

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 18 of 2022

In the matter of
Habib Metropolitan Modaraba
Management Co. (Pvt.) Ltd.

And

First Habib Modaraba

And

Habib Metro Modaraba

Date of Hearing: 07.02.2023

Petitioners: Through Mr. Mikael Azmat Advocate.

SECP on Court notice: Through Mr. Ibad-ur-Rehman, Law Officer.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition under sections 279 read with Sections 280 and 283, 285(8) and 505(1)(C) of Companies Act, 2017 pertains to merger of petitioner No.3 with and into petitioner No.2 through petitioner No.1 which is vested with the rights of management of both the petitioners No.2 and 3. The purpose of the petition is sanction of the Scheme of Arrangement dated 22.07.2022 attached as Annexure 'E' to the petition to give effect to proposed merger. In substance the petitioners have proposed restructure and merger whereby petitioner No.3 i.e. Habib Metro Modaraba is to be merged and amalgamated into petitioner No.2 i.e. First Habib Modaraba.

2. On presentation of the petition, notices were issued to SECP and so also advertised in terms of Rule 76 read with Rule 19 of the Companies Ordinance (Court) Rules, 1997. The SECP filed its comments, whereas no objections of whatsoever nature has been received.

3. I have heard learned counsel for petitioner as well as law officer SECP and perused material available on record.

4. In terms of the Scheme of Arrangement entire undertaking and business including assets, rights, properties, benefits, powers privileges, contracts, liabilities, encumbrances, obligations and dues of petitioner No.3 will be transferred to and vested in and assumed by petitioner No.2 against the issuance of Modaraba certificates of petitioner No.2 to certificate holder of petitioner No.3. Thus, in terms of Scheme of Arrangement, petitioner No.2 will act accordingly under the name of “First Habib Modaraba” whereas petitioner No.3 shall cease to exist without winding up. The members, creditors, employees and certificate holders etc. of petitioners will remain secured and their rights and interests are taken care of in the Scheme of Arrangement.

5. Petitioner No.1 has got requisite No objection Certificate from SECP vide letter dated 22.07.2022 in pursuance of an application to Registrar, Modaraba Companies & Modarabas in respect of proposed merger followed by no objection certificates by petitioner No.2 from secured creditors whereas petitioner No.3 has no secured creditors.

6. The annual audited reports of petitioner No.2 as on 30.06.2021 and financial statements as on 31.03.2022 are available on record as Annexures ‘I’ and ‘I-10’ respectively containing financial statements, auditor’s reports, statement of profit or loss etc. Similarly annual audited report of petitioner No.3 as on 30.06.2021 with special purpose financial statements for the period from 01.07.2021 to 31.03.2022 are filed as Annexure “J” and “J1”. The Scheme is determined and approved by the respective Board of directors of both the petitioners after considering all the aspects of the matter. They were unanimous in their view that it would be advantageous if petitioner No.3 is merged with into petitioner No.2.

7. Separate extraordinary meetings of the two petitioners were held on 27.09.2022 and its minutes are annexed as Annexure A to the

Chairman's report of petitioners No.2 and 3, which after considering all the aspects of the matter has recommended for approval of the subject merger. Copies of Modaraba authorization certificates and Memorandum & Articles of Association of both the petitioners with ancillary documents are also filed along with petition.

8. As far as the issues raised in the parawise comments are concerned, which the Law Officer has also agitated during the course of arguments, a perusal of the record reveals that all such objections are met. Hence in substance he has conceded to the Scheme of Arrangement.

9. In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of certificate holders and board of directors, requisite publication and issuance of notices to the Securities & Exchange Commission of Pakistan. In terms of such meetings of the board of directors and certificate holders to the extent it is applicable and reports pertaining to such meetings are available on record and not a single certificate holder of any of the two petitioners objected to the scheme, as referred above. The publication of the instant petition was effected in Daily 'Jang' and 'The News' Karachi in its issue of 14.09.2022 and official gazette has been issued on 05.10.2022.

10. In view of the above, I do not see any impediment in granting this petition, which is accordingly allowed as prayed.

Dated: 07.02.2023

Judge