

IN THE HIGH COURT OF SINDH AT KARACHI

Judicial Companies Miscellaneous No.18 of 2024
[Eplanet Communications [Private] Limited and 2 others – Petitioners]

Date of hearing : 21.01.2025

Petitioners No.1 & 2 : Opal Laboratories [Private] Limited and Wellinova Life Sciences [Private] Limited, through Mr. Mikael Rahim, Advocate.

: Mr. Syed Ibad, Counsel for the Securities and Exchange Commission of Pakistan [SECP].

ORDER

Muhammad Faisal Kamal Alam, J: Through this Petition, the Petitioners No.1 and 2 have sought the sanctioning of the ‘Scheme of Arrangement’ [Annexure ‘C’], under Section 279 read with Sections 280 to 283 and 285(8) of the Companies Act, 2017 [“**the Act**”], between the Petitioners No.1 and 2 and their respective Members.

2. As required, Publication of the Subject Scheme was done in different Dailies; ‘The News’ and ‘Jang’ of 02.10.2024, respectively, which are available in record.

3. The Resolution passed by the Board of Directors of Petitioner No.1 of the Meeting held at its Registered Office on 04.06.2024 is at page-91 [of the Court File; Annexure “H”], whereas, the Resolution passed by the Board of Directors of Petitioner No.2 at their Meeting held on 07.06.2024 is appended as Annexure “D-1” [at page-97 of the Court File]. The Boards of both the Petitioners have resolved that the Petitioner No.2 along with assets and liabilities, be merged by way of amalgamation into the Petitioner No.1

in accordance with the terms of the Scheme of Arrangement as envisaged in Sections 279 to 283 and 285(8) of the Act.

4. Consideration for the amalgamation is highlighted in Sub-Articles of Article 9 of the Subject Scheme, *inter alia*, all existing shares of the Petitioner No.1 held by Petitioner No.2, shall stand cancelled, of the proposed merger, because the Petitioner No.1 is the wholly owned subsidiary of Petitioner No.2.

Simultaneously, in lieu of the above, and as consideration for the Amalgamation, OLPL [Petitioner No.1] shall allot and issue an aggregate of 3,458,849 (Three Million Four Hundred Fifty Eight Thousand Eight Hundred Forty Nine) OLPL Shares to the WLSPL [Petitioner No.2] Shareholders, credited as fully paid up, at par, on the basis of a swap ratio of approximately 0.051 OLPL Shares for every 1 (one) share of WLSPL, of the face value of PKR 10/- (Pak Rupees Ten) each, held by each WLSPL Shareholders (the “**Swap Ratio**”). All fractions less than an OLPL Share shall be consolidated into whole OLPL Shares which shall be disposed of / dealt with by OLPL in a manner determined by the Board of Directors of OLPL. All entitlements of the WLSPL Shareholders shall be determined in the proportion aforesaid [Article 9.2].

5. The Swap Ratio has been determined and approved by the respective Board of Directors of OLPL and WLSPL [Petitioners No.1 and 2, respectively], from the range of valuations and calculations as stated in the Swap Letter, based, *inter alia*, on the audited financial statements of the respective companies for the period ended December 31, 2023, and the workings and valuations provided by the companies, to determine the fair market values of the companies. The Swap Letter has been approved by the respective Board of Directors of each of OLPL and WLSPL [Articles 9.3].

6. Salient object(s) of the Scheme is_

The principal object of this Scheme is to amalgamate the entire undertaking of WLSPL [Petitioner No.2] with and into OLPL [Petitioner No.1], by transferring to, merging with and vesting in OLPL the whole of WLSPL, as a going concern, including all the Assets, Liabilities and Obligations of WLSPL, as of the Effective Date (the “**Amalgamation**”), against the allotment of issue of OLPL Shares to the WLSPL Shareholders based on the Swap Ratio, and dissolving WLSPL without winding up in accordance with the provisions of this Scheme.

7. It is clarified in Article 8.2 of the Subject Scheme that the execution and / or sanction of this Scheme shall not: (i) constitute any assignment, transfer, devolution, conveyance, alienation, parting with possession, or other disposition under any law for the time being in force; (ii) give rise to any forfeiture; (iii) invalidate or discharge any Contract or Security; and (iv) give rise to any right of first refusal or pre-emptive right that any person may have in respect of any investment made by such person in OLPL [Petitioner No.1] and / or WLSPL- the Petitioner No.2.

8. The Audit Reports of both the Petitioners along with the Financial Statements, as of June 30, 2023 and June 30, 2024 are appended.

9. It is stated in Paragraph 20 of the Petition, that no investigation proceedings are pending against the Petitioners.

10. By the Order dated 23.09.2024, this Court granted the Application [C.M.A. No. 1504 of 2024] of Petitioners, filed under Rule 55 of the Companies (Court) Rules, 1997, *inter alia*, permitting to move forward as per statutory provisions and submit a Report in due course. In compliance of the said Order, the Extraordinary General Meetings of the Members of the Petitioners were held on 16.12.2024 and the Meeting of the Secured

Creditors of the Petitioner No.1 was held on 14.01.2025 and the Reports dated 18.12.2024 and 16.01.2025, respectively were submitted through Chairman of the Petitioners [available in the record]. Majority of the Members so also the sole Secured Creditor, viz. Habib Bank Limited [HBL], have approved the Scheme. The NOC [No Objection] of HBL is at *Page-177* [of the 2nd Part of the *Lis* Record], mentioning the terms of NOC, *inter alia*, that the proposed merger will not affect / derogate the financial arrangement and the encumbrances already created in favor of HBL.

11. Security and Exchange Commission of Pakistan [SECP] has filed its Parawise Comments. The Subject Scheme has not been opposed, except, that in sub paragraph [ii], it is stated that Attendance Sheets of the respective Board of Directors have not been provided, which were produced by the Petitioners' Counsel during proceeding with Copies thereof to the Counsel for the Respondent-SECP, who after going through the same has recorded his no objection.

12. 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: 03.02.2025.

Riaz / P.S.