

IN THE HIGH COURT OF SINDH AT KARACHI

J.C.M. NO.10/2023

IN THE MATTER OF:

- 1. FIRST UDL MODARABA**
 - 2. UDL INTERNATIONAL LIMITED**
 - 3. UDL FINANCIAL SERVICES LIMITED**
- **PETITIONERS**

Date of hearing and order: 02.11.2023.

Petitioners: Through Mr. Hassan Ali advocate.
SECP on Court notice: Through Syed Abad advocate for SECP.

J U D G M E N T

SALAHUDDIN PANHWAR, J: This petition under section 279 to 283 and section 285 r/w section 505(1)(c) of Companies Act, 2017 seeks sanction of subject Scheme of Arrangements (Annexure-A). In substance the petitioners have proposed to restructure, in terms whereof petitioner No.1 is required to be merged / amalgamated into petitioner No.2 and petitioner No.3 is required to issue share capital to petitioner No.2.

2. By order dated 12.05.2023 on application under section 279(1) of the Act of 2017 meetings of the members/certificate holders of petitioners was ordered, person named in that application was appointed Chairman. Publication of advertisement of the petition in official gazette and newspapers and affixation of notice on notice board of this Court was ordered; notice was issued to Registrar of Companies, as required under the Act 2017 and Sindh Chief Court Rules (OS) as well notice was ordered to be issued to SECP. The counsel for SECP after notice has marked his appearance and has raised some formal objections.

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

4. Terms of the Scheme of Arrangement provide proposed amalgamation / merger of petitioner No.1 with and into petitioner

No.2 by transferring to and vesting in the petitioner No.2 the entire undertaking and business including diminishing and non-diminishing musharika portfolios together with all assets properties, rights, liabilities, quotas and obligations with effect from the effective date as defined in the scheme; as a result of proposed amalgamation/merger, petitioner No.1 shall stand dissolved without being wound up and petitioner No.2 shall hive down the diminishing musharika portfolio to petitioner No.3 which is wholly owned by petitioner No.2. Per Scheme petitioner No.1 shall be dissolved and cease to exist without winding up while petitioner No.2 and 3 will continue as going concerns under their respective existing names and none of them shall be dissolved.

5. The proportion in which the share of petitioner No.2 are to be allotted in lieu of certificates of petitioner No.1 held by the registered shareholders has been recommended in respect of special purpose balance sheets of petitioner No.1 which have been accepted by board of directors of petitioners No.1 and 2 and on the basis of special purpose balance sheets a share swap ratio letter has been issued by A.F. Ferguson & Co., Chartered Accountants.

6. As far as the issues raised in the parawise comments, which learned counsel has also agitated during the course of arguments, perusal of the record reveals that all such objections are met and even learned counsel has conceded to it. Hence in substance he has conceded to the Scheme of Arrangement. The basic requirement of Section 279 of the Companies Act 2017 is as follows:-

- (i) there must be a compromise / arrangement/ Scheme
- (ii) proposed between a company and its creditors
- (iii) application to be made to the Commission, now the High Court, as defined above;
- (iv) supported by meetings
- (v) mandatory filing of material facts relating to the company which is;
 - (a) financial position
 - (b) auditor's report
 - (c) latest accounts of the company
 - (d) the pendency of any investigation proceedings
 - (e) supported by the affidavits

7. In Case of Sidhpur Mills Co. Ltd. (AIR 1962 Gujrat 305), the learned Judge while pointing out the correct approach for sanctioning of scheme held that the scheme should not be scrutinized in the way a carping critic, a hairsplitting expert, a meticulous accountant or a fastidious counsel would do it, each trying to find out from his professional point of view what loopholes are present in the scheme, what technical mistakes have been committed, what accounting errors have crept in or what legal rights of one or the other sides have or have not been protected. But it must be tested from the point of view of an ordinary reasonable shareholder acting in a business-like manner taking with his comprehension and bearing in mind all the circumstances prevailing at the time when the meeting was called upon to consider the scheme in question.

8. By examining sections 279 to 284 of the Companies Act it is clear where the scheme is found to be reasonable and fair, at that moment in time it is not the sense of duty or province of the Court to supplement or substitute its judgment against the collective wisdom and intellect of the shareholders of the companies involved. Nevertheless, it is the duty of the Court to find out and perceive whether all provisions of law and directions of the court have been complied with and when the scheme seems like in the interest of the company as well as in that of its creditors, it should be given effect to. However the Court has to satisfy and reassure the accomplishment of some foremost and rudimentary stipulations that is to say, the meeting was appropriately called together and conducted; the compromise was a real compromise; it was accepted by a competent majority; the majority was acting in good faith and for common advantage of the whole class; what they did was reasonable, prudent and proper; the Court should also satisfy itself as to whether the provisions of the statute have been complied with; whether the scheme is reasonable and practical or whether there is any reasonable objection to it; whether the creditors acted honestly and in good faith and had sufficient information; whether the court ought in the public interest to override the decision of the creditors and shareholders.

9. In view of the above, it appears that the petitioners completed all necessary legal formalities, including holding separate meetings of members/certificate holders of petitioners, requisite publication and issuance of notices. In terms of referred meetings of the members/certificate holders to the extent they are applicable and report pertaining to such meetings are available on record with approval. The publication of the instant petition was effected in Daily Jang and Daily News Karachi in their issue of 12.05.2023. Official Gazette is also available. Reports of the Chairmen in terms of Rule 955 of SCCR are also available on record in terms whereof meetings of the members of petitioner No.1 to 3 were held wherein subject scheme of arrangement was adopted/approved. As explained above, once the requirements of a scheme for getting sanction of the court are found to have been met, the Court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval of the scheme. There does not remain any objection to the scheme of arrangement and no mistake, conspicuous, detectable shortcoming or flaw has further been pointed out in the present matter.

10. For the foregoing reasons, there remains no impediment to grant and sanction of the Scheme of Arrangements. Accordingly, this petition is allowed and the Scheme of Arrangements (Annexure-A) is hereby sanctioned in terms thereof.

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