IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.461 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.268 OF 2015

Royalstar Health Foods Private Limited.
.....Petitioner/the Transferor Company.

WITH
COMPANY SCHEME PETITION NO.462 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.269 OF 2015

Good-Day Foods Private Limited.
.....Petitioner/the Transferee Company.

In the matter of Companies Act, 1956 (1 of 1956);

AND

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

AND

In the matter of the Scheme of Amalgamation of Royalstar Health Foods Private Limited (Transferor Company) into Good-Day Foods Private Limited (Transferee Company)

Called for Hearing

Mr. Ashish Kamat i/b M/s Crawford Bayley & Co., Advocate for Petitioner Company.

Mr. D. R. Shah i/b Shri. A. A.Ansari for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 461 of 2015.

CORAM: K. R. Shriram, J.

DATE : 20th November, 2015

PC:

1. Heard learned counsel for parties. None appears 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 a Scheme of Amalgamation of Royalstar Health Foods Private Limited (Transferor Company) into Good-Day Foods Private Limited (Transferee Company).

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

5. The Learned Advocate appearing on behalf of the Petitioners has stated that they 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, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 19th November, 2015 in Company Scheme Petition No. 461 of 2015, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed his Affidavit on 09th September, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) and (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) and (b) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

(a) *Clause 7.2 of the scheme states that the investment held by the Transferee Company in the capital of Transferee Company to the extent of 85.80% shall get cancelled. The scheme is silent with respect of compliance of section 100 of the Companies Act and therefore the Petitioner Company shall take appropriate steps for reduction of paid capital of Transferee Company.*

(b) *Clause 5.9 of the scheme provides for "right to carry forward and set off unobserved losses and depreciation" besides seeking benefit of other tax segments. In this regards, the Income Tax Department has raised their concern on the scheme vide their letter dated 27/08/2015 copy of the same is annexed hereto and marked as Exhibit 'D' states that Rs. 73,07,134/- is due as against Transferor Company. Whether the Petitioner Company is eligible for tax benefit or not and further eligible for adjusting the losses and unobserved depreciation in the hands of Transferee Company is an issue with the domain if Income Tax Authority and decision of the Income Tax authorities is binding on the petitioner company. In this regards, it is respectfully 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 Learned Advocate appearing on behalf of the Petitioners submit that pursuant to Clause 7.2 of the Scheme the consequential effect of the reduction of the Share capital of the Transferee Company under Sections 100 of the Companies Act, 1956 is required to be incorporated in the Scheme. Hence, the Learned Advocate for the Petitioner Companies seeks leave of this Court to amend the Scheme as per the draft amendments. The draft amendments are taken on record and marked as "X" for identification. Leave to amend the Scheme as per draft amendment is granted. Amendments to be carried out within period of two weeks from the date of the order.

9. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioners are bound to comply with all applicable provisions of the 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 undertaking given and amendment sought by the Advocate for the Petitioner Company. The said undertaking is 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.461 of 2015 to 462 of 2015 are made absolute in terms of prayer clauses (a) & (b)

13. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, 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 this order.

14. Petitioner is directed to file/lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

15. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No. 461 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 today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K. R. Shriram, J.)

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed order.

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