

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

J.C.M. No. 17 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of Main Petition

04.11.2019.

Mr. Abdul Aleem, Advocate for Petitioners.

Mr. Saad Abbasi, Advocate for SECP.

This is a Petition for merger / amalgamation of Petitioner No.1 into Petitioner No.2 and has been filed under Section 279 to 282 of the Companies Act 2017 for approval of the Scheme of Amalgamation / Arrangement as entered into by the petitioner(s) and more expressly stated in Annexure “**A-1**” to this Petition.

The Petitioner No.1 presently carries on business activity of manufacturer, importer & exporter of textile made up and allied accessories except rental income. Whereas, the Petitioner No.2 presently carries on business of manufacturing, importing, exporting, dealing and trading in readymade garments and allied products. Now the Petitioners are desirous of merging Petitioner No.1 into Petitioner No.2 and the Scheme of Amalgamation / Arrangement for such purposes has been annexed with this Petition as Annexure “A-1”, wherein, the Share Exchange Swap Ratio as well as allotment of Shares of Petitioner No.1 to Petitioners No.2 has been mentioned on the basis of every 30 ordinary shares held by Petitioner No.1 of the nominal value of Rs.10/- credited as fully paid be issued 1 ordinary share of the Petitioner No.2 of the nominal value of Rs.100/- each credited as fully paid up.”

The Petitioners are desirous to restructure and merge, by way of amalgamation, with the object of better and more economic reasons to run the same business. The Petitioners have agreed and entered into an agreement being the Scheme of Amalgamation (Annexure “A-1”) 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 Scheme of Amalgamation, attached as Annexure "A-1" 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.1 and general provisions with respect to the arrangement. It also provides the number of shares of Petitioner No.1 to be allotted respectively to shareholders of Petitioner No.2 on the basis of evaluation and SWAP ratio on the basis of every 30 ordinary shares held by Petitioner No.1 of the nominal value of Rs.10/- credited as fully paid be issued 1 ordinary share of the Petitioner No.2 of the nominal value of Rs.100/- each credited as fully paid up." Such Scheme of Amalgamation / 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.1, as more specifically stated in the Scheme of Arrangement, will be transferred to, stand vested and assumed by petitioner No.2.

On 23.05.2019 the Court had ordered 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 08.05.2019 and "THE NEWS" dated 13.06.2019. Comments have been filed by the SECP, wherein, certain objections have been raised in respect of Subsection (2) of Section 279 for consent of three/fourths majority of the members of the Petitioners for such arrangement and No Objection Certificate from Habib Metropolitan Bank by Petitioner No.2 and so also secured Swap Ratio and the narration of facts in para-13 of the Petition. In response, reply has been filed and learned Counsel for the Petitioners submits that for the Scheme of Arrangement / Amalgamation, separate meetings of the members of both petitioners have been conducted, wherein, such Scheme has been approved by 100% of the members,

whereas, this matter is of private companies and ownership is also common, therefore, this objection stands satisfied. As to the No Objection Certificate of Habib Metropolitan Bank, the same has been placed on record in respect of Petitioner No.2. Insofar as the swap ratio and the contents of Para-13 of the Petition are concerned, learned Counsel submits that there are typographical errors in this paragraph and same may be read and amended as under:-

“13. That the amalgamation of the Petitioner No.1 with the Petitioner No.1 in accordance with the Scheme involves the transfer to and vesting in the Petitioner No.2 of the whole of the undertaking of the Petitioner No.1 together with all their respective properties, assets, rights, liabilities and obligations of every description, including those described in Articles 5 and 6 of the Scheme, the allotment at par to the registered holders of ordinary shares in the Petitioner No.1, in accordance with their entitlements determined under the Scheme on the basis of every 30 ordinary shares held by Petitioner No.1 of the nominal value of Rs.10/- credited as fully paid be issued 1 ordinary share of the Petitioner No.2 of the nominal value of Rs.100/- each credited as fully paid up.”

In view of such position I am of the view that objections of SECP stands complied with. A proper notice has also been published in the Gazette of Pakistan dated 26.06.2019. Since all formalities have been completed whereas, objections have also been complied with, 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.

J U D G E