IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 136 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 85 OF 2015

Parry Phytoremedies Private Limited...Petitioner Company

In the matter of the Companies Act, 1956

(1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Parry Phytoremedies Private Limited with E.I.D.-Parry (India) Limited

Called for Hearing

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioner Company.

Ms. S.V Bharuch, i/b Mr. A. A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator Present

CORAM: S. J. Kathawalla, J.

DATE: 3oth April 2015

P.C.

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Parry Phytoremedies Private Limited with E.I.D.-Parry (India) Limited.

3. The Petitioner /Amalgamating Company is engaged in the business of manufacturing anti oxidants which are required by the Nutraceuticals Industry. The Transferee Company is presently engaged, inter-alia, in the business of manufacturing of sugar with interests in Bio-pesticides and Nutraceuticals.

4. The Learned Counsel for the Petitioner states that with a view to integrate the operation from manufacturing to marketing, flexibility in moving the operation to one place, provide Administrative convenience and savings on administrative cost, it is desirable to merge and amalgamate the whole of the undertaking of the Amalgamating Company with the Amalgamated Company. The amalgamation of the undertakings of the Amalgamating Company with the Amalgamated Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. The Amalgamating Company and the Amalgamated Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The learned Advocate for the Petitioner Company further states that, the Petitioner Company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Company have stated that the Petitioner Company has complied with all requirements as per the directions of this Court and filed necessary Affidavits of compliance in this behalf. The Petitioner Company further undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and Companies Act, 2013, as may be

applicable, and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 17th April 2015 stating therein that the Affairs of the Petitioner/ Amalgamating Company has been conducted in a proper manner and that the Petitioner/ Amalgamating Company may be ordered to be dissolved by this Hon'ble Court.

9. The Regional Director has filed an Affidavit on 23rd April, 2015 stating therein that save and except as stated in paragraph 6(a) and 6(b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) and 6(b) of the said Affidavit, the Regional Director has stated that :

6. The Deponent further states that:-

(a) The Registered office of the of the Transferee Company is situated in the State of TamilNaidu. Hence the Transferee Company has to file similar petition before the High Court of Madras for approving the Said Scheme.

(b) That the Deponent further submits that the Tax issue if any arising out of this Scheme shall be subject to final decision of Income tax Authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to the amalgamation . The decision of the Income tax Authority is binding on the Petitioner Company.

10. In response to the aforesaid observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the learned counsel for the Petitioner-Company states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company, which is situated in the state of Tamilnadu and the Petitioner Company is situated within the jurisdiction of this Court and where as in the case of Mahaamba Investment Limited v/s IDI Limited (2001) 105 Company Cases page 16 to 18, this Court, inter-alia, observed and held that if the Scheme of Amalgamation provides for no issue of Equity Shares to the members of the Transferor Company, being

wholly owned subsidiary of the Transferee Company and there is no reorganization of share capital of the Transferee Company, filing of separate Application /Petition by the Transferee Company is not necessary. Learned Counsel for the Petitioner further submits that similar view has been taken by this Court in the Scheme of Amalgamation of Damini Multitrade Private Limited and Dhaneshwar Solution Private Limited and Sapan Holdings and Trading Private Limited and Sambhaw Holdings Limited with Binani Metals Limited (Company Scheme Petition Nos. 210 to 213 of 2013), wherein the registered offices of all the Transferor Companies were situated in the State of Maharashtra and the registered office of the Transferee Company was situated in the State of West Bengal and the argument of not filing separate Application/ Petition by the Transferee Company was accepted and also in Umapathi Trading Private Limited with Dreamline Manpower Solutions Private Limited (Company Scheme Petition No 832 of 2013) where the registered office of the Transferor Company was situated in the State of Maharashtra and the Registered office of the Transferee Company was situated in the state of Andhra Pradesh and the objection raised by the Regional Director was withdrawn. Similar view has been taken by this Court in Company Scheme Petition No. 522 of 2014 and the same has been explained to the Regional Director and relying upon the same, the Regional Director is not pressing for objection as raised in paragraph 6(a) of his Affidavit.

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

12. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai,

states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 136 of 2015, filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

15. The Petitioner Company is directed to file a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the order.

16. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of companies, electronically, along with E-form INC-28 in addition to the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act, whichever is applicable.

17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director and to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks, from the date of the Order.

18. Filing and issuance of the drawn up order is dispensed with.

19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J.)