

**IN THE HIGH COURT OF SINDH AT KARACHI**

BEFORE:  
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 47 of 2021

In the matter of  
G. A. Enterprises (Pvt.) Ltd.  
And  
GAM Corp (Pvt.) Ltd.  
And  
SIZA Foods (Pvt.) Ltd.

Date of Hearing: 08.02.2023

Petitioners: Through Mr. Fehem Ahson Hashmi and Ms. Sanaya Vachha Advocates.

**J U D G M E N T**

**Muhammad Shafi Siddiqui, J.**- This petition under sections 279 to 283 of Companies Act, 2017 pertains to amalgamation and/or transfer of whole of the undertaking of petitioners No.1 and 2 with and into petitioner No.3. The purpose of the petition is sanction of such Scheme of Arrangement attached as Annexure 'A' to the petition and to give effect to proposed amalgamation. In substance the petitioners have proposed restructure and merger whereby petitioners No.1 and 2 i.e. G.A. Enterprises (Private) Limited and GAM Corp (Private) Limited are to be merged and amalgamated into petitioner No.3 i.e. Siza Foods (Private) Limited.

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. Permission was accorded to convene requisite shareholders meetings. The SECP filed its comments whereas none of the objections of any nature have been received from any quarter.

3. I have heard learned counsel for petitioner and perused material available on record whereas no one has turned up on behalf of Securities & Exchange Commission of Pakistan.

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 petitioners No.1 and 2 will be transferred to and vested in and assumed by petitioner No.3. Thus, in terms of Scheme of Arrangement, petitioner No.3 will act accordingly under the name of "G.A. Enterprises (Private) Limited" whereas share capital of petitioners No.1 and 2 shall stand cancelled and they shall cease to exist and/or dissolved without winding up. The members, creditors, employees and shareholders etc. of petitioners will remain secured and their rights and interests are taken care of in the Scheme of Arrangement.

5. Since two entities are being merged with third one, they would evolve as petitioner No.3, which is already conducting business affairs under its Memorandum & Articles of Association. Whether Memorandum & Articles of Association of petitioner No.3 would give room for the businesses being conducted by petitioners No.1 and 2, since their business is ancillary but not the same. In my view the merged entity, through its Memorandum & Articles of Association, if the business of petitioners No.1 and 2 is being continued, it (petitioner No.3) shall amend its Memorandum & Articles of Association to provide room for such activities as well although present provisions of company law i.e. Companies Act 2017 does not oppose such understanding.

6. As regards, clearance from Competition Commission of Pakistan (CCP), though petitioner has not filed any documents in relation thereto, however, learned counsel for petitioner submitted that admittedly petitioners belong to the same group and petitioners No.1 and 2 as being

subsidiaries of holding company i.e. petitioner No.3 are being merged hence in terms of Regulation 5(1)(ii) of Competition (Merger Control) Regulations 2016 such clearance certificate is not required. He further submitted that in response to Competition Commission of Pakistan's letter of 20.06.2022 petitioner vide letter dated 24.06.2022 claimed to have apprise such fact to Competition Commission of Pakistan. The Competition Commission of Pakistan however has not come forward to raise any objection to the instant petition after public notice. The understanding of law is such that in view of such facts clearance certificate is inconsequential.

7. The annual audited accounts of petitioner No.1 as on 30.06.2021 and that of petitioners No.2 and 3 as on 31.12.2020 and 30.06.2021 are available on record as Annexures 'H', 'I' and 'J' respectively containing financial statements, statement of profit or loss etc. The Scheme is determined and approved by the respective Board of directors of the petitioners after considering all the aspects of the matter. They were unanimous in their view that it would be advantageous if petitioners No.1 and 2 are merged with/into petitioner No.3.

8. In terms of Resolutions dated 20.11.2021 the board of directors of petitioners approved the subject scheme followed by filing of instant petition. Separate extraordinary meetings of the petitioners were held on 31.12.2021 and its minutes are placed on record during the course of argument along statement, which are taken on record. In terms of such reports, Chairman of petitioners No.1, 2 and 3, after considering all the aspects of the matter, has recommended for approval of the subject merger.

9. Issues raised in the parawise comments are complied with as is evident from the rejoinder to the parawise comments filed by the petitioner. Furthermore, no one has appeared on behalf of Securities &

Exchange Commission of Pakistan to argue the petition. Perusal of the record otherwise also reveals that all such objections are met.

10. In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of shareholders 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 shareholders to the extent it is applicable and reports pertaining to such meetings are available on record and not a single shareholder of any of the three petitioners objected to the scheme, as referred above. The publication of the instant petition was effected in Daily 'Express and 'Express Tribune Karachi in its issue of 05.02.2022 and official gazette has been issued on 19.01.2022.

11. In view of the above, the Court cannot oppose the wisdom of petitioners approving Scheme of Arrangement, hence I do not see any impediment in granting this petition, which is accordingly allowed as prayed.

Dated:

**Judge**