IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 771 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 722 OF 2014

Aquagel Chemicals Private Limited **.... *Petitioner/ Transferor Company.***

AND

COMPANY SCHEME PETITION NO. 772 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 723 OF 2014

Lakme Lever Private Limited **.... *Petitioner/ Transferee Company.***

IN THE MATTER of the Companies Act of 1956 (or re-enactment thereof upon effectiveness of the Companies Act, 2013);
AND
IN THE MATTER of Sections 391 to 394 of the Companies Act, 1956 (or re-enactment thereof upon effectiveness of the Companies Act, 2013);
AND
IN THE MATTER of Scheme of Amalgamation between Aquagel Chemicals Private Limited (Transferor Company) And Lakme Lever Private Limited (Transferee Company) And Their Respective Shareholders.

Called for hearing:

Ms. Alpana Ghone along with Mr. Arvind Talgaonkar i/b. M/s. Crawford Bayley & Co., Advocate for the Petitioners in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CPS No. 771 of 2014.

Mr. C. J. Joy i/b. Mr. H. P. Chaturvedi for Regional Director in all the Petitions.

Ms. J. M. Raut i/b. M/s. JJ. Associates, Advocate for Unsecured Creditors.

CORAM: S. J. Kathawalla J.

DATE: 6th February, 2015

PC:

1. Heard counsel for the parties.

2. The sanction of the Court is sought to a Scheme of Amalgamation between Aquagel Chemicals Private Limited (Transferor Company) And Lakme Lever Private Limited (Transferee Company) and their respective shareholders, under Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 (or re-enactment thereof upon effectiveness of the Companies Act, 2013).

3. The Learned Counsel for the Petitioners states that the Transferor Company is presently carrying on business of manufacturing of soaps, detergents and related products at its production facilities at Gandhidham, Gujarat and the Transferee Company is presently carrying on business of providing services in the areas of beauty and wellness by setting up Trade or retail business in India through retail formats such as beauty salons.

4. The Learned Counsel for the Petitioners states that the amalgamation will enable the Transferee Company to drive simplification through bringing both companies on to a common platform in various processes such as legal & secretarial, accounting and controls which would reduce the time spent on compliance support, and also reduce risk of unintended statutory non-compliance and also simplify compliances needed under the Companies Act, 2013 such as appointment of independent director, woman director, internal auditors and constitution of CSR Committee. It will also enable the Transferee company to carry on and conduct its business more efficiently and advantageously with better economies of scale, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, stronger capital base for future expansion/growth

and to optimize the costs of associated complexities in operating two separate companies, e.g. filing separate returns, consolidation and review of separate financial returns.

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

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

7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Hon'ble Court and that the Petitioners have filed necessary Affidavits of compliance in this Hon'ble Court. Moreover, the 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.

8. The Regional Director has filed an Affidavit on 4th February, 2015 stating therein that save and except as stated in paragraphs 6. (a) and (b) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 (a) and (b) of the affidavit, the Regional Director has stated as under:

6.

(a) *Clause 13.3 of 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 the approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinise the returns filed by the petitioner company after giving effect to the amalgamation the decision of the Income Tax Act Authority is binding on the petitioner company.

9. In so far as observation made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner/Transferee through its Counsel undertakes to pass such accounting entries as may be necessary in connection with the scheme to comply with other applicable accounting standards.

10. In so far as observation made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner companies are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the scheme and/or from the scrutiny of the returns filed by the petitioner company will be met and answered in accordance with law.

11. The Learned Counsel for 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 Petitioners hereinabove. The above undertakings are accepted.

12. The Official Liquidator has filed his report on 22nd January, 2015 in Company Scheme Petition No. 771 of 2014 stating 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 without winding up.

