

IN THE HIGH COURT OF SINDH KARACHI

J. C. M. No. 06 of 2022

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

Petitioners : 1. B.R.R. Investment (Private) Limited,
2. BRR Guardian Limited and
3. B.R.R. Guardian Modaraba,
through Mr. Abdul Qayyum Abbasi Advocate.

Respondent : SECP through Syed Hafiz Ibad, Law Officer, SECP.

Date of hearing : 22.03.2023.

ORDER

NADEEM AKHTAR, J. – The petitioners viz. B.R.R. Investment (Private) Limited (petitioner No.1), B.R.R. Guardian Limited (petitioner No.2) and B.R.R. Guardian Modaraba (petitioner No.3) have filed the present petition under Section 279 read with Sections 280 to 283 and 505(i)(c) 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 225) proposed and approved by their respective Boards of Directors. The Scheme, *inter alia*, provides the proposed amalgamation of petitioner No.3 with and into petitioner No.2. Petitioner No.1 is stated to be the Management Company of petitioner No.3.

2. The petitioners have prayed for as under :

“ It is most respectfully prayed on behalf of the petitioners named above that this Hon’ble Court may very graciously be pleased to pass the following orders, if the certificate holders of the petitioner No.3 have approved the scheme (as the petitioner Nos.2 and 3 do not have any secured creditors) at a meeting called on the application made under Rules 55 of the Companies Court, Rules 1997 :

(a) *An order under Section 279(2) of the Companies Act, 2017 sanctioning the scheme as set-forth in Annexure ‘D’ hereto so as to make the Scheme binding on the petitioners and the certificate and shareholders of petitioner No.2 & 3 ;*

(b) *Following orders under Section 282 of the Companies Act, 2017 namely :*

- (i) *An order under Section 282(1) of the Companies Act, 2017 transferring to and vesting in the petitioner No.2 the whole undertakings, assets, properties, liabilities, rights, benefits, powers, privileges, licenses, contracts of the petitioner No.3 as more particularly described in the Scheme as set-forth in Annexure 'D' ;*
- (ii) *All necessary orders to give effect to the Scheme, including but not limited to, an order whereby all assets, businesses, undertakings, properties, rights and liabilities of petitioner No.3 are transferred to and vested in petitioner No.2 and similarly, all liabilities and duties of petitioner No.3 are assumed by and vested in petitioner No.2 which shall be deemed as listed company on Pakistan Stock Exchange with effect from the Effective Date as defined under the Scheme being close of business on June 30, 2022 or such date as may be directed by this Hon'ble Court ;*
- (iii) *An order under Section 282(3)(c) of the Companies Act, 2017 directing that all Suit(s), Appeal(s), Arbitration, Governmental investigations and other legal proceedings instituted by or against petitioner No.3 and any judgment(s), order(s) or direction(s) passed in respect of petitioner No.3 shall be treated as Suit(s), appeal(s) and legal proceedings by or against the petitioner No.2 and judgment(s), order(s) or direction(s) passed in respect of petitioner No.3 may be continued, prosecuted and enforced by or against the petitioner No.2 accordingly ;*
- (iv) *An order that all books of accounts and other documents which would before the Effective Date have been the evidence in respect of any matter for or against petitioner No.3 shall be admissible in evidence in respect of the same matter for and against petitioner No.2 ;*
- (v) *An order directing that the petitioner No.2 be deemed as listed company on the Pakistan Stock Exchange and the petitioner No.3 shall stand dissolved without winding up ;*
- (vi) *An order directing the petitioner No.2 to issue 94,998,489 share certificates of Rs.10 each of petitioner No.2 to the Certificate holders of petitioner No.3 for each certificate of Rs.10 held by the certificate holder of petitioner No.3 in pursuance of the terms of the scheme.*

2. It is stated in the petition that petitioner No.1 is a private limited company and is the management company of petitioner No.3 ; petitioner No.2 is a public limited company having authorized capital of Rs.100,000.00 divided into 10,000.00 ordinary shares of Rs.10.00 each that are issued and fully paid ; and, petitioner No.3 is a Modaraba having authorized modaraba capital of Rs.1,400,000,000.00 divided into 140,000,000.00 Modaraba certificates of Rs.10.00 each, out of which Rs.94,998,489 Modaraba Certificates of Rs.10.00 are issued and fully paid and the remaining are un-issued.

3. It is further stated that the Registrar Modaraba has accorded his no objection on 28.03.2022 for the proposed amalgamation of petitioner No.3 with and into petitioner No.2. It is also stated that petitioner No.3 has settled the liability of its sole creditor viz. National Bank of Pakistan who has issued a no objection certificate confirming such settlement, and as such petitioner No.3 does not have any creditor ; and, petitioner No.2 also has no creditor. True copies of the audited accounts of petitioner No.3 and the projected balance sheet of petitioner No.2, after the proposed amalgamation of petitioner No.3 with and into petitioner No.2, have been annexed to the petition.

4. The petitioners have submitted that the object of the Scheme submitted by them for the sanction of this Court is to effect the amalgamation of petitioner No.3 with and into petitioner No.2. The Scheme states that after the proposed amalgamation future growth prospects and management of the merged entity would improve significantly as single operation of accounts, treasury and MIS Department will not only save management fee and cost, but will also enhance its profitability.

5. Notice of this petition was published in the Gazette of Pakistan dated 18.05.2022, and also in newspapers viz. English daily 'The News' and Urdu daily 'Jang' on 18.05.2022 and 17.05.2022, respectively. Notice was also affixed on the Court notice board and it was issued to the Additional Registrar of Companies too. Vide order dated 21.04.2022 passed on CMA No.1009/2022 filed by the petitioners, petitioners 2 and 3 were allowed to convene separate meetings of their respective members and certificate holders for approving the Scheme. In compliance of the said order, separate meetings were held whereafter separate reports were filed on 23.05.2022 by the Chairmen of the meetings of the members of petitioner No.2 and certificate holders of petitioner No.3 held on 20.05.2022. As per the said reports, the Scheme was placed before the members and certificate holders and it was approved by them.

6. Para-wise comments were filed by SECP on 23.09.2022, wherein it was stated that the petitioners have not filed the no-objection certificates (NOCs) from their secured creditors. In response to the comments of SECP, a detailed reply / rejoinder was submitted by the petitioners on 07.10.2022 along with supporting material. Learned counsel for SECP states that in view of the said reply by the petitioners, SECP has no objection to the sanction of the Scheme, provided the proposed amalgamation is effected strictly in terms of the Scheme and all post-amalgamation requirements are fulfilled by the petitioners in accordance with law. An undertaking to this effect has been given by learned counsel for the petitioners.

7. I have examined the Scheme wherein the amalgamation of petitioner No.3 with 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 the latest financial position and the latest audited accounts of petitioner No.3 for the year ended December 31, 2021, and the projected balance sheet of petitioner No.2, after the proposed amalgamation of petitioner No.3 with and into petitioner No.2. The Scheme has been approved by the members of petitioner No.2 and certificate holders of petitioner No.3 in their respective meetings held with the permission of this Court, and the Registrar Modaraba has also accorded its consent 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.

8. The object of the Scheme, as stated therein, appears to be lawful, and the proposed amalgamation of petitioners No.3 with petitioner No.2 does not appear to be against the public interest / 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 and certificate holders of petitioners 2 and 3 have unanimously approved the proposed amalgamation, the Scheme is hereby sanctioned and accordingly the petition is granted as prayed.

J U D G E

Shahbaz