IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SUMMONS FOR DIRECTION NO 271 OF 2015

In the matter of Section 391 of the companies Act, 1956;
And
In the matter of Scheme of Compromise between Unimark Remedies Ltd. and its Class of Creditors

Unimark Remedies Ltd., a Company incorporated }
Under the Companies Act, 1956 having its Registered office }
at Enterprise Centre, First floor, Off. Nehru Road, }
Vile Parle (East), Mumbai 400 099 }
……Applicant Company

Called Summons for Directions for hearing

Mr. D.D. Madon, Senior Counsel, with Hemant Sethi i/b M/s Hemant Sethi & Co., Advocates for Applicant Company

Mr Rahul Narichani, Senior Counsel appearing for HSBC Bank, one of the Secured Creditors

Mr. Ashish Kamat, i/b Desai Diwanji & co Advocates for ICICI Bank one of the Secured Creditors.

Coram: S. J. Kathawalla, J.

Date: 23rd April 2015

MINUTES OF THE ORDER

1. The present Company Summons for Directions has been taken out by the Applicant Company seeking orders of this Court for convening meetings of Secured Creditors and Equity Shareholders.
2. Mr Rahul Narichani, learned Senior Counsel appearing on behalf of HSBC Bank has filed an Affidavit objecting to the proposed Scheme and has stated that no directions should be given for convening meeting of Secured creditors as the proposed Scheme is not in the interest of Secured Creditors and that merits of the Scheme can be gone into at the Summons stage. Reliance is placed upon Judgment of this Court reported in (1981) CO Cases Vol. 51 page 266 in the matter of Sakamari Steel & Alloys Limited where this Court dismissed the

Application taken out under Rule 67 of the Companies (Court) Rules 1959) seeking directions for convening meeting of Creditors as the scheme propounded was not in the interest of the Creditors.

3. Mr Diniyar Madon, learned Senior Counsel appearing for the Applicant has stated that the judgment reported in (1981) CO Cases Vol. 51 page 266 is no more good law in view of the judgment of the Supreme Court reported in (2002) 10 Supreme Court Cases 498 page 498. In paragraph 5 of the said judgment it is stated that:-

   "The appropriate time for the Company Judge to consider the scheme is subsequent to approval thereof by the shareholders and creditors of the appellant Company. Therefore, the order of the learned Company Judge and the order under Appeal must be set aside and liberty given to the appellant Company to move the the High Court for directions for calling meetings of its Shareholders and Creditors for the purpose of considering and approving the scheme. Once that has been done, a further application will be required to be made before the learned Company Judge to consider the scheme."

4. The learned Senior Counsel also relied upon order passed by the Calcutta High Court in CA No. 215 of 2013 wherein the Calcutta High Court has also observed that meeting of the shareholders cannot be stopped at the stage of giving directions for convening meeting of shareholders.

5. In view of the judgment of the Supreme Court, it is clarified that the objecting Creditor would have the right to oppose sanction of the scheme by this Court when it comes before it after approval of the Secured Creditors and Shareholders, if at all. The objecting Creditor would have right to file Affidavit in opposition. At the stage of sanction of the scheme, all objections to the scheme are kept open.

6. UPON the application of the Applicant Company above named by a Company Summons for Directions and upon hearing the parties, I pass the following order.

i. The meeting of the Equity Shareholders of the Applicant Company shall be convened and held at Compaq Hall, Air Link Hotel, 75, Off Nehru Road, Near Santacruz Airport, Vile Parle (E), Mumbai- 400 099 on Monday, the 8th June, 2015 at 10.00 AM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Compromise between Unimark Remedies Ltd. and its Class of Creditors

ii. That meeting of the Secured Creditors of the Applicant Company shall be convened and held at Compaq Hall, Air Link Hotel, 75, Off Nehru Road, Near Santacruz Airport, Vile Parle (E), Mumbai- 400 099 on Monday, the 8th June, 2015 at 11.00 AM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Compromise between Unimark Remedies Ltd. and its Class of Creditors.

iii. At least 21 clear days before the said meeting of the Secured Creditors and Equity Shareholders of the Applicant Company, to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 393 of the Companies Act, 1956 or corresponding provisions of Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail to each of the Secured Creditors and Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Secured Creditors and the Equity Shareholders as per the record of the Applicant Company.

