

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 04 of 2022

In the matter of
The Chancellor Masters and Scholars of the University of Oxford
And
Oxford University Press Pakistan (SMC-Private) Limited

Date of Hearing: 30.01.2023

Petitioners: Through Mr. Muhammad Abdur Rahman, Advocate.

SECP: Through Syed Ibad, Law Officer, SECP.

JUDGMENT

Muhammad Shafi Siddiqui, J.- This petition under Section 279 and 282 of the Companies Act, 2017 seeks a sanction of Scheme of Arrangement meant for the amalgamation of Petitioner No.1 with and into the petitioner No.2.

2. Chancellor Masters and Scholars of the University of Oxford operates in Pakistan through Oxford University Press Pakistan Branch i.e. petitioner No.1, whereas, petitioner No.2 is the Oxford University Press Pakistan (SMC-Private) Limited. Cumulatively, an order of the entire undertaking of Oxford University Press Pakistan Branch the Petitioner No.1 for its transfer to and vest in the petitioner No.2 is sought which would be inclusive of:-

- (a) the entire business, operations and activities of all properties, assets, rights, liabilities and obligations of Oxford University Press Pakistan Branch as described in the scheme.
- (b) without an issue of shares of Petitioner No.2 to Petitioner No.1.

(c) with the closure of Oxford University Press Pakistan Branch of Petitioner No.1.

3. The scheme of arrangement internally materialized on 28th March, 2022 and claimed to have been adopted by the Steering Committee to whom powers were delegated by the Finance Committee, which is at par with its board of directors to that of Board of Directors of the Petitioner No.2.

4. The paramount consideration is the transfer of entire business operation activities, assets, rights obligations of Petitioner No.1 to Petitioner No.2 which is an entity having a distinct corporate status. It is to be seen whether such corporate status is recognized under the corporate regime, as applicable presently, to enable it to be merged and transferred to and vest in the Petitioner No.2.

5. The University of Oxford set up a department by the name of and which is trading as, Oxford University Press. Oxford University Press does not have any share capital.

6. Petitioner No.1 is a statutory corporation evolved under the laws of England that is an Act for the Incorporation of University of Oxford and Cambridge, 1571. It is with this background that the Petitioner No.1 is known by the name of Chancellor Masters and Scholars of the University of Oxford and does not have any share capital being creation of an act and its offshoots. Oxford University Press Pakistan Branch is thus a trading extension of the University of Oxford.

7. Initially, permission was granted under the registration letter dated 06.06.1967 by the Government of Pakistan, Ministry of Industries and Natural Resources (Industries Division), Department

of Investment Promotion and Supplies (Investment Promotion Wing).
Petitioner No.1 thus in this way formed a commercial extension of
University of Oxford and acquired corporate status.

8. Petitioner No.2 however is a company defined under Section 2(1)(17) of the Companies Act, 2017 and is registered as a single member company as defined under Section 2(1)(65) of the Companies Act. Since it is incorporated under the laws of Pakistan, the share capital of Petitioner No.2 was set at Rs.100,000/- divided into 10,000/- ordinary shares of Rs.10 each of which 10,000 ordinary shares are fully issued and paid up. It is thus a wholly owned subsidiary of Oxford Publishing Limited which itself is owned subsidiary of Petitioner No.1.

9. In compliance of Section 781 of Sindh Chief Court Rules (O.S) and Rule 19 of the Companies (Court) Rules, 1997, notices of filing of the petition, prayer clauses and CMA No.922/2022 were published in the official gazette of Pakistan dated 11.5.2022 as well as in three leading newspapers such as Dawn, Business Recorder and Daily Jang on 18.05.2022. The notices were also served upon the Registrar of the Companies in terms of Section 283 of Companies Act, 2017 on 26.04.2022. The notices were also affixed in the Court's notice board on 26.04.2022.

10. Regulation 5 of the Competition (Merger Control) Regulation, 2016 was pressed by SECP's counsel, however, it identified transactions which are exempted from seeking pre-merger clearance
i.e:-

- 1. a transaction in which a holding company (whether incorporated in or outside Pakistan) increases its stake in its subsidiary or the subsidiaries thereof (whether*

incorporated in or outside Pakistan), or if such subsidiary acquire or increase their equity investment in each other.

2. *a transaction in which a holding company (whether incorporated in or outside Pakistan), merges, amalgamates, combines or ventures jointly with its subsidiary or the subsidiaries thereof (whether incorporated in or outside Pakistan) merge, amalgamate, combine or venture jointly with each other.*

Since the Petitioner No.2 is a wholly owned subsidiary of Oxford Publishing Limited, which in turn is a wholly owned subsidiary of the University of Oxford, the Petitioner No.2 thus belongs to the same economic group as the petitioner No.1 (University of Oxford) and therefore, falls within the exemptions set out under Regulation 5 of the Competition (Merger Control) Regulations 2016. Therefore, premerger clearance is not required.

