

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.524 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO.413 OF 2015**

Diversey (India) Private Limited

.....Petitioner Company
(Transferor Company)

AND

**COMPANY SCHEME PETITION NO.525 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO.414 OF 2015**

Sealed Air (India) Private Limited

.....Petitioner Company
(Transferee Company)

In the matter of the Companies Act, 1956;

And

In the matter of Sections 391 to 394 of
the said Act;

And

In the matter of Sealed Air (India) Private
Limited;

And

In the matter of the Scheme of
Amalgamation of Diversey (India) Private
Limited with Sealed Air (India) Private
Limited.

CALLED FOR HEARING AND FINAL DISPOSAL

Ms. Kirtida Chandarana i/b Mr. Mahernosh Humranwala, Advocate for the
Petitioner Company

Mr. S. Ramakantha Official Liquidator Present

Ms. Priya V. Sankpal i/b. A. A. Ansari for Regional Director

Coram: S. C. Gupte, J.
Date: 30th October, 2015

MINUTES OF THE ORDER

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

2. The sanction of this Court is sought under Sections 391 to 304 of the Companies Act, 1956 to a Scheme of Amalgamation of Diversey India Pvt. Ltd. with Sealed Air India Pvt. Ltd.
3. The learned Counsel for the Petitioner Company states that Scheme of Amalgamation is necessary/justified/beneficial as it would lead to consolidation of operating business of the Transferee group entities, ease and integration of management, optimum utilization of skilled manpower, infrastructure, production and other facilities, and reduction of, and control over operating and administrative costs.
4. The Transferor Company has approved the scheme of amalgamation by passing a Board Resolution, which is annexed to the above Company Scheme Petition. The Transferee Company has also approved the Scheme of Amalgamation by passing a Board Resolution which is annexed to the Company Scheme Petition filed by the Transferee Company.
5. The learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all directions passed in the Company's Summons for Direction and that the above Company Scheme Petition has been filed in consonance with the Orders passed in the said Company Summons for Direction.

6. The learned Counsel for the Petitioner Company states that the Petitioner Company has complied with all the requirements as per the directions of this Court and has filed necessary Affidavits of Compliance in court. moreover, the Petitioner Company, through their Counsel, undertakes to comply with all statutory requirements. if any, as required under the Companies Act, 1956, or the Companies Act, 2013, and the Rules made thereunder, whichever is applicable. The said undertaking is accepted.
7. The Official Liquidator has filed his Report dated 16th October, 2015 in the above Company Scheme Petition, *inter alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and therefore, the Transferor Company be ordered to be dissolved by this Hon'ble Court.
8. The Regional Director has filed an affidavit dated 6th October, 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 interests of shareholders and public. In paragraph 6 of the said Affidavit, it is stated that :

“6. That the deponent further submits that,

 - a) The shares of the petitioner companies are held by foreign body corporate. Hence while giving effect to the scheme, by issuing shares by the Transferee Company to the Transferor Company, the petitioner companies may be directed to comply with FEMA/RBI regulations as applicable in this regard.

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."*

9. With respect to paragraph 6(a) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Company states that the Petitioner Company shall comply with all the FEMA/RBI Regulations as applicable.
10. With respect to paragraph 6(B) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Company states that the Petitioner Companies are bound to comply with all the provisions of Income Tax Act arising out of the Scheme and the same will be met with and answered in accordance with law.
11. The Learned Counsel for the Regional Director, on instructions of Mr. 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 undertakings given by the Advocates for the Petitioner Company are accepted.
12. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and the same is not in violation 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 is made absolute in terms of in terms of prayer clauses (a) to (d) and (f) to (h).
14. The Petitioner Company is directed to lodge a copy of this Order and the Scheme of Amalgamation duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Superintendent of stamps for the purpose of adjudication on stamp duty payable, if any, on the same, within 60 days from the date of this Order.
15. The Petitioner Company has directed to file a copy of this Order along with the copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21/INC 28 in addition to the physical copy, as per the relevant provision Companies Act, 1956 or the Companies Act, 2013, whichever is applicable.
16. The Petitioner Company in both the Company Scheme Petitions are directed to pay costs of Rs.10,000/- each to the Regional Director western Region, Mumbai and to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 524 of 2015. The said costs, is to be paid within four weeks from the date of this Order.

17. Filing an issuance of the drawn up Order is dispensed with.
18. All concerned regulatory authorities to act on copy of this Order along with the Scheme of Amalgamation duly authenticated by the Company Registrar, High Court (O.S.).

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by: S. Gawde
Stenographer