

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 443 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 226 OF 2015

KHATAU CAPACITORS PRIVATE LIMITED

..... Petitioner / Transferor Company 2

AND

COMPANY SCHEME PETITION NO. 444 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 227 OF 2015

INDOKEM EXPORTS LIMITED

..... Petitioner / Transferor Company 1

AND

COMPANY SCHEME PETITION NO. 445 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 228 OF 2015

INDOKEM LIMITED

..... Petitioner / Transferee Company

In the matter of the Companies Act, 1956
(1 of 1956) or any corresponding
provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read
with Section 100 to 103 of the Companies
Act, 1956 or any corresponding provisions
of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation
and Arrangement between Khatau
Capacitors Private Limited and Indokem
Exports Limited and Indokem Limited and

their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocates for the Petitioners in all the Petitions.

Mr. H.V. Mehta, i/b Mr. A.A. Ansari for Regional Director in all the Company Scheme Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 443 of 2015 and 444 of 2015.

CORAM: S. C. Gupte, J.

DATE: 4th September, 2015

1. Heard the learned counsel for the Petitioner Companies. 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 read with Sections 100 to 103 of the Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation and Arrangement between Khatau Capacitors Private Limited and Indokem Exports Limited and Indokem Limited and their respective shareholders.
3. Learned Counsel for the Petitioner Companies states that the Transferee Company in Company Scheme Petition No. 445 of 2015 is mainly engaged in the business of processing and trading of textiles dyes and chemicals. The Transferee Company deals in dyes, sizing chemicals and auxiliaries used in the textile industry. Transferor Company 1 in Company Scheme Petition No. 444 of

2015 is engaged in the business of dealing in textiles dyes and chemicals. Transferor Company 2 in Company Scheme Petition No. 443 of 2015 is engaged in the business of manufacturing and dealing in electrical capacitors.

4. Learned Counsel for the Petitioner Companies states that the rationale for the Scheme of Amalgamation and Arrangement inter-alia is that Transferee Company and Transferor Company 1 are engaged in similar business and cater to the same industry i.e. textiles dyes and chemicals. Through consolidation of Transferor Company 1 with Petitioner Company, the synergies existing among the entities in terms of similar business line, processes and resources can be put to the best advantage for the stakeholders. Transferor Company 2 is engaged in the business of manufacturing and dealing in electrical capacitors which has good prospects and housing the same in the Transferee Company would provide it the platform to grow to the next level as well as give the Transferee Company additional revenues to complement its existing business. Further, the amalgamation will result in a significant reduction in the multiplicity of legal and regulatory and other applicable compliances required at present to be carried out by the companies.
5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which is annexed to the respective Company Scheme Petitions.
6. Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Scheme has been

filed in consonance with the orders passed in respective Company Summons for Directions.

7. Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the rules made thereunder. The said undertakings given by the Petitioner Companies are accepted.
8. The Official Liquidator has filed his report on 20th August, 2015 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Court.
9. The Regional Director has filed an Affidavit on 19th August, 2015 in the above Petition 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 paragraph 6(b) of the said affidavit, it is stated that:

- a) That the Deponent submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the 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.*

b) That scheme provides for issue of only preference shares to the equity shareholders of Transferor Company. As per section 2 (1B) of the Income Tax Act, 1961, 75% of the equity shareholders of Transferee Company shall become the shareholders of the Transferee Company. Whether the issue of preference shares alone in lieu of equity shares by the Transferee Company is satisfying the provisions of Income Tax Act, or not and the scheme is a tax neutral scheme or not are matters within the domain of Income Tax Authorities and their decision is final in this regard.

10. In so far as observations made by the Regional Director in paragraph 6(a) and 6(b) of his Affidavit, the Petitioner Companies through their Counsel undertake that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of Amalgamation will be met and answered in accordance with law.
11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the 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.
12. 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 443 of 2015 to 445 of 2015 are made absolute in terms of prayer clause (a) of the respective Company Scheme Petition.
14. The Petitioner Companies to lodge 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.
15. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act 1956 / 2013.
16. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition 443 of 2015 and 444 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of order.
17. Filing and issuance of the drawn up order is dispensed with.
18. 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. C. Gupte, J.)