

IN THE HIGH COURT OF SINDH KARACHI

J. C. M. No. 15 of 2023

Date	Order with signature of Judge
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For hearing of Main Petition :

Petitioners : 1. New Hampshire Insurance Company,
through Mr. Shahbakht Pirzada Advocate.

2. TPL Insurance Limited,
through Mr. Mikael Azmat Rahim Advocate.

SECP through Law Officer Syed Ibad-ur-Rehman,
on Court notice.

Date of hearing : 13.2.09.2023.

ORDER

NADEEM AKHTAR, J. – The petitioners viz. New Hampshire Insurance Company (petitioner No.1) and TPL Insurance Limited (petitioner No.2) have filed the instant petition under Sections 279 to 283 and 285(8) of The Companies Act, 2017, (**‘the Act’**) as amended by the Companies (Amendment) Ordinance, 2020, seeking the sanction of this Court for the Scheme of Arrangement dated 29.05.2023 (**‘the Scheme’**) (pages 19–39) proposed and approved by their respective Boards of Directors. The Scheme, *inter alia*, provides the proposed amalgamation / merger of the Pakistan Undertaking of petitioner No.1 with and into petitioner No.2 by transferring to and vesting in petitioner No.2 the entire Pakistan Undertaking of petitioner No.1 with effect from the ‘completion date’ defined in the Scheme ; and, the closure of the Pakistan Branch of petitioner No.1 along with revocation of its registration with the Securities and Exchange Commission of Pakistan (**‘SECP’**). In this background, the petitioners have prayed, *inter alia*, that the Scheme be sanctioned by this Court so as to make it binding on the petitioners and their respective members and creditors.

2. It is stated in the petition that petitioner No.1 is a corporation incorporated under the laws of the State of Illinois, United States of America, and is a body corporate in terms of Section 2(9) of the Act, which is included within the definition of the term “transferor company” ; petitioner No.2 is a company incorporated under the laws of Pakistan and is a company as defined

in the Act ; the Pakistan Branch of petitioner No.1 was established on 20.04.1949 ; in September 2016, petitioner No.1 decided to cease conducting business in Pakistan and currently there is no insurance contract between petitioner No.1 and any policy holder in Pakistan ; however, the transfer of its liabilities to a registered insurer in terms of Section 9 of the Insurance Ordinance, 2000, could not be made by petitioner No.1 ; the main object for petitioner No.1 in seeking to transfer and vest its Pakistan Undertaking, by means of the Scheme, to petitioner No.2, which is a registered insurer under the above Ordinance, is to fulfill such condition and allow petitioner No.2 to proceed with the subsequent steps necessary to effectuate the closure of the Pakistan Branch ; and, after transfer of its Pakistan Undertaking to petitioner No.2, petitioner No.1 will no longer require registration under the above Ordinance. The petition further states that the sanctioning of the Scheme is subject to the approval from the Competition Commission of Pakistan in terms of Section 11 of the Competition Act, 2011, and the approval of SECP in terms of Section 67 of the Insurance Ordinance, 2000. The petition also states that the Scheme is between each of the petitioners and their members, and all members of each of the petitioners are of a single class, being holders of ordinary shares, and each member shall be affected by the Scheme in the same manner. It is stated that the respective Boards of Directors of the petitioners, in their respective meetings held on 25.05.2023 and 26.05.2023, have duly approved the Scheme by way of resolutions dated 25.05.2023 and 26.05.2023 (pages 41 and 47).

3. Notice of this petition was published in the Gazette of Pakistan dated 21.06.2023 and also in newspapers viz. English daily 'The News' and Urdu daily 'Jang' on 15.06.2023 and 16.06.2023, respectively. Notice was also affixed on the Court notice board and it was issued to the Additional Registrar of Companies too. Vide order dated 31.05.2023 passed on CMA Nos.1308/2023 and 1309/2023 filed by the petitioners, they were allowed to convene separate meetings of their respective members and creditors for approving the Scheme, and the Chairmen of such meetings were directed to submit their reports in relation to the said meetings within seven (07) days thereof. In compliance of the said order, separate meetings of the members of the petitioner No.1 and members and creditors of petitioner No.2 were held on 15.06.2023 and 27.06.2023, whereafter separate reports were filed on 05.07.2023 and 07.07.2023 by the Chairmen of the said meetings. As per the said reports, the

Scheme was placed before the members of the petitioners who approved the same.

4. It is contended by learned counsel for the petitioners that petitioner No.1 does not have any creditor ; whereas petitioner No.2 has only one secured creditor viz. Faysal Bank Limited who have issued a letter dated 30.05.2023 stating that they have no objection to the sanction of the Scheme and, through their authorized representative, also had consented to the sanction of the Scheme in the meeting of members and creditors of petitioner No.2 held on 27.06.2023. It is further contended that no investigation or other proceedings are pending in relation to any of the petitioner under Sections 256 to 275 of the Act and/or any other provision thereof. It is also contended that the Competition Commission of Pakistan has granted approval dated 29.08.2023 for the sanction of the Scheme, copy whereof has been placed on record.

5. Para-wise comments were filed by SECP on 19.08.2023, wherein it is stated that comments from the Pakistan Stock Exchange may be called by this Court, if deemed necessary, as petitioner No.2 is a public listed company ; and, the sanction of the Scheme is subject to the approval from the Competition Commission of Pakistan (CCP) in terms of Section 11 of the Competition Act, 2011. Learned counsel for SECP does not dispute any of the submissions made by learned counsel for the petitioners and accordingly does not press any of the above comments. He submits that SECP has no objection to the sanction of the Scheme, provided the proposed amalgamation is effected strictly in terms of the Scheme and all post-amalgamation requirements and formalities are fulfilled by the petitioners in accordance with law.

6. I have examined the Scheme the main object whereof, as stated therein, is the amalgamation of the Pakistan Undertaking of petitioner No.1 with and into petitioner No.2 by transferring to and vesting in the Pakistan Undertaking with and into petitioner No.2 against deposit of the consideration by petitioner No.1 with its Pakistan Branch, and the closure of its Pakistan Branch along with revocation of the registration of the Pakistan Branch with SECP. The petitioners have disclosed before the Court all material and relevant facts relating to them including the audited financial statements of petitioner No.1 for the year ended 31.12.2021 and its unaudited financial statements for the year ended 31.12.2022, and audited financial statements of petitioner No.2 for the year ended 31.12.2022. The Scheme has been duly approved by the members of petitioner No.1 and members and the sole secured creditor of petitioner No.2 in their respective meetings held with the permission of this Court. The Scheme has also been approved by the Competition Commission of Pakistan, and

SECP has not raised any objection to the sanction of the Scheme. Thus, all legal and formal requirements for the sanction of the Scheme have been duly complied with by the petitioners.

7. The object of the Scheme, as disclosed therein, appears to be lawful, and the proposed amalgamation does not appear to be against the public interest or policy, or in violation of any law for the time being in force. Thus, there appears to be no impediment in sanctioning the Scheme. In view of the above, the Scheme is hereby sanctioned and accordingly the petition is granted as prayed.

J U D G E

Shahbaz