

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 33 of 2021

In the matter of
Nutrico Morinaga (Pvt.) Ltd.
And
Nutrico Pakistan (Pvt.) Ltd

Date of Hearing: 15.02.2022

Petitioners: Through Mr. Mikael Azmat Rahim Advocate.

SECP: Through Mr. Saad-ur-Rasheed Abbasi, Law Officer, SECP.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition pertains to merger of petitioner No.2 with petitioner No.1. The purpose of the petition is approval of the scheme of arrangement dated 31.08.2021 attached as Annexure C to the petition. In substance the petitioners have proposed to restructure in terms whereof petitioner No.2 i.e. Nutrico Pakistan (Pvt.) Limited is required to be merged and amalgamated into petitioner No.1 i.e. Nutrico Morinaga (Pvt.) Limited.

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

In terms of the Scheme of Arrangement entire undertaking and business including assets, rights, properties, benefits, powers privileges, contracts, liabilities, obligations and dues of petitioner No.2 will be transferred to and vested in and assumed by petitioner No.1 against the allotment and issue of shares of petitioner No.1 to shareholders of petitioner No.2. Thus, in terms of Scheme of Arrangement petitioner No.1 will act accordingly whereas petitioner No.2 shall cease to exist without winding up.

The audited financial statements of both petitioners No.1 and 2 as on 30.06.2020 and 31.03.2021 are available on record. The Scheme is determined and approved by the respective Board of directors of both the petitioners after considering all the aspects including the values and calculations by the Chartered Accountants. The shareholders of petitioner No.2 shall be issued shares of petitioner No.1 in accordance with the Scheme of Arrangement.

As far as the issues raised in Para 9 to 12 of 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 and even the Law Officer has conceded to it. Hence in substance he has conceded to the Scheme of Arrangement.

In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of shareholders and creditors, requisite publication and issuance of notices to the Securities & Exchange Commission of Pakistan. It is urged that in terms of such meetings of the shareholders and secured creditors to the extent it is applicable and report pertaining to such meetings are available on record and not a single shareholder or secured creditor of any of the two petitioners objected to the scheme. The publication of the instant petition was effected in Daily 'Jang' and 'The News' in their issue of 20.09.2021 and was also gazette on 13.10.2021. Reports of the Chairmen in terms of Rule 955 of SCCR and Rule 57 of Companies (Court) Rules, 1997 are also available on Record.

In the case of Brooke Bond (Pakistan) Limited v. Aslam Bin Ibrahim reported in 1997 CLC 1873, the approach was channelized to ascertain (i) whether the statutory requirements were complied with and (ii) to determine whether the scheme as a whole has been arrived at by the majority, bona fide and the interest of whole body of shareholders in

whose interest the majority purported to act and (iii) whether scheme is such that fair and reasonable shareholder will consider it to be for the benefit of the company for himself. In the instant case no objection of whatsoever from any quarter has come forward while all the requisite formalities have been fulfilled hence no exception could be taken.

To question the merger it is rather to be seen from the perception that a wise group of businessmen has taken a decision considering all its pros and cons. While taking such decision there are chances of success and failure but then while questioning such decision the bona fide is the real litmus test. A businessman takes decision foreseeing the future aspect. The Court could only see that all legal formalities have been fulfilled and that the scheme is neither unjust nor unfair or against the national interest but cannot challenge the wisdom of a decision of businessman as by doing that the Court would be overriding the wisdom of a businessman and their prerogative. Even otherwise the report of Chartered Accounts is also very material who were engaged for calculating the swap ratio in respect of envisaged scheme of arrangement.

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

Dated:

Judge