

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 01 of 2022

In the matter of
Nadeem Power Generation (Pvt.) Ltd.
And
Nadeem Textile Mills Ltd.

Date of Hearing: 30.11.2022

Petitioners: Through Mr. Saleem uz Zaman Advocate.

SECP: Through Mr. Ibad-ur-Rehman, Law Officer,
SECP.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition under sections 279 to 282 read with Section 285 of Companies Act, 2017 pertains to merger of petitioner No.1 with petitioner No.2. The purpose of the petition is approval of the scheme of Amalgamation/Merger dated 28.12.2021 attached as Annexure 'A' to the petition. In substance the petitioners have proposed to restructure in terms whereof petitioner No.1 i.e. Nadeem Power Generation (Pvt.) Ltd. is required to be merged and amalgamated into petitioner No.2 i.e. Nadeem Textile Mills Ltd.

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 Amalgamation/Merger entire undertaking and business including assets, rights, properties, benefits, powers privileges, contracts, liabilities, encumbrances, obligations and dues of petitioner No.1 will be transferred to and vested in and assumed by petitioner No.2 against the allotment and issue of shares of petitioner No.2 to shareholders of petitioner No.1. Thus, in terms of Scheme of

Amalgamation/Merger petitioner No.2 will act accordingly whereas petitioner No.1 shall cease to exist without winding up.

The audited financial statements of both petitioners No.1 and 2 as on 30.06.2021 are available on record as Annexures 'O' and 'P' respectively. 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 Amalgamation/Merger.

As far as the issues raised in 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, which fact is ratified by Additional Registrar of Companies, Incharge Company Registration Office, Karachi, Securities & Exchange Commission of Pakistan by filing a statement dated 12.10.2022, which is taken on record. Hence in substance he has conceded to the Scheme of Amalgamation/Merger.

The Court in the proceedings put a question as to how the two petitioners having distinct objects could be merged as in terms of the Scheme once the two entities are merged, business of power generation i.e. petitioner No.1 cannot be operated through one Memorandum & Articles of Association that concerns with textile mills i.e. petitioner No.2. Learned counsel for the petitioner in the line with the observation of the Court filed amended/revised Scheme, to which the Law Officer SECP has extended his no objection as far as revised memorandum of the merger scheme of two entities i.e. Nadeem Power Generation (Pvt.) Ltd. and Nadeem Textile Mills Ltd. is concerned.

In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of shareholders and board of directors, requisite publication and issuance of notices to the Securities & Exchange Commission of Pakistan. In terms of such meetings of the board of directors and shareholders to the extent it is applicable and report pertaining to such meetings are available on record and not a single shareholder of any of the two petitioners objected to the scheme. Copy of letter of Pakistan Stock Exchange to such merger and that of swap ratio calculation issued by the Chartered Accountants are available on record. The publication of the instant petition was effected in Daily 'Dunya and 'Business Recorder' of Lahore, Karachi and Islamabad in their issue of 03.01.2022 and was also gazette.

It is settled principle of law that the approach is 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 understand the concept of question, 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 Amalgamation/Merger.

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

Dated:

Judge