners in addition to filing reply to the preliminary submissions of SECP, have also submitted a statement before this honorable Court on 19.03.2019. In this statement the Petitioners have appended an undertaking furnished to SECP to the effect that sponsors of AGP Limited and Petitioner No.4 shall retain not less than three financial years. In addition to the aforesaid undertaking the Petitioners also filed a copy of in-principle approval of PSX under the Regulations 2017.
5. That in response to Preliminary Submission No. (i), the Petitioners through their aforesaid Reply provided pro-forma balance sheets of the petitioner duly audited by the Auditors. From examination thereof it was revealed that in consideration of transfer of Excluded Undertaking 2 from Petitioner No.1 to Petitioner No.4, receivable of an amount of approximately Rs.2.3 billion is created in the accounts of Petitioner No.1 to be payable by the Petitioner No.4. Thus instant issue was taken up with the Petitioner.
6. That in response to the aforementioned observation the Petitioner No.4 submitted an Undertaking to SECP that the aforesaid liability shall be off-set by the Petitioner No.4 by or before 30th June 2019 in cash. Therefore, SECP, in order to assist this Honourable Court, has submitted Additional Comments to the extent of settlement of Rs.2.3 billion by the Petitioner No.4 and transfer of shareholding of AGP Limited from the Petitioner No.1 to Petitioner No.4.
7. That pursuant to the reply of the Petitioners to the preliminary submissions of SECP, furnishing approval of PSX under sub-regulation 4 & 5 of the Regulations, 2017 and on the basis of undertaking dated March 11, 2019 & April 08, 2019 submitted by the Petitioner No.4, the objections raised by the Securities and Exchange Commission of Pakistan have been addressed by the Petitioners. Therefore, the Securities and Exchange Commission of Pakistan has no further objections to the scheme of arrangement.

Moreover, a proper notice has also been published in the Gazette of Pakistan dated 30.01.2019, whereas, no objections have been received from any quarter.

In view of such position, since all formalities have been completed whereas, no objections have been received from any quarter, there appears to be no impediment in granting this Petition which is accordingly allowed as prayed. For further proceedings and necessary fulfilment of the requirements under the Companies Act, 2017, the Petitioner may approach SECP accordingly, whereas, the Petitioner(s) are also required to abide by the undertaking(s) given to SECP in response to their objection(s) and in case of default, action in accordance with law may be initiated.

J U D G E