13. The Learned Counsel appearing on behalf of M/s. IGC Institute (Unsecured Creditor of Transferor Company), Mr. Jitu Negandhi (Unsecured Creditor of Transferor Company) and M/s. Integrated Group of Consultants (Unsecured Creditor of Transferor company) has raised their respective objections, interalia, stating that the dues of these Unsecured Creditors have not been paid by the Petitioner/Transferor Company. The Counsel for the Petitioner Companies states that the Scheme does not affect the rights of the Creditors and no Compromise or Arrangement is called for with any of the Creditors including creditors mentioned herein above. It is open to the Unsecured Creditors to pursue their legal remedies against the Transferee Company as may be advised for recovery of their dues. The Transferee Company shall abide by the final outcome of the said legal remedies if any, in favour of the Creditors.

14. Another objection has been filed by one Mr. Bharat Raut (former shareholder of the Transferor Company). In or about December, 2002, Hindustan Unilever Limited ("HUL") held 26% shares in the Transferor Company. Mr. Bharat Raut along with his family members held 8% shares in the Transferor Company. The balance 66% shares were held and/or controlled by Mr. Ramesh Shah and his family. In or about October, 2012 HUL decided to buy entire 74% shares held by non HUL members. There was a Special Power of Attorney executed on 6th November, 2012 by Mr. Bharat Raut in favour of the then Chairman and Managing Director of the Transferor Company to complete the process of sale of 74% shares in favour of HUL. By using the said Special Power of Attorney, the entire 74% shares have been transferred in favour of HUL on 4th April, 2013. It is sought to be contended by Learned Counsel appearing on behalf of Mr. Bharat Raut group that i) they have not ratified the sale of 8% shares in favour of HUL; ii) as a result of a non-compete clause which has been introduced in the Shareholders Agreement, he is precluded from carrying on any competing business with HUL. The said clause however, excludes Mr. Ramesh Shah and Mr. Darshak Shah and they are therefore permitted to carry on competing business with HUL and iii) that he has not received any consideration for sale of his 8% shares in the Transferor Company. Arbitration proceedings between Mr. Bharat Raut group and Mr. Ramesh Shah Group are pending adjudication. The Transferor Company is not a party to the said arbitration proceedings.

15. The Learned Counsel for the Petitioner Companies has, inter alia, stated that as the transfer of shares has been effected in the books of the Transferor Company on 4th April, 2013 in favour of HUL, the objector viz. Mr. Bharat Raut is not a shareholder today and therefore has no locus to oppose the present scheme of amalgamation. Also, as the Transferor Company is not a party to the pending arbitration proceedings, any award passed therein would not bind the Transferor Company. The Transferor Company is not concerned with the disputes between the Bharat Raut group and the Ramesh Shah group. No steps have been taken by the Objector against the Transferor Company and/or HUL to have the transfer of shares cancelled till date.

16. This Court in a Petition seeking sanction to a scheme of amalgamation filed under Sections 391 to 394 of the Companies Act, 1956 is not required to go into issues pertaining to disputes interse between alleged shareholders. The Learned Counsel for the Objector Mr. Bharat Raut has failed to place on record any material which indicates that the scheme is prejudicial to the interests of the shareholders or creditors or is in violation of any law. In view thereof, the objection is rejected. However, it is made clear that the Objector viz. Mr. Bharat Raut will be at liberty to adopt appropriate proceedings as may be advised against the Transferor if he so desires. The Transferor Company will be entitled to defend the same.

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 771 of 2014 is made absolute in terms of prayer clauses (a), (b) and (d), and 772 of 2014 is made absolute in terms of prayer clauses (a) and (c).

19. The Petitioner Companies to lodge a copy of this order and 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 issuance of the order by the Registry.

20. Petitioner Company 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 physical copy as per the provisions of the Act.

21. The Petitioners in all the Petitions to pay costs of INRs.10,000/- each to the Regional Director, Western Region, Mumbai, and the Petitioners in the Company Scheme Petition Nos. 771 of 2014 to pay cost of INRs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

23. All the 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.

(S. J. Kathawalla J.)