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No end in sight in Apex-Mercury merger saga

BY LIEW JIA TENG

Just two days after Apex Equity Holdings Bhd received the second nod from a majority of its shareholders to go ahead with the merger between its Kajang-based stock-broking unit JF Apex Securities Bhd and Mercury Securities Sdn Bhd, the dissenting shareholders have thrown another spanner in the works.

Last Wednesday, two minority shareholders of Apex, namely Concrete Parade Sdn Bhd and Pinerains Sdn Bhd — both of which are against the proposed merger — took steps to further intervene against Apex's application for the vesting order to proceed with the merger.

Concrete Parade — controlled by former investment banker Lim Beng Guan — has a 4.68% stake in Apex, while Pinerains has 4.17%.

Judging from the outcome of Apex's extraordinary general meeting (EGM) last Monday, it is clear that the majority of shareholders are determined to merge JF Apex and Mercury Securities.

The merger resolution was passed with shareholders and proxies attending the meeting holding a 55.32% stake, or 101.862 million shares, voting in favour. The remaining 44.68%, with 82.259 million shares, voted against it.

This is the second time Apex shareholders have cast their votes on the proposal to acquire Mercury Securities. An earlier vote in June was invalidated.

However, the merger saga seems far from over.

Speaking to *The Edge*, Apex directors Datuk Azizan Abd Rahman and Chithra Ganesalingam — both visibly frustrated — lament that the dissenting minority shareholders are turning to the courts to deny the wishes of the majority.

Azizan, who is the chairman and non-executive director of Apex, acknowledges that the directors' hands are tied as the board could not implement or give effect to shareholders' decision.

"We do not know why they (the dissenting shareholders) are against the merger. We do not know what their intention is, and we do not know what they really want. We are trying our best to work it out," he says.

Chithra, who is an independent non-executive director of Apex, stresses that the majority of shareholders have spoken not once but twice that they want this merger to materialise.

"It would appear that minority shareholders who were unhappy with the decision of the EGM are using the judicial process to frustrate the will of the majority



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Azizan: We do not know why they (the dissenting shareholders) are against the merger

shareholders and delay the conclusion of the merger," she says.

When contacted by *The Edge*, Lim, who has a 95% stake in Concrete Parade, did not respond to a request for comment.

'Shareholders' decision must be respected'

Azizan says he is surprised that the implementation of the merger is being delayed again by the dissenting shareholders, despite the fact that the majority of Apex's shareholders had voted in favour of it at the EGM.

"In fact, we received more fa-

vourable votes in the second EGM than we did in the first EGM," he says.

Azizan points out that for most companies, the outcome of an EGM should be the finality, subject to regulatory compliance, as the need to get shareholders' approval is a cornerstone of the principle of majority rule.

"Once the shareholders' decision has been made, it must be respected. Unfortunately, some dissenting shareholders are refusing to abide by the decision of the majority at the EGM and have taken the matter to court. Such an approach is manifestly unfair for the majority shareholders who are in favour of the transaction," he says.

Azizan also warns that if the JF Apex-Mercury merger cannot go through, it essentially means that the minorities can now challenge the decision made by the majorities at EGMs.

"Being an industry veteran for decades, I have never seen something quite like this before. This would set a bad precedent for all the PLCs (public listed companies) on Bursa Malaysia and the implication is very serious," he says.

To recap, a resolution on the merger was tabled at Apex's first EGM on June 19, with shareholders holding a 54.8% stake, or 100.85 million shares, voting in favour, while the remaining 45.2%, with 83.19 million shares, voted against it.

However, the resolution was invalidated by the High Court on Sept 18, following the intervention by Pinerains against a vesting order application by Apex.

The decision by High Court judge Azizul Azmi Adnan was made on the grounds that the circular to shareholders on the proposed merger was opaque. As a result, Apex had to table the same resolution again in its second EGM last Monday.

A vesting order is required in a merger exercise to transfer to — and vest in — one party all of another party's rights, assets and liabilities.

In the case of the JF Apex-Mercury Securities merger, the vesting order is the last condition precedent to be fulfilled to execute the merger between the two stock-broking firms.

Last Thursday, Apex said the Court of Appeal had adjourned the hearing to grant the vesting order, which was initially fixed on Wednesday.

"The hearing on our vesting order application was supposed to be heard by Justice Azizul at 3pm on Nov 20. Unfortunately, on the morning of Nov 20, Concrete Parade succeeded at the Court of Appeal in obtaining a stay over the vesting order application because their oppression suit against the company — which was dismissed by the High Court on Aug 7 — is still pending appeal. As a result, we had to get another case man-

agement date for the vesting order application, which is Dec 10," says Chithra.

The court has also directed Pinerains to file its affidavit in opposition to the vesting application order by Dec 4.

"Pinerains informed the High Court that it would be once again opposing the vesting order application. This will inevitably delay the granting of any vesting order as the company will have to defend the challenge mounted by Pinerains for the second time," says Chithra.

The hearing to grant the vesting order was adjourned because of the ongoing court case, in which Concrete Parade wants to invalidate the business merger agreement that has been signed by JF Apex and Mercury Securities. Although the High Court had on Aug 7 dismissed the application filed by Concrete Parade, the company subsequently filed an appeal against the dismissal. The Court of Appeal has fixed a hearing of the appeal on Dec 3.

Meanwhile, the Court of Appeal has allowed Concrete Parade's notice of motion to restrain JF Apex and Mercury Securities from proceeding with the vesting order application or commencing the vesting order pursuant to the business merger agreement, pending the disposal of the appeal seeking to dismiss the proposed merger.

'Buck stops with the court'

Commenting on the deadlock situation, Minority Shareholders Watch Group (MSWG) CEO Devanesan Evanson says the judiciary will have to determine if there is a basis for the legal suits filed by dissenting minorities or if they are merely frivolous.

"The majority of the shareholders want the merger to proceed. The dissenting minority shareholders are also acting according to the rights afforded to them by law. This impasse can only be solved by the judiciary, who will take into consideration all facts and circumstances of the case," he tells *The Edge*.

Devanesan, however, is of the view that a majority vote to a resolution at an EGM is not a done deal, as the minority has the right to bring about a court action if they feel that they have been oppressed.

"The judiciary will have to put a stop to this, if there is merit in stopping this. Likewise, the judiciary will entertain the dissenting minority if the dissenting minority have a basis for their dissent. The buck stops with the court. What we must understand is that both the majority of shareholders and the dissenting minority shareholders are exercising their legitimate legal rights according to the law, and it is up to the arbiter of the laws — the judge — to determine which way to decide," he reiterates. ■