IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 485 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 422 OF 2015

Kapoor Glass (India) Private Limited Transferor / Petitioner Company

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 486 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 423 OF 2015

Dinshi Ampoule Makers Private Limited …Transferee /Petitioner Company\

In the matter of the Companies Act, 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 Kapoor Glass (India) Private Limited with Dinshi Ampoule Makers Private limited.

Called for Hearing

Mr. Ramesh Saraogi , Advocate for the Petitioner Companies.

Mr. A.R.Verma I/b A.A.Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator Present.

Coram: S. C. Gupte, J.

Date: 11th September, 2015

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner. One objector Mr. Vikram H. Zaveri has come before the Court to oppose the Scheme and his objections are disposed off by a separate order. Except the said opposer no any party has opposed or 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 Kapoor Glass (India) Private Limited with Dinshi Ampoule Makers Private Limited.

3. The Transferor Company is engaged in the business of manufacturing Glass Ampoules and dealing in the related products.The Transferee Company is also engaged in the business of manufacturing of glass ampoules and dealing in the related products.
4. The Learned Counsel for the Petitioner Companies states that amalgamation will result into expansion of activities, pooling of the resources, administrative efficiency, better utilization of resources. The amalgamation will result in to long run advantage to the Shareholders of the amalgamated entity as number of entities will get reduced whereby reducing the overheads and paperwork. The Amalgamation will result into optimum and better utilization of resources and economy in the long-run.

5. The Petitioner Companies has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petitions filed by the Petitioner Companies.

6. The learned Advocate of Petitioner Companies further states that amalgamating companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.

7. The Learned Counsel appearing on behalf of Petitioner Companies have stated that amalgamating Companies have complied with all requirements as per the directions of this Court and filed necessary Affidavit of Compliance in this behalf. The Petitioner Companies 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. A Creditor of the Transferor Company by the name of Vikram H. Zaveri appeared in person and opposed the Scheme. His Claim is of Rs. 39,000/-. The Transferor Company disputed this claim. In any event all liabilities of the Transferor Company are taken over by the Transferee Company. There is nothing on record to show that the objectors claim would in any way be prejudiced by the amalgamation order.

9. The Official Liquidator has filed his report on 9th September,2015 stating therein that the Affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Hon'ble Court.

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

6(a) With reference to clause 15.5 of the Scheme, it is submitted that the reserve, if any, arising out of the scheme is only due to transfer of capital assets from Transferor Company to Transferee Company. Such reserve is not a revenue reserve and hence shall not be treated as free reserve of the Transferee Company such reserve shall be credited to capital reserve account of Transferee Company.

6(b) Clause 15.6 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.

6(c) 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.

11. As far as observation made in paragraph 6(a) of the Affidavit of Regional Director are concerned, the Petitioner Company through their Advocate states that the treatment of amalgamation reserve shall be as per the applicable provisions of the Companies Act and applicable Accounting Standards and such amalgamation reserves arising out of the Scheme will not be treated as free reserves.

12. As far as observation made in paragraph 6(b) of the Affidavit of Regional Director are concerned, the Petitioner Company through their Advocate undertakes to comply with the requirements of the relevant applicable Accounting Standards.

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

14. 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 Companies. The said undertaking given by the Petitioner Companies is accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company scheme Petition No. 485 of 2015 and 486 of 2015 , filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the respective Company Scheme Petitions.

17. The Petitioner Companies 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 order.

18. Petitioner Companies 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.

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

20. Filling and issuance of the drawn up order is dispensed with.

21. 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.)