

THE HIGH COURT OF SINDH, KARACHI
[COMPANY BENCH]

J.C.M. No. 08 of 2024
In the matter of the Companies Act, 2017
And
of (a) EFG Hermes Pakistan Ltd.
(b) Intermarket Securities Ltd.

Petitioners : EFG Hermes Pakistan Limited and Intermarket Securities Limited, through Mr. Mikael Azmat Rahim Advocate.

On Court notice : (i) Pakistan Stock Exchange through Mr. Tariq Ali, Advocate.
(ii) Securities and Exchange Commission of Pakistan through Syed Ebad-ur-Rehman, Advocate.

Date of hearing : 09-10-2024

Date of order : 09-10-2024

ORDER OF SANCTION OF SCHEME

Adnan Iqbal Chaudhry J. - The Petitioners are public companies limited by shares incorporated in Pakistan with registered offices at Karachi. The Petitioners seek sanction of a Scheme of Amalgamation under section 282 read with sections 279 to 281 of the Companies Act, 2017 [**the Act**]. The Petitioners fall in the category of Large Sized Companies under the Third Schedule to the Act. Therefore, in view of SRO 840(I)/2017 dated 17.08.2017 issued under section 285(8) of the Act, the instant petition lies before the Company Bench of the High Court.

2. The principal line of business of both Petitioners is brokerage of securities. Both hold Trading Rights Entitlement (TRE) Certificates issued by the Pakistan Stock Exchange [**PSX**].

3. The Scheme of Amalgamation proposes to merge/amalgamate the Petitioner No.2 with the Petitioner No.1 such that:

- (a) the entire undertaking and business of the Petitioner No.2, including all assets, rights, liabilities and obligations, shall stand transferred to and vest in the Petitioner No.1 with effect from the start of business on July 1, 2024;
- (b) the authorized capital of the Petitioner No.1 shall stand enhanced to Rs. 2,000,000,000/- divided into 200,000,000 shares of Rs. 10/- each;
- (c) in consideration of the amalgamation, the Petitioner No.1 will issue and allot an aggregate of 108,735,374 shares of Rs. 10/- each to the shareholders of the Petitioner No.2 at a swap ratio of approximately 2.16 shares for every 1 share of the Petitioner No.2;
- (d) the Petitioner No.2 shall stand dissolved without winding-up.

4. By order dated 04.03.2024 passed under section 282(1) of the Act, the Court ordered separate meetings of shareholders and secured creditors of the Petitioners to vote on the Scheme of Amalgamation. The Chairman appointed for each meeting has filed his report under Rule 57 of the Companies (Court) Rules, 1997.

5. Heard learned counsel and perused the record.

6. In view of section 11 of the Competition Act, 2010, read with Regulation 6 of the Competition (Merger Control) Regulations 2016, the Petitioners have obtained the pre-merger clearance from the Competition Commission of Pakistan. A copy of such order dated 22.05.2024 is placed on the record.

7. *Prima facie*, the requirements of section 282(2) of the Act were fulfilled in calling the meetings of shareholders and secured creditors of each Petitioner to vote on the Scheme of Amalgamation.

8. Reports of the Chairmen of the respective meetings, submitted under Rule 57 of the Companies (Court) Rules, 1997, are to the following effect:

- (i) the meeting of shareholders of the Petitioner No.1, held on 28.03.2024, was attended by shareholders representing 15,134,312 shares (75.612%) out the total of 20,015,650 shares issued; that the Scheme was approved by shareholders representing 15,134,262 shares as against holders of 50 shares voting against it; thus the Scheme was approved by 99.99% of the value of shareholders present and voting at the meeting and a special resolution was passed accordingly;
- (ii) the meeting of shareholders of the Petitioner No.2, held on 28.03.2024, was attended by 100% of the shareholders, all of whom voted in favor of the Scheme and a special resolution was passed accordingly;
- (iii) the meetings of the secured creditors of the Petitioners were held respectively on 29.05.2024 and 21.06.2024, which were attended by 100% of them, all of whom voted in favor of the Scheme. NoCs of the secured creditors are also on the record.

Thus, the Scheme of Amalgamation is approved without modification by more than three-fourths majority of the value of shareholders and secured creditors of each Petitioner present and voting at the meeting called for such purpose, thereby fulfilling the requirement of section 279(2) of the Act.

