

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 49 of 2021

In the matter of
SPI Insurance Company Limited
And
The United Insurance Company of Pakistan Limited

Date of Hearing: 23.01.2023

Petitioners: Through Mr. Ali Ibrahim Advocate.

SECP: Through Syed Ibad, Law Officer, SECP.

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition under sections 279 to 283 and 285 of Companies Act, 2017 pertains to merger of petitioner No.1 with petitioner No.2. The purpose of the petition is sanction of the scheme of Merger attached as Annexure 'G' to the petition. In substance the petitioners have proposed to restructure in terms whereof petitioner No.1 i.e. SPI Insurance Company Limited is required to be merged and amalgamated into petitioner No.2 i.e. The United Insurance Company of Pakistan Limited.

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

3. In terms of the Scheme of 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 issuance of shares of petitioner No.2 to shareholders of petitioner No.1 on the effective date as per the computed share swap ratio based on breakup value whereby 0.90 shares of petitioner No.2 shall be issued for every 1 share of petitioner No.1. Thus, in terms of

Scheme of Merger petitioner No.2 will act accordingly whereas petitioner No.1 shall cease to exist without winding up. The members, creditors and shareholders of petitioners will remain duly secured to the same extent as they are at present without affecting the security interests and other rights of the member or creditors of the petitioner.

4. Initially petitioners approached Lahore High Court via Civil Original No.52268 of 2021 for sanction of scheme of merger where most of the codel formalities were completed. However, on the point of jurisdiction, it is filed before this Court and a request is made that the same may be treated and considered in this petition to save the time and money spent as the same would not cause any prejudice to anyone. Notwithstanding filing of such lis before Lahore High Court, our jurisdiction is conferred by virtue of two petitioners being registered within territorial limits of this Court and having their registered office.

5. The annual reports both petitioners No.1 and 2 as on 31.12.2020 are available on record as Annexures 'K' and 'O' respectively containing financial statements, auditor's reports, statement of profit or loss etc. 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. They were unanimous in their view that in order to improve the businesses of both the petitioners it would be advantageous if petitioner No.1 is merged with into petitioner No.2. The shareholders of petitioner No.2 shall be issued shares of petitioner No.1 based on the swap ration and in accordance with the Scheme of Merger. No shareholder had objected to such swap ratio.

6. Separate extraordinary meetings of the two petitioners were held on 23.10.2021 and 16.10.2021 respectively and its minutes are annexed as Annexure D/1 and D/2. A joint report of the Chairman is filed, which

after considering all the aspects of the matter has recommended for approval of the subject merger. Copies of certificates of incorporation, change of name and Memorandum & Articles of Association of both the petitioners with ancillary documents are filed as Annexure I onwards. A pre-merger application dated 25.08.2021 under the provisions of Competition Act, 2010 read with Competition (Merger Control) Regulations 2016 was also filed before the Competition Commissioner of Pakistan seeking approval of the merger, which was accorded in terms of order dated 15.09.2021.

7. 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. Hence in substance he has conceded to the Scheme of Merger.

8. 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. Copies of letter of swap ratio calculation issued by the Chartered Accountants are available on record. The publication of the instant petition was effected in Daily 'Jang' and 'The News' Karachi in its issue of 24.01.2022.

9. 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.

10. 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 Merger.

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

Dated: 23.01.2023

Judge