IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 29 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 662 OF 2014

Duracell Investments and Finance Private Limited ….Petitioner Company

AND

COMPANY SCHEME PETITION NO 30 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 663 OF 2014

Mrinal Exim Private Limited ….Petitioner Company

AND

COMPANY SCHEME PETITION NO. 31 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 664 OF 2014

Seel Investment Private Limited ….Petitioner Company

In the matter of the Companies Act,1956

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956.

AND

In the matter of the Scheme of Amalgamation of Duracell Investments and Finance Private Limited, Transferor Company No. 1 and Mrinal Exim Private Limited, Transferor Company No. 2 with Seel Investment Private Limited, Transferee Company and their respective members and creditors.

Called for Hearing

Mr. Sanjay Udeshi alongwith Mