

IN THE HIGH COURT OF SINDH KARACHI

J. C. M. No. 05 of 2016

Date	Order with signature of Judge
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1. For hearing of CMA No.223/2016 [U/R 60 Companies (Court) Rules, 1997] :
2. For hearing of Main Petition :

Petitioners : (1) Kolson Industries (Private) Limited and
(2) Lotte Kolson (Private) Limited
through Mr. Ijaz Ahmed, Advocate.

Respondent : SECP through Mr. Munawwar Awan, Advocate.

Date of hearing : 30.05.2016.

ORDER

NADEEM AKHTAR, J. – This petition has been filed under Sections 284 and 287 of the Companies Ordinance, 1984, for the sanction of the Scheme of Arrangement set forth in Annexure ‘A’ to the petition for amalgamation of Kolson Industries (Private) Limited (petitioner No.1) with Lotte Kolson (Private) Limited (petitioner No.2). The above named petitioners have prayed as under :

“1. *The Petitioners therefore humbly pray that, after the Members of the Petitioners have approved, adopted and agreed the Scheme of Arrangement by the requisite statutory majority at meeting to be convened under the order of this Honourable Court requested in the interlocutory application aforesaid of the Petitioners, this Honourable Court may be pleased to make the following orders:*

(a) *an order under Section 284(2) of the Companies Ordinance, 1984 sanctioning the Scheme of Arrangement as set forth in Annexure A hereto so as to make the Scheme of Arrangement binding on Petitioner No.1 and Petitioner No.2 and their Members;*

(b) *the following orders so as to take effect at the same time as the order sanctioning the Scheme of Arrangement takes effect in accordance with the section 284(3) of the Companies Ordinance, 1984, namely:*

(i) *an order under Section 287(1)(a) of the Companies Ordinance, 1984 transferring to and vesting in the Petitioner No.2 the whole undertaking of the Petitioner No.1 together with all properties, assets, rights, liabilities and obligations of every description including those described in the Scheme of Arrangement.*

- (ii) *an order directing all relevant authorities to mutate their records by entering the name of Pet. .No.2 as the owner of all assets and properties (movable as well as immovable) as would be appearing in the name of Petitioner No.1 before the sanctioning of the Scheme.*
 - (iii) *an order under Section 287(1)(b) of the Companies Ordinance, 1984 for the cancellation of the entire issued and paid-up capital of Petitioner No.1;*
 - (iv) *An order under Section 287(1)(c) of the Companies Ordinance, 1984 directing that all legal proceedings, if any, instituted by or against the Petitioner No.1 which may be pending shall be continued by or against the Petitioner No.2;*
 - (v) *An order under Section 287(1)(d) of the Companies Ordinance, 1984 declaring the dissolution, without winding up, of Petitioner No.1;*
- (c) *such further or other order or orders as may deem just and proper to this Honourable Court.”*

2. Both the petitioner-companies have been incorporated and are existing as private companies under the Companies Ordinance, 1984, ('the Ordinance'). Their objects are set forth in their respective Memorandums and Articles of Association, copies whereof are attached to the petition. Petitioner No.1 has authorized capital of Rs.150,000,000.00 divided into 15,000,000 ordinary shares of Rs.10.00 each, out of which 13,400,000 ordinary shares of Rs.134,000,000.00 have been issued, and remaining 1,600,000 ordinary shares of Rs.10.00 each are unissued. At present, petitioner No.1 is engaged in the business of toll manufacturing of bakery, confectionary and other food products primarily for petitioner No.2. Petitioner No.2 has authorized capital of Rs.1,000,000,000.00 divided into 100,000,000 ordinary shares of Rs.10.00 each, out of which 77,917,647 ordinary shares of Rs.779,176,470.00 have been issued, and remaining 22,082,353 ordinary shares of Rs.10.00 each are unissued. Petitioner No.2 is engaged in the business of manufacturing and sale of food products.

3. It is stated in the petition that the Scheme of Arrangement is between petitioner No.1 and its members and petitioner No.2 and its members ; petitioner No.1 is the wholly owned subsidiary of petitioner No.2 ; all members of petitioner No.2 are of a single class ; each member of petitioner No.2 will be benefited by the Scheme of Arrangement in the same manner as every other member to the extent of their respective share holding ; except for trade creditors, petitioner No.1 has no other creditor ; petitioner No.2 has obtained no objection certificates from its secured creditors in respect of the Scheme of

Arrangement ; and, the Scheme of Arrangement has been adopted by the respective Boards of Directors of both the petitioners.

4. The object of the Scheme of Arrangement submitted for the approval of this Court is to effect the amalgamation of petitioner No.1 with petitioner No.2, in accordance with the Scheme of Arrangement, including inter alia orders providing for the transfer to and vesting in petitioner No.2 of the whole undertaking of petitioner No.1 together with all properties, assets, rights, liabilities and obligations of every description, the cancellation of the entire issued and paid up capital of petitioner No.1, the continuation by or against petitioner No.2 of all legal proceedings instituted by or against petitioner No.1 that may be pending, and the eventual dissolution of petitioner No.1 without being wound up. Financial statements of both the petitioners have been filed for the nine months ended on 30.09.2015.

5. Notice of this petition was published in the Gazette of Pakistan dated 20.04.2016, and also in daily newspapers 'The News' and 'Jang' on 05.03.2016. Notice was also affixed on the Court notice board and it was issued to the Additional Registrar of Companies too. Vide order dated 24.02.2016 passed on CMA No.88/2016 filed by the petitioners, they were allowed to convene separate meetings of their respective members for approving the Scheme of Arrangement in terms of paragraph 14 of the said application. In compliance of the said order, separate meetings were held and thereafter reports were filed on 31.03.2016 by the Chairman of the Extraordinary General Meetings of the petitioners held on 24.03.2016 as well as the general meetings of the creditors of the petitioners held on 24.03.2016. As per the said reports, the Scheme of Arrangement was placed before the members and it was approved by them unanimously.

6. Para-wise comments were filed by SECP, wherein it was pointed out that instead of providing NOCs from all the creditors / financial institutions, the petitioners had submitted NOCs only from United Bank Limited and Faysal Bank Limited. In reply to the comments of SECP, the requisite NOCs were submitted by the petitioners, whereafter learned counsel for SECP stated that SECP has no objection to the sanction of the Scheme of Arrangement.

7. I have examined the Scheme of Arrangement wherein the amalgamation of petitioner No.1 with petitioner No.2 as well as the procedure and the implications thereof have been set forth in detail. In compliance of Section 284(2) of the Ordinance, the petitioners have disclosed to the Court all material facts relating to them including the latest financial position and the latest audited accounts for the year ended September 30, 2015. The Scheme of Arrangement

has been unanimously approved by the members of the petitioners in their respective meetings held with the permission of this Court. Thus, all legal and formal requirements for the sanction of the Scheme of Arrangement have been duly complied with by the petitioners.

8. The object of the Scheme of Arrangement, as stated therein, appears to be lawful, and the proposed amalgamation of petitioners No.1 with petitioner No.2 does not appear to be against the public interest / policy, or in violation of any law. In view of the above and also as the members of the petitioners have unanimously approved the said proposed amalgamation, the Scheme of Arrangement is hereby sanctioned and the petition is granted as prayed.

J U D G E