

# IN THE HIGH COURT OF SINDH AT KARACHI

JCM No.11 of 2022

*[M/s. Liven Pharmaceuticals (Pvt.) Limited-Petitioner No.1  
M/s. Landmark Spinning Industries Limited-Petitioner No.2]*

Date of hearing : 19.08.2024

Petitioners No.1 and 2 : Liven Pharmaceuticals (Pvt.) Limited and M/s. Landmark Shipping Industries Limited, through M/s. Ammar A. Saeed and Syed Sheheryar Raza Zaidi, Advocates.

: Syed Ibad, Counsel for the Securities and Exchange Commission of Pakistan (SECP).

## **JUDGMENT**

**Muhammad Faisal Kamal Alam, J:** Through this Petition, the Petitioner No.1 has sought sanctioning of Scheme of Arrangement under Sections 279 (2) of the Companies Act, 2017 (“**the Act**”), between the Petitioners No.1, 2 and their respective Members, as contained in Annexure “**T**” of this Petition.

2. As required, Publication of the Subject was done in the different Dailies, which are available in record. The Resolutions passed by the Board of Directors of Petitioner No.1 of the Meeting held at its Registered Office on 06.04.2022 and 13-04-2022 is at page-223 (of the Court File; Annexure “**H**”), whereas, the Resolution passed by the Board of Director of Petitioner No.2 at their Meeting held on 13.04.2022 is appended as Annexure “**H-1**” (at page-231 of the Court File). The Board of Petitioner No.1 has resolved that the latter along with assets and liabilities, be merged by way of amalgamation into the Petitioner No.2 in accordance with the terms of the Scheme of Arrangement as envisaged in Sections 279 to 283 and 285 of the Act, *inter alia*, in exchange for issuance of ordinary shares of Petitioner

No. 2 to the Shareholders of Petitioner No.1, in accordance with Articles 4 and 5 of the Scheme [Page 241 of the *Lis*], subject to finalization of the same by the authorized Representative(s) of the Petitioner No. 1, and any changes, modifications as may be required by the shareholders of the Petitioner No.1, Petitioner No.2, and / or this Court, and / or such amendments as may be considered necessary to rectify an error or for clarifying any provision of the Scheme without affecting the substance thereof.

3. Similarly, Petitioner No.2 also in its Board Meeting [*ibid*] gave formal approval of the Scheme of Amalgamation with Petitioner No.1, *inter alia*, concerning swap ratio, change in the Object Clause of the Memorandum of Association of the Petitioner No. 2, increase in the authorized share capital, Directors loan appearing in the Books of the Petitioner No. 1.

4. Salient object(s) of the merger is\_

- i) combine the assets and liabilities of both the Petitioners and their Members into one Company, to bring significant value addition to its Members / shareholders of both the Companies, which would likely to benefit the employees also of the surviving entity, besides resulting in enhance security available to the creditors. Petitioner No.1 will be dissolved without winding up and the surviving entity (Petitioner No.2) shall be renamed as ‘Liven Pharma Limited.’
- ii) by way of the subject merger, the shareholders of the Petitioner No.1 through the surviving entity, viz. Petitioner No.2 will be able to merge with and hold ownership in an existing listed Company (as Petitioner No.2 is listed on Pakistan Stock Exchange); *inter alia*, enabling to expand the scope and scale of business

operations by raising funds in such mode and manner as are available to public listed companies.

5. The assets and liabilities of the Petitioner No.2 as on 31.12.2021 are detailed in the audited financial Statement of the Petitioner No.2, which has been appended with the Petition as Annexure “F”.

6. By the Order dated 20.05.2022, this Court granted the application of Petitioner No.1, *inter alia*, permitting it to hold the Creditors Meeting, which was held on 29.06.2022 and the Report is filed by the Advocate as Annexure “C” to its Reply to the Comments filed by the Securities and Exchange Commissioner of Pakistan (“SECP”). According to this Report, the sole Creditor of Petitioner No.1, Bank Al-Habib Limited had approved the Scheme. The liabilities of the Petitioners is stated in Articles 4 and 5 of the Scheme and shall be settled accordingly. Two private Entities are the Creditors of Petitioner No.2, which gave their consent to the Scheme in terms of a Tripartite Agreement [between them and Petitioner No.2, at Page 305 of the *Lis/File*] and their liabilities would be settled by transfer of the immovable asset [Land in the Industrial Estate at Winder, Balochistan], owned by the Petitioner No.2.