11. On 05.09.2022 resolution approving and adopting the scheme of arrangement was passed by sole member of petitioner No.2. Thus petitioner No.2, the single member company in terms of Section 134(11) of the Companies Act, 2017, passing of a resolution and being recorded in the relevant minutes book of the Petitioner No.2 is a compliance of the Companies Act, 2017.

12. This was followed by a report of the Director of petitioner No.2 dated 19.9.2022 to this court describing chairman's report on the resolution passed by the sole member of petitioner No.2, in compliance of Sindh Chief Court Rule i.e 955 and Rule-55 of the Companies (Court) Rules, 1997. For the purposes of verification and resolution approving and adopting the scheme of arrangement, a Chartered Accountant was entrusted who assented.

13. So far as the creditors' stake is concerned, the scheme of arrangement is shown to have been carved out in a way that it will

not diminish or affect the rights and securities of the creditors as essentially and eventually those will then be considered as creditors' of petitioner No.2 for the amounts owing and with the benefits of the same securities as would be subsisting against Oxford University Press Pakistan Branch immediately before the aforesaid transfer, petitioner No.2 on its merger will consider itself as under the obligation to discharge all such liabilities and to perform all obligations as were required by Oxford University Press Pakistan Branch. Notwithstanding above, in view of creditors' consent received by Oxford University Press Pakistan Branch of petitioner No.1, there is no occasion for convening or holding meetings of the creditors to seek their further approval to the scheme of arrangement when the consent is given which scheme otherwise secures all creditors. The scheme also offers employments to all employees of petitioner No.1 and consequently preserves the employment of all those employees of Oxford University Pakistan Branch who accept employment (as all the employees will be offered), with petitioner No.2 on the same terms and conditions upon the above transfer.

14. In response to a query of SECP, a body corporate requirement of petitioner No.1, it could be seen that the petitioner No.1 is the University of Oxford which is a statutory corporation established under the law of England as discussed above.

15. Section 2(1)(9) of the Companies Act, 2017 describes a body corporate which includes a statutory body declared as body corporate in the relevant statute. The Act for incorporation of the Universities of Oxford and Cambridge, 1571 also states that the University of Oxford shall be incorporated and have perpetual succession in fact, deed and name and shall have a common seal to serve for necessary

causes touching and concerning the University of Oxford and that the University of Oxford may severally implead and be impleaded and sue or be sued by all manner of causes, quarrels and actions of whatsoever kind, quality and nature¹.

16. SECP has objected to the existing status of the petitioner No.1 in Pakistan which is to be ascertained out of Companies Act, 2017 or any statute earlier existing or any department recognizing the status of body corporate. It is thus described above as far as the creation of petitioner No.1 is concerned.

17. It is established in the year 1967 with the permission of Ministry of Industries and Natural Resources (Industries Division) Department of Investment, Promotion and Supplies (Investment Promotion Wing). The objection of the SECP that concerns with the promotion "BOI" is not confidence inspiring as at the relevant time it was not in existence and it came into being later when it took over the responsibilities of the investment promotion bureau and the investment promotion wing of the Ministry of Industries when the entity that is petitioner No.1 has already been in existence. Precisely, Investment Promotion Bureau, which is offshoot of Ministry of Industries, was set up in 1959 which was later on taken over by the Investment Promotion Wing of the Ministry of Industries which then took over the responsibilities. Ordinance 2001 (Board of Investment) does not make an explicit references to the status of registration issued by the predecessor of BOI and therefore, such prior registration of foreign companies in Pakistan would continue to be recognized.

¹ Act for Incorporation for the Universities of Oxford and Cambridge, 1571.

18. Pursuant to Section 282(1)(c) read with Section 282(9) of the Companies Act, the scheme provides the transfer to the petitioner No.2 of the whole undertaking and property and liabilities in Pakistan of the University of Oxford which is a body corporate and hence the transferor company. The “reasons” for this transfer and benefits have never been considered for a judicial review as it is their wisdom, which cannot be challenged. Only thing which is important for the court to see is whether this merger is lawful and has undergone the requirement of law.

19. The Scheme of Arrangement under consideration as such stands approved as has been done by the petitioners and the creditors, which seems to be fair and reasonable and is not found against public or any individual’s interest. All financial and other related information including last audited accounts and unaudited accounts of the petitioners have been disclosed and no investigation proceedings claimed to have been pending before any forum including SECP.

20. The petition as such is granted as prayed.

JUDGE

Karachi
Dated: 03.03.2023

Ayaz Gul