

THE HIGH COURT OF SINDH, KARACHI
[COMPANY BENCH]

J.C. Misc. No. 31 of 2023
In the matter of the Companies Act, 2017
And
of (a) Arif Habib Corporation Ltd.
(b) Arif Habib Ltd.

Petitioners : Arif Habib Corporation Ltd. & Arif Habib Ltd. through Mr. Mikael Azmat Rahim Advocate.

On Court notice : (i) Securities and Exchange Commission of Pakistan through M/s. Syed Imran Ali Shamsi and Syed Ebad-ur-Rehman, Advocate.

(ii) Pakistan Stock Exchange through Mr. Tariq Ali Qureshi, Advocate.

Date of hearing : 02-10-2024

Date of order : 21-10-2024

ORDER OF SANCTION OF SCHEME

Adnan Iqbal Chaudhry J. - The Petitioners are public companies limited by shares incorporated in Pakistan with registered offices at Karachi. The Petitioners seek sanction of a Scheme of Arrangement under section 282 read with sections 279 to 281 of the Companies Act, 2017 [**the Act**]. The Petitioners fall in the category of Large Sized Companies under the Third Schedule to the Act. Therefore, in view of SRO 840(I)/2017 dated 17.08.2017 issued under section 285(8) of the Act, the instant petition lies before the Company Bench of the High Court.

2. The Petitioner No.2 is a subsidiary of the Petitioner No.1. The principal line of business of the Petitioner No.1 is to act as an investment holding company. The principal line of business of the Petitioner No.2 is brokerage of securities, and in that regard it holds Trading Rights Entitlement (TRE) Certificate issued by the Pakistan Stock Exchange [**PSX**].

3. The Scheme of Arrangement proposes to merge/amalgamate with the Petitioner No.1 specific portions of the undertaking of the Petitioner No.2, referred to in the Scheme as the “**Demerged Undertaking**”, such that:

- (a) the Demerged Undertaking, including all assets, rights, liabilities and obligations thereto, shall stand separated/demerged from the Petitioner No.2 and transferred to and vest in the Petitioner No.1 with effect from the start of business on July 1, 2023;
- (b) in consideration of the amalgamation of the Demerged Undertaking, the Petitioner No.1 will issue and allot fully paid up shares of Rs. 10/- each to each shareholder of the Petitioner No.2 (other than the Petitioner No.1 itself as holding company) at a swap ratio of 0.8673 share for every 1 share of the Petitioner No.2, *i.e.* 86.73 shares for every 100 shares;
- (c) the Petitioner No.2 shall continue to carry on business with its remaining assets, referred to in the Scheme as the “**Retained Undertaking**”.

4. By order dated 23.11.2023 passed under section 282(1) of the Act, the Court ordered separate meetings of shareholders and secured creditors of the Petitioners to vote on the Scheme of Arrangement. The Chairman appointed for each meeting has filed his report under Rule 57 of the Companies (Court) Rules, 1997.

5. Heard learned counsel and perused the record.

6. Apparently, the Scheme of Arrangement subject matter of the petition is a transaction exempted by Regulation 5(1)(ii) of the Competition (Merger Control) Regulations 2016, and therefore the pre-merger clearance of the Competition Commission under section 11 of the Competition Act, 2010 is not required.

7. *Prima facie*, the requirements of section 282(2) of the Act were fulfilled in calling the meetings of shareholders and secured creditors of each Petitioner to vote on the Scheme of Amalgamation.

