

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 16 of 2022

In the matter of
Awwal Modaraba Management Ltd.
And
KASB Modaraba
And
First Pak Modaraba
And
First Prudential Modaraba

Date of Hearing: 02.03.2023

Petitioners: Through Mr. Faiz Durrani Advocate.

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

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition under sections 279 read with Sections 280 and 283 and 505(1)(C) of Companies Act, 2017 pertains to merger of petitioners No.2 and 3 with and into petitioner No.4 through petitioner No.1 which is vested with the rights of management of petitioners No.2 to 4. The purpose of the petition is sanction of the Scheme of Arrangement attached as Annexure 'P-5' to the petition to give effect to proposed merger. In substance the petitioners have proposed restructure and merger whereby petitioners No.2 and 3 i.e. KASB Modaraba and First Pak Modaraba are to be merged and amalgamated into petitioner No.4 i.e. First Prudential Modaraba.

2. On presentation of the petition on 05.07.2022, notices were ordered to be published in terms of Rule 76 read with Rule 19 of the Companies Ordinance (Court) Rules, 1997 whereas on application under Rule 55 of Companies (Court) Rules 1997 permission was accorded to hold meetings of the certificate holders and to appoint the Chairman. On

23.12.2022 notices were issued to SECP as well. The SECP filed its comments, whereas no objections of whatsoever nature has been received from any quarter.

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

4. In terms of the Scheme of Arrangement entire undertaking and business including assets, rights, properties, benefits, powers privileges, contracts, liabilities, encumbrances, obligations and dues of petitioners No.2 and 3 will be transferred to and vested in and assumed by petitioner No.4 against the issuance of certificates of petitioner No.4 to certificate holders of petitioners No.2 and 3 in terms as set out in the Scheme of Arrangement. Thus, in terms of Scheme of Arrangement, petitioner No.4 will act accordingly as a going concern whereas petitioners No.2 and 3 shall cease to exist without winding up. The members, employees and certificate holders etc. of petitioners No.2 to 4 will remain secured and their rights and interests are taken care of in the Scheme of Arrangement and so also the secured creditor who is only one who has also given its no objection.

5. Petitioner No.1 has got requisite No objection Certificate from Registrar Modaraba SECP vide letter dated 24.06.2022 of SECP in pursuance of an application to Registrar, Modaraba Companies & Modarabas in respect of proposed merger, though subject to fulfillment of certain conditions, which appear to have been fulfilled. As regards the exemption and/or NOC from Competition Commission of Pakistan is concerned, in terms of Section 11 of the Competition Act, 2010, the petitioners are exempted from filing such application and in this regard correspondence is available as Annexure P-8 and P-9. The annual audited reports of petitioners No.1 to 3 ended December, 2021 financial statements as on 31.03.2022 are available on record as Annexures P/10

to P/11 respectively containing financial statements, auditor's reports, statement of profit or loss balance sheets etc.

6. The Scheme is determined and approved by the respective Board of directors of all the petitioners after considering all the aspects of the matter. They were unanimous in their view that it would be advantageous if petitioners No.2 and 3 are merged with into petitioner No.4.

7. Separate extraordinary meetings of the petitioners were held on 12.08.2022 by the Chairman appointed in terms of the above referred order and its minutes are placed on record via statement dated 02.03.2023 filed by learned counsel for petitioners in Court today, which is taken on record. Chairman's report of petitioners No.2 to 4 after considering all the aspects of the matter has recommended for approval of the subject merger.

8. As far as the issues raised in the parawise comments of SECP as well as of Additional Registrar of Companies, Incharge Company Registration Office, Karachi, 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 Arrangement.

9. In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of certificate holders 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 certificate holders to the extent it is applicable and reports pertaining to such meetings available on record, not a single certificate holder of any of the petitioners objected to the scheme, as referred above. The

publication of the instant petition was effected in Daily 'Jang' and 'The News' Karachi in its issue of 29.07.2022 and official gazette has been issued on 03.08.2022.

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

Dated: 02.03.2023

Judge