

IN THE HIGH COURT OF SINDH KARACHI

J. C. M. No. 10 of 2022

Date	Order with signature of Judge
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For hearing of Main Petition :

Petitioners : 1. Bhanero Energy Limited,
2. Bhanero Textile Mills Limited,
through M/S Omer Soomro and Shahbakht Pirzada
Advocate.

SECP through Law Officer Syed Hafiz Ibad.

Date of hearing : 31.05.2023.

ORDER

NADEEM AKHTAR, J. – The petitioners viz. Bhanero Energy Limited (petitioner No.1) and Bhanero Textile Mills Limited (petitioner No.2) have filed the present petition under Section 279 read with Section 282 of The Companies Act, 2017 (**‘the Act’**), as amended by the Companies (Amendment) Ordinance, 2020, seeking the sanction of this Court for the Scheme of Arrangement (**‘the Scheme’**) (page 31) proposed and approved by their respective Boards of Directors. The Scheme, *inter alia*, provides the demerger of BEL-Kotri Unit-1 Undertaking from petitioner No.1 whereafter the same shall stand transferred to and vest in petitioner No.2 ; reduction in the issued and paid-up share capital of petitioner No.1 ; and, issue of the BTML shares by petitioner No.2 to BEL shareholders in proportion to their existing shareholding. In this background, the petitioners have prayed, *inter alia*, that the Scheme be sanctioned by this Court so as to make it binding on the petitioners and their respective members and creditors. Further consequential relief under Sections 282(1)(f), 282(3)(b), 282(3)(c) and 282(3)(f) of the Act has also been prayed for by the petitioners. It is stated in the petition that the respective Boards of Directors of the petitioners, in their meetings held on 07.04.2022, have duly approved the Scheme by way of resolutions dated 07.04.2022 (pages 65 and 71).

2. The main object of the Scheme submitted by the petitioners for the sanction of this Court is the demerger of BEL-Kotri Unit-1 Undertaking from petitioner No.1 whereafter the same shall stand transferred to and vest in petitioner No.2. The Scheme states that the proposed demerger will, *inter alia*,

enable petitioner No.2 to directly exercise control over and manage the affairs of BEL-Kotri Unit-1 Undertaking in its best interest and its members, and it will no longer be entirely depended on purchase of electricity for its textile facility at Kotri from another city and its energy requirements will be fully or substantially met.

3. Notice of this petition was published in the Gazette of Pakistan dated 06.07.2022 and also in newspapers viz. English daily 'The News' and Urdu daily 'Jang' on 23.06.2022. Notice was also affixed on the Court notice board and it was issued to the Additional Registrar of Companies too. Vide order dated 01.06.2022 passed on CMA No.1194/2022 filed by the petitioners, they were allowed to convene separate meetings of their respective members for approving the Scheme. In compliance of the said order, separate meetings were held whereafter separate reports were filed on 21.07.2022 by the Chairman of the meetings of the members of the petitioners held on 14.07.2022. As per the said reports, the Scheme was placed before the members of the petitioners who approved the same.

4. Para-wise comments were filed by SECP on 03.12.2022, wherein it was stated that petitioner No.1 has one secured creditor viz. UBL and petitioner No.2 has thirteen registered creditors, and the petitioners have not filed the no-objection certificates (NOCs) from their said creditors. Prior to the comments filed by SECP, a statement was filed on 09.06.2022 on behalf of the petitioners along with copies of the no objections certificates issued by all their creditors. As copy of this statement was not received by learned counsel for SECP, time was sought by him on 23.05.2023 to examine the same. He has made a categorical statement today that after examining the aforesaid statement and the no objections certificates of creditors filed therewith, SECP has no objection to the sanction of the Scheme, provided the proposed demerger is effected strictly in terms of the Scheme and all post-demerger requirements are fulfilled by the petitioners in accordance with law.

5. I have examined the Scheme wherein the demerger of BEL-Kotri Unit-1 Undertaking from petitioner No.1 and transferring to and vesting of the same in petitioner No.2 as well as the procedure and the implications thereof have been set forth in detail. The petitioners have disclosed before the Court all material facts relating to them including their latest financial position and the latest audited accounts for the year ended December 31, 2021. The Scheme has been duly approved by the members of the petitioners in their respective meetings held with the permission of this Court, and their creditors and SECP have also accorded their no objection to the sanction of the Scheme. Thus, all

legal and formal requirements for the sanction of the Scheme have been duly complied with by the petitioners.

6. The object of the Scheme, as disclosed therein, appears to be lawful, and the proposed demerger of BEL-Kotri Unit-1 Undertaking from petitioner No.1 does not appear to be against the public interest or policy, or in violation of any law for the time being in force. Thus, there appears to be no impediment in sanctioning the Scheme. In view of the above and also as the members of the petitioners have unanimously approved the proposed demerger, the Scheme is hereby sanctioned and accordingly the petition is granted as prayed.

J U D G E

Shahbaz