8. Reports of the Chairmen of the respective meetings, submitted under Rule 57 of the Companies (Court) Rules, 1997, are to the following effect:

- (i) the meeting of shareholders of the Petitioner No.1, held on 26.12.2023, was attended by shareholders representing 376,848,152 shares (92.279%) out the total of 408,375,000 shares issued; that the Scheme was approved by shareholders representing 376,502,602 shares as against holders of 257,129 shares voting against it; thus the Scheme was approved by 99.93% of the value of shareholders present and voting at the meeting, and a special resolution was passed accordingly;
- (ii) the meeting of shareholders of the Petitioner No.2, held on 26.12.2023, was attended by shareholders representing 50,848,765 shares (77.82%) out the total of 65,340,000 shares issued; that the Scheme was approved by shareholders representing 50,117,059 shares as against holders of 730,295 shares voting against it; thus the Scheme was approved by 98.56% of the value of shareholders present and voting at the meeting, and a special resolution was passed accordingly;
- (iii) the meetings of the secured creditors of the Petitioners were held on 26.02.2024, which were attended by 100% of them, all of whom voted in favor of the Scheme. NoCs of the secured creditors are also on the record.

Thus, the Scheme of Arrangement was approved without modification by more than three-fourths majority of the value of shareholders and secured creditors of each Petitioner present and voting at the meeting called for such purpose, thereby fulfilling the requirement of section 279(2) of the Act.

9. Comments filed by the Securities & Exchange Commission of Pakistan [SECP] do not bring forth any material objection to the Scheme.

10. As per the auditor's report on the financial statements of the Petitioners for the period ended 30-06-2023, the books of accounts of the Petitioners are properly maintained, and the financial statements are in accord with the books of accounts. The auditors also affirm that the shares issued by each Petitioner are fully paid-up.

11. The Scheme of Arrangement is primarily for transferring the investment portfolio of the Petitioner No.2 to its holding company, the Petitioner No.1, whose principal line of business is to act as an investment holding company. Therefore, the Scheme aims at effective and efficient management of investment portfolio under the holding company, and hence for viable reasons. The swap ratio of shares worked out by the Chartered Accountant engaged for the purpose appears to be reasonable. It is settled law that where a Scheme of Amalgamation approved by the requisite majority appears to be fair, just, reasonable and *prima facie* fulfils statutory requirements, then the Court does not sit in appeal over the commercial wisdom of the Scheme.¹

12. The Petitioners affirm that there are no investigation proceedings pending against them under sections 256 to 258 of the Act. The SECP does not dispute that fact. The PSX has reported that no claims are pending with it against the Petitioner No.2 as stock broker. The petition was advertised pursuant to Rule 19 of the Companies Court Rules, 1997. None of the shareholders or creditors of the Petitioners have come forth to oppose sanction of the Scheme of Arrangement.

¹ *Paramount Spinning Mills* (2020 CLD 1443); *IGI Insurance Ltd.* (2018 CLD 572); *Gadoon Textile Mills Ltd.* (2015 CLD 2010).

13. Therefore, the Scheme of Arrangement filed with the petition as **Annexure 'E'** is hereby sanctioned without modification with the following order:

- (i) That all the property, rights and powers of Arif Habib Ltd. [AHL] in the Demerged Undertaking as per Annexure 'A' to the Scheme read with the audited financial statement of AHL as at June 30, 2023, and all the other property, rights and powers of AHL related to the Demerged Undertaking, be transferred without further act or deed to Arif Habib Corporation Ltd. [AHCL], and accordingly the same shall pursuant to section 282(3) of the Companies Act, 2017 be transferred to and vest in AHCL for all the estate and interest of AHL therein but subject nevertheless to all charges now affecting the same; and
- (ii) That all the liabilities and duties of AHL related to the Demerged Undertaking be transferred without further act or deed to AHCL, and accordingly the same shall pursuant to section 282(3) of the Act, be transferred to and become the liabilities and duties of AHCL; and
- (iii) That all proceedings now pending by or against AHL in relation to the Demerged Undertaking be continued by or against AHCL; and
- (iv) That AHCL do without further application allot to the members of AHL (excepting AHCL itself) the shares in AHCL to which they are entitled under the Scheme of Arrangement, and the shares allotted by AHL shall be cancelled as per the Scheme; and
- (v) That AHCL do within 7 days after the date of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration, and on such certified copy being so delivered the Scheme shall be effective as on start of business on July 1, 2023; and
- (vi) That any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

Petition allowed as above.

JUDGE

Karachi:

Dated: 21-10-2024