iv. At least 21 clear days before the meetings of the Secured Creditors and Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting, at the place, day, date and time of meeting(s) and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 or corresponding provisions of Companies Act, 2013 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and/or at the office of its Advocates having their office at 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai 400071, shall be published in two local newspapers i.e. "Free Press Journal" in English language and translation thereof in "Navshakti" in Marathi Language, both circulated at Mumbai.

v. Publication of Notice of meetings of the Secured Creditors and Equity Shareholders of the Applicant Company in the Government Gazette are dispensed with.

vi. The settling and approving of the Form of Advertisement, Form of Proxy, the Form of Notice, the Explanatory Statement required to be furnished pursuant to Section 393 of the Companies Act, 1956 to accompany the notice to be issued to the Secured Creditors and Equity Shareholders of the Applicant Company by the Company Registrar of this Court is dispensed with. The Applicant Company undertakes with respect to the meetings of the Secured Creditors and Equity Shareholders to:

a) issue Notice convening meeting as per Form No. 36 (Rule 73);

b) issue Explanatory Statement containing all the particulars as per Section 393 of the Companies Act, 1956, if need be;

c) issue Form of Proxy as per Form No. 37 (Rule 73); and

d) advertise the Notice convening meetings as per Form No. 38 (Rule 74)

The undertaking is accepted.

vii. That Mr. Ashish O. Lalpuria, Practicing Company Secretary, and failing him Mrs. Jayshree A. Lalpuria, also Practising Company Secretary and failing her Mr. Abdul Latif, Company Secretary of the Applicant Company, shall be the Chairman of the meetings of the Equity Shareholders and Secured Creditors to be held at Compaq Hall, Air Link Hotel, 75, Off Nehru Road, Near Santacruz Airport, Vile Parle (E), Mumbai- 400 099 on 8th June, 2015 at 10.00 AM, and 11.00 AM respectively or any adjournment or adjournments thereof.

viii. The Chairman appointed for the aforesaid Meeting(s) to issue the advertisement and send the notices of the Meeting(s) to the Secured Creditors and Equity Shareholders as referred above. The said Chairman shall have all powers under the Companies (Court) Rules, 1959 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the aforesaid meeting(s) or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any Secured Creditor or by Equity shareholder and to ascertain the decision of the sense of meeting(s) by a poll.

ix. The quorum for the aforesaid meeting of the Secured Creditors shall be 9 Secured Creditors.

x. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.

xi. That voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting(s), is filed with the Applicant Company at its Registered Office at Enterprise Centre, First floor, Off. Nehru Road, Vile Parle (East), Mumbai 400 099, not later than, 48 hours before the aforesaid meeting as required under Rule 70 of Companies (Court) Rules, 1959.

xii. The value of debt and number of the Secured Creditors and shares of each Equity shareholder shall be in accordance with the books of Accounts / register of the Applicant Company and where the entries in the books of Accounts / register are disputed, the Chairman of the Meeting shall determine the value of the debt/shares, for the purpose of the aforesaid meeting(s) and his decision in that behalf would be final.

xiii. The Chairman of meetings of the Secured Creditors and Equity Shareholders of the Applicant Company do report to this Court, the result of the meeting within thirty days of the conclusion of the meetings of the Secured Creditors and Equity Shareholders, and the said reports shall be verified by his Affidavit.

xiv. The Chairman to file an Affidavit of service as per Rule 76 of the Company (Court) Rules, 1959 not less than seven days before the date fixed for the holding of the meeting(s) or the holding of the meeting(s), as the case may be, and to report to this Court that the directions regarding the issue of notices and the advertisement have been duly complied with.

xv. The convening and holding of the meeting of the Unsecured Creditors for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Compromise between Unimark Remedies Ltd. and its Class of Creditors is dispensed with in view of averments made in paragraph 22 of the Affidavit in support of Company Summons for Directions, inter-alia stating that the present Scheme of Compromise is an Arrangement between the Applicant Company and its Secured Creditors as contemplated under Section 391 (1)(a) of the Companies Act, 1956 and there is no arrangement with any of the Unsecured Creditors of the Applicant Company.

(S.J. Kathawalla, J.)