

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 446 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 237 OF 2015.

VIKRAM SEEDS PRIVATE LIMITED

....Petitioner/ the First Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.447 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 238 OF 2015

JOHN FOWLER (INDIA) PRIVATE LIMITED

....Petitioner/ the Second Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.448 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 239 OF 2015

BARWALE SEEDS PRIVATE LIMITED

....Petitioner/ the Third Transferor or the
First Demerged Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 449 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 240 OF 2015.
JALNA SEEDS PROCESSING AND REFRIGERATION COMPANY LIMITED
....Petitioner/ the Fourth Transferor Company the Second
Demerged Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 450 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 241 OF 2015
SUNGRO SEEDS LIMITED
....Petitioner/ the Transferor Company

In the matter of the Companies Act, 1 of 1956 and
other relevant provisions of the Companies Act,
2013;

AND

In the matter of Sections 391 to 394, Section 100 of
the Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement between VIKRAM SEEDS PRIVATE LIMITED, the First Transferor Company and JOHN FOWLER (INDIA) PRIVATE LIMITED, the Second Transferor Company and BARWALE SEEDS PRIVATE LIMITED, the Third Transferor Company or the First Demerged Company and JALNA SEEDS PROCESSING AND REFRIGERATION COMPANY LIMITED, the Fourth Transferor Company or the Second Demerged Company with SUNGRO SEEDS LIMITED, the Transferee Company or the Resulting Company

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners in all Petitions.

Mr. P.S Jetley i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator.

CORAM: S. C. Gupte, J.

DATE: 28th August, 2015

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought to a Composite Scheme of Amalgamation and Arrangement between VIKRAM SEEDS PRIVATE LIMITED, the First Transferor Company and JOHN FOWLER (INDIA) PRIVATE LIMITED, the Second Transferor Company and BARWALE SEEDS PRIVATE LIMITED, the Petitioner / Third Transferor Company or the First Demerged Company and JALNA SEEDS PROCESSING AND REFRIGERATION COMPANY LIMITED, the Fourth Transferor Company or the Second Demerged Company with SUNGRO SEEDS LIMITED, the Transferee Company or the Resulting Company, under Sections 391 to 394, Section 100 of the Companies Act, 1956 and other relevant provisions of Companies Act 2013.

3. The Learned Counsel for the Petitioners states that the First Transferor Company at present is in the business of all types hybrid, certified seeds including hybrid/variatal seeds of cotton, cereal and vegetable crops, vegetables, flower seeds and commercial seeds and the Second Transferor Company is in the business of engineering, allied services and investment activities and Third Transferor Company is engaged in the business of trading of seeds and into investment activities and the Fourth Transferor Company is engaged in the business of cold storage of agricultural produce and investment activities and Transferee Company at present is engaged in the business of seeds and investment activities. The proposed Composite scheme of Amalgamation and Arrangement will have the benefit as per the opinion of the management, that the merger will lead to synergies of operations and

more particularly the benefits that the combined operations offer better business opportunities owing to economies of scale, integrated operations and reductions in costs and that the amalgamation would enable optimum utilization of Funds & Resources and that the amalgamation would also enable the merged entity to grow much faster with consolidated resources and that the amalgamation will integrate all activities of management functions thereby achieving reduction in overhead costs and improving control over costs which will also lead to administrative convenience and greater internal controls and that the amalgamation and arrangement would enable leveraging the capabilities of combined entity which will allow opportunities for undertaking future expansion strategies .It will also be conducive to enhance the capability to face competition in the market place more effectively.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Composite Scheme of Amalgamation and Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 14th day of August, 2015 in Company Scheme Petition Nos. 446 and 447 of 2015 stating 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.

8. The Regional Director has filed an Affidavit on 5th day of August, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

“6. That the Deponents further submits that,

(a) “Clause 11 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(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 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.

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its counsel submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting Standard which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.
9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioners. The above undertakings are accepted.

11. 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.
12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 446 and 447 of 2015 are made absolute in terms of prayers clause (a),(b) and (d) and 448 to 450 of 2015 are made absolute in terms of prayer clauses (a) and (c).
13. The Petitioner Companies 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.
14. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation and Arrangements 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 whichever is applicable.
15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition Nos. 446 and 447 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

17. 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.)