

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
J.C.M No.44 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of Main Petition.

04.09.2018.

Mr. Abdul Qayyum Abbasi, Advocate for Petitioner.
Mr. Syed Ibad, Advocate for SECP.
Mr. Saleem Mangrio for Objector.

This is a Company Petition under Section 279 read with Section 282 to 283 and 505 (i) (c) of the Companies Act, 2017 seeking sanctioning of the Scheme of Arrangement as set-forth in Annexure "C" to this Petition so as to make the scheme of arrangement binding with Petitioners and the Shareholders of the Petitioners along with other persons.

As stated petitioner No.1 is the management company of Petitioner No.2 & 3 (Modaraba Companies) and was originally incorporated on 27.4.1983. On the other hand petitioner No.2 & 3 are Modaraba Companies floated under Section 8 of the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980, and were issued authorization certificates by the Registrar Modarabas on 16.05.1985 and 4.7.1992 respectively. The Petitioner No.3 is desirous to merge, by way of amalgamation, with and into Petitioner No.2 with the object of better and more economic reasons to run the same business. The Petitioners No.2 & 3 have agreed and entered into an agreement being the Scheme of Arrangement (Annexure "C") for merger and amalgamation which has been duly approved by the respective Board of Directors of the Petitioners and

such resolutions have been placed on record. The Registrar of Modarabas has also issued NOC for such merger and amalgamation.

The Scheme of Arrangement, attached as Annexure "C" to this petition gives full particulars as to the benefits of the merger / amalgamation, the purpose for the same, the consequences of the arrangement, the effective date of the merger / amalgamation, consideration and related matters, the effect on the employees of the Petitioner No.3 and general provisions with respect to the arrangement. Such Scheme of Arrangement is part and parcel of the petition. By seeking sanction of the Scheme of Arrangement through this Petition under the Companies Act, as above, the intention is to obtain approval of the terms, whereby, the entire undertaking and business, inclusive of all assets, properties, rights, liabilities, obligations and dues of Petitioner No.3, as more specifically stated in the Scheme of Arrangement, will be transferred to, stand vested and assumed by petitioner No.2, whereas, Petitioner No.2 will continue as a going concern and petitioner No.3 at the same time shall stand dissolved. The Petitioner No.2 has already obtained No objection to the Scheme of arrangement from all the secured creditors.

On 04.01.2018 on an application 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" and "THE NEWS" whereas, report has been furnished by the Chairman dated 09.02.2018. Comments were filed by SECP and objections were raised regarding NOC of certain secured creditors and subsequently the petitioners have placed on record the requisite NOC's. A proper notice has also been published in the Gazette of Pakistan dated 07.03.2018. Subsequent to passing of orders of this Court Additional Registrar of Companies, In-charge Company Registration Office, Karachi, Securities & Exchange Commission of Pakistan has filed Statement, dated 27.4.2018, wherein, it is stated that report has been examined and SECP has no objection if the Petition is allowed. An objection was also raised regarding some NOC from the Competition Commission of Pakistan, whereafter, notice was issued and vide letter dated 4.7.2018 addressed to the Assistant Registrar of this Court, they have stated that no NOC from Competition Commission of Pakistan is needed in this matter.

An objector namely Innovative Investment Bank Limited has filed its objections as according to them a Civil Suit filed by them is pending against Petitioner No.3 before this Court. In response learned Counsel for the petitioner has referred to Article 4.02 of the Scheme of arrangement, wherein it has been provided that all liabilities and obligations of petitioner No.3 shall immediately and without any further act or deed be assumed by and become the liabilities and obligations of Petitioner No.2 which shall pay, undertake, satisfy, discharge and perform, when due, all of the liabilities and obligations, and in this Court's opinion, the objections are unwarranted, as the Scheme of Arrangement sufficiently takes care of it. As of today the Suit is merely pending and yet to be decreed. Notwithstanding, the Scheme of Arrangement fully caters to the issue / interests, if any, of the objector.

Since considerable time has lapsed from the date of filing of this petition and its grant today, an application bearing CMA No.304/2018 has been filed on behalf of the petitioner regarding condonation of delay, if any, in submission of merged Accounts by the Auditor of petitioner No.2 & 3 within a period of three months from the date of order of amalgamation. In the peculiar facts of this case, the same is granted as prayed.

In view of such position, since all formalities have been completed whereas, no further objections are pending from any quarter, there appears to be no impediment in granting this Petition which is accordingly allowed as prayed.

J U D G E

Ayaz P.S.