

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:
Mr. Justice Muhammad Shafi Siddiqui

J.C.M. No. 14 of 2022

In the matter of
Foundation Securities (Pvt.) Ltd.
And
Askari Securities Limited

Date of Hearing: 13.03.2023

Petitioners: Through Mr. Abdul Rehman Advocate.

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

J U D G M E N T

Muhammad Shafi Siddiqui, J.- This petition under section 279 to 282 and 285 of Companies Act, 2017 pertains to merger of petitioner No.2 with petitioner No.1. The purpose of the petition is approval of the scheme of arrangement dated 29.12.2021 attached as Annexure 'A' to the petition. In substance the petitioners have proposed to restructure in terms whereof petitioner No.2 i.e. Askari Securities Limited is required to be merged and amalgamated into petitioner No.1 i.e. Foundation Securities (Pvt.) Limited.

2. By virtue of an order dated 22.06.2022, meetings of members of the petitioner companies was ordered to be held in pursuance of application filed in that regard, and so also publication of notices of main petition to be published in official gazette and newspapers, as required under the scheme of Company Court Rules 1997 and Sindh Chief Court Rules (OS). Notice to Securities & Exchange Commission of Pakistan was also issued.

3. The SECP after notice have marked their appearance and have raised some formal objections in their parawise comments, which Law

Officer appearing for SECP has also agitated during the course of his arguments.

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

5. In terms of the Scheme of Arrangement entire undertaking and business including assets, rights, properties, benefits, powers privileges, contracts, trading terminals, servers, back-office system, trademarks, patents, liabilities, obligations and dues etc. of petitioner No.2 will be transferred to and vested in and assumed by petitioner No.1 against the allotment and issue of shares of petitioner No.1 to Askari Bank Limited, which shall be in terms as stipulated in the Scheme of Arrangement and prayed for in prayer clause. Such ratio and scheme is based on the recommendation of the Chartered Accountants after considering the financial positions of the company. Thus, in terms of Scheme of Arrangement petitioner No.1 will act accordingly whereas petitioner No.2 shall cease to exist without winding up and its shares held by shareholders shall stand cancelled.

6. The audited financial statements of both petitioners No.1 and 2 for the year ending 31.12.2021 are available on record. 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 interests and rights of the employees of the petitioner No.2 are safeguarded in the Scheme of Arrangement and comprehensive policy has been devised in that regard. Creditors of the petitioners have consented to the Scheme of Arrangement and letter of Chartered Accountants in that regard is available on record at page 497. Competition Commission of Pakistan has deliberated upon the Scheme and passed order on 14.02.2022, copy of which is placed on record. So also SECP accorded its approval in terms of

letter dated 19.05.2022, copy of which is attached as Annexure 'I' to the petition.

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 and even the Law Officer has conceded to it. Hence in substance he has conceded to the Scheme of Arrangement.

8. In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of shareholders and creditors, requisite publication and issuance of notices to the Securities & Exchange Commission of Pakistan. In terms of meetings of the shareholders reports of which meetings are available on record, not a single shareholder of any of the two petitioners objected to the scheme. The publication of the instant petition was effected in Daily 'Jang', 'The Dawn', 'Business Recorder' of Karachi, 'Nawai-e-Waqt' and 'The Nation' of Lahore and 'Business Recorder' and 'Nawai-e-Waqt' of Rawalpindi Islamabad, in their issue of 05.08.2022 and was also gazette on 06.07.2022. Reports of the Chairmen in terms of Rule 955 of SCCR and Rule 57 of Companies (Court) Rules, 1997 are also available on record in terms whereof meetings of the members were held wherein no objection of whatsoever nature has been raised.

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

Dated: 13.03.2023

Judge