

Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

J.C.M. No. 36 of 2021

Date	Order with Signature of Judge
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For hearing of main petition :

**03.06.2022**

Mr. Ammar Ather Saeed, Advocate for the petitioners a/w  
M/S Usman Alam, Sheheryar Raza Zaidi and Ms. Amna Farooqui, Advocates.  
M/S Hafiz Syed Ibad and Muhammad Imran Shamsi, Advocates for SECP.

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**NADEEM AKHTAR, J.** : The petitioners viz. AKD Securities Limited (petitioner No.1) and BIPL Securities Limited (petitioner No.2) have filed the present petition under Sections 279 to 283 and 285 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 (**‘the Scheme’**) proposed and approved by their respective Boards of Directors. The Scheme, *inter alia*, provides the proposed amalgamation / merger of petitioner No.1 with and into petitioner No.2 by transferring to and vesting in petitioner No.2 all the existing assets and liabilities of petitioner No.1 with effect from the ‘effective date’ defined in the Scheme, without affecting in any way the security interest and other rights and obligations of the members and or creditors of the petitioners. 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, creditors and or stakeholders. Further consequential relief under Sections 282(3)(a), 282(3)(b), 282(3)(c), 282(3)(d) and 282(3)(f) of the Act has also been prayed for by the petitioners.

2. The petitioners have stated that their respective Boards of Directors, in their meetings held on 28.09.2021, have duly approved the Scheme by way of resolutions passed therein. In pursuance of the order passed in the present petition on 14.10.2021, separate Extraordinary General Meetings of the members and creditors of the petitioners were held on 29.11.2021 to approve the Scheme. Pursuant to the said meetings, the Chairman of each meeting submitted his report as directed by this Court in the aforesaid order. According to the reports submitted by the Chairmen of the said meetings, the Scheme was

duly approved by the members and creditors of the petitioners, however, subject to the sanction thereof by this Court.

3. It is stated in the petition that both the petitioners are public companies limited by shares and are engaged in the business of securities brokerage ; and, petitioner No.1 is an unlisted company, whereas petitioner No.2 is listed on the Pakistan Stock Exchange. The authorized and paid up capitals of both the petitioners have been disclosed in the petition. The salient features of the Scheme have been highlighted in the petition and the post-merger effect on the business of the petitioners and also in relation to their members and creditors has been discussed in paragraph 16 in the petition.

4. In compliance of order dated 14.10.2021, the notice of the petition was published in Urdu and English newspapers on 09.11.2021 and 10.11.2021. It was published in the gazette of Pakistan dated 24.11.2021 and was also affixed on the Court notice board. SECP has filed para-wise comments, however, no objection whatsoever has been received from any other quarter to oppose the present petition.

5. Para-wise comments were filed by SECP on 23.02.2022 wherein certain reservations were expressed in relation to the proposed merger. Perusal of the said comments shows that, except for the said reservations, the petition has not been seriously opposed by SECP on any major ground nor has its maintainability been challenged. In response to the said comments, a counter affidavit was filed by the petitioners wherein the reservations expressed by SECP were addressed along with supporting documents. On 10.05.2022, a statement was made on behalf of SECP that, in view of the counter affidavit filed by the petitioners, SECP does not wish to press the objections raised in its comments ; and on 19.05.2022, a statement was filed by the Additional Registrar of Companies, SECP, Karachi, that SECP has no objection to the grant of the present petition. However, additional para-wise comments were filed by SECP on 28.05.2022 wherein some of the reservations made by it earlier were reiterated.

6. Hafiz Syed Ibad, learned counsel for SECP, was asked to clarify the precise stance of SECP in relation to the Scheme and the present petition. He states that SECP does not have any objection to the sanction of the Scheme provided all the statutory requirements relating to the post-merger scenario are fulfilled by the petitioners, particularly with regard to determining the fair value of shares for determining the swap ratio and submission of the post-merger

accounts. Mr. Muhammad Imran Shamsi Advocate, who is also appearing for SECP, reiterates the statement made by Hafiz Syed Ibad. On behalf of the petitioners, their learned counsel undertakes that the petitioners shall fulfill all the legal and codal formalities as well as all the statutory requirements prescribed under the Act and the relevant rules and regulations. Learned counsel for SECP are satisfied with the undertaking given on behalf of the petitioners and seek disposal of this petition in terms thereof.

7. Prima facie, there appears to be no adverse effect on the business of the petitioners and or on their members and creditors in case the Scheme is sanctioned by this Court. The petitioners have undertaken to fulfill all the legal and codal formalities as well as all the statutory requirements prescribed under the Act and the relevant rules and regulations, and learned counsel for SECP are satisfied with such undertaking. Needless to say the petitioners are duty-bound not only to carry on their business in accordance with law, but also to comply with all the statutory requirements prescribed by law. In case of non-compliance or violation of any of the statutory provisions by the petitioners, SECP will be at liberty to take action against them in accordance with law. Subject to compliance of all the statutory requirements prescribed by law, the Scheme is hereby sanctioned. By consent, the petition stands disposed of in the above terms.

JUDGE