7. Pakistan Stock Exchange [PSE] by its Letter dated 11<sup>th</sup> August 2022, upon the request of Petitioner No. 1, has granted relaxation by invoking Regulation 5.22.7 [of Pakistan Stock Exchange Regulations], which reads\_

*“Where the Exchange is satisfied that it is not practicable to comply with any requirement pertaining to Reverse Merger as provided in these Regulations, in a particular case or class of cases, the Exchange may, for reasons to be recorded, relax such requirement subject to such condition(s) as it may deem fit.”*

8. Tax Consultant of Petitioner No.1 has addressed a pre-merger Notice dated 17.10.2022 to Competition Commission of Pakistan [CCP], *inter alia*, highlighting the fact, that since annual turnover of both the

Undertakings / Petitioners is less than rupees one billion, therefore, they are exempted from the application of Regulation 4 [2] [a] and [b] of the Competition [Merger Control] Regulations, 2016. *Hitherto*, it is not objected to by the Competition Commission of Pakistan.

9. SECP [Security and Exchange Commission of Pakistan] has filed the Additional Comments in compliance of the Order dated 4<sup>th</sup> May 2023 [observing, that both Petitioners are doing businesses of different nature, that is, Petitioner No.1 is a pharmaceutical company, whereas, Petitioner No.2 is in the business of production and sale of textile yarn and other specialized products], that the Scheme provides about the amendment in the Memorandum of Association of Petitioner No.2 to change principal line of business, to manufacture and sale of pharmaceutical and other allied products. In addition to the above the Petitioners' Counsel has also placed reliance on a reported Judgment of the Lahore High Court, handed down in *Dilsons (Private) Limited and Others versus Security and Exchange Commission of Pakistan - 2021 CLD 1317*. This Decision is perused, which, inter alia, has exhaustively explained 'Mergers', its philosophy and statutory requirements. It is held in Paragraph 31, "*There is no restriction as regards the kind of company with which alone there can be amalgamation. If the shareholders resolve to amalgamate with a company, whether having same or different objects, the court will not sit in judgment over the wisdom or otherwise of the resolution.*"

10. One of the objections raised by SECP is non participation of National Bank of Pakistan [NBP] which holds 32.75% shares in Petitioner No.2; it is averred that post-merger scenario does not clarify about the shareholding pattern of National Bank of Pakistan. The Counsel for the Petitioner, has replied this objection by referring to Paragraphs 11 and 14 [x] of the Rejoinder [Reply by the Petitioners to the Comments of SECP],

that shareholding of the main Sponsors / Directors and associated companies are mentioned for the purpose of this Petition; Clause (q) of Article-5 of the Scheme is referred, to point out that it pertains to ‘Selling Shareholders’, that they will sell their shareholding to the existing shareholders of Petitioner No.1, who are referred as ‘Purchasing Shareholders’, which means that shareholding of NBP will remain intact. Petitioners Counsel cited a reported Judgment of this Court in *Paramount Spinning Mills Limited and Others- 2020 CLD 1443*, where Bank of Punjab [Creditor] objected to the Scheme of Compromise / Arrangement, and NBP remained absent; the Court interpreted Section 279 [Sub-section 2, in particular] of the Act, that requirement of law is that creditors or class of creditors representing three-fourths in value, present and voting in favour of any compromise or arrangement, the same shall, if sanctioned by a Court, be binding on the company and all its creditors [same criterion is for members]; when despite notice NBP opted to remain absent and the resolution was passed by those creditors which constitute 3/4<sup>th</sup> majority, considering their volume of liability; held, the decision was binding and the statutory threshold of three-fourth majority is fulfilled.

11. In view of the above discussion, this Petition is granted and the Scheme of Arrangement of the Petitioners is sanctioned and approved.

**JUDGE**

Karachi.

Dated: 02.09.2024

MJavaidPA