9. Comments filed by the Securities & Exchange Commission of Pakistan [SECP] make an observation with regards to Article 11 of the Scheme, which proposes that upon sanction of the Scheme the name of the Petitioner No.1 will stand changed to the name which is presently of the Petitioner No.2. Though the SECP does not object to

such change, it submits that the procedure for change of name is provided separately in section 12 of the Act. That appears to be correct. Under section 12 of the Act the change of name of a company requires approval of the Registrar of Companies, and comes into effect upon a certificate issued by him under section 13 of the Act. However, Article 11 of the Scheme does not seek to by-pass section 12 of the Act, but only that the special resolution passed by the Petitioner No.1 on 28.03.2024 for approving the Scheme may also be taken as the special resolution required by section 12 for change of name. That resolution specifically recites that it is also a resolution for change of name of the Petitioner No.1. Therefore, with the observation that the Petitioner No.1 need not pass a further special resolution for making an application under section 12 of the Act, I see no impediment to Article 11 of the Scheme.

10. Article 4.3 of the Scheme proposes that upon the amalgamation of the Petitioners, the Memorandum and Articles of Association of the Petitioner No.1 shall stand amended for the enhanced authorized capital of the Petitioner No.1. The objection of the SECP is that the Memorandum and Articles of Association can only be amended by resort to sections 32 and 38 of the Act. However, such argument was rejected in the cases of *Joint Registrar of Companies, SECP v. Omer Iqbal Solvent (Pvt.) Ltd.* (2016 CLD 902) and *Kings Food (Pvt.) Ltd & Hilal Confectionary (Pvt.) Ltd.* (2014 CLD 961). It was held that where an increase in the authorized capital of the transferee company was automatic by virtue of an amalgamation under sections 284 and 287 of the erstwhile Companies Ordinance, 1984, the separate provisions for enhancing the authorized capital were not attracted. Therefore, the objection to Article 4.3 of the Scheme is rejected.

11. As per the auditor's report on the financial statements of the Petitioners for the period ended 30-09-2023, the books of accounts of the Petitioners are properly maintained, and the financial statements are in accord with the books of accounts. The auditors also affirm that the shares issued by each Petitioner are fully paid-up.

12. The principal line of business of the Petitioners is the same. The Scheme of Amalgamation is for viable reasons, *inter alia* that the amalgamation would increase the asset base of the surviving company and would reduce administrative costs of the surviving company. The swap ratio of shares worked out by the Chartered Accountant engaged for the purpose appears to be reasonable. It is settled law that where a Scheme of Amalgamation approved by the requisite majority appears to be fair, just, reasonable and *prima facie* fulfils statutory requirements, then the Court does not sit in appeal over the commercial wisdom of the Scheme.¹

13. The Petitioners affirm that there are no investigation proceedings pending against them under sections 256 to 258 of the Act. The SECP does not dispute that fact. The PSX has also reported that no claims are pending with it against the Petitioners. The petition was advertised pursuant to Rule 19 of the Companies Court Rules, 1997. None of the shareholders or creditors of the Petitioners have come forth to oppose sanction of the Scheme of Amalgamation.

14. Therefore, the Scheme of Amalgamation filed with the petition as **Annexure 'C'** is hereby sanctioned without modification with the following order:

- (i) That all the property, rights and powers of Intermarket Securities Ltd. [IMS] as per the audited financial statement of IMS as at September 30, 2023, and all the other property, rights and powers of IMS, be transferred without further act or deed to EFG Hermes Pakistan Ltd. [EFGH], and accordingly the same shall pursuant to section 282(3) of the Companies Act, 2017 be transferred to and vest in EFGH for all the estate and interest of the IMS therein but subject nevertheless to all charges now affecting the same; and
- (ii) That all the liabilities and duties of IMS be transferred without further act or deed to EFGH, and accordingly the same shall pursuant to section 282(3) of the Act, be

¹ *Paramount Spinning Mills* (2020 CLD 1443); *IGI Insurance Ltd.* (2018 CLD 572); *Gadoon Textile Mills Ltd.* (2015 CLD 2010).

transferred to and become the liabilities and duties of EFGH; and

- (iii) That all proceedings now pending by or against IMS be continued by or against EFGH; and
- (iv) That EFGH do without further application allot to the members of IMS the shares in EFGH to which they are entitled under the Scheme of Amalgamation, and the shares allotted by IMS shall be cancelled as per the Scheme; and
- (v) That the authorized capital of EFGH stands increased to Rs. 2,000,000,000/- divided into 200,000,000 shares of Rs. 10/- each, and Memorandum & Articles of Association of EFGH stands amended accordingly; and
- (vi) That EFGH do within 7 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration, and on such certified copy being so delivered IMS shall stand dissolved without winding-up and the Scheme shall be effective on start of business on July 1, 2024. The Registrar of Companies shall place all documents relating to IMS and registered with him on the file kept by him in relation to EFGH, and the files relating to the said two companies shall be consolidated accordingly; and
- (vii) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

Petition allowed as above.

JUDGE

Karachi:

Dated: 09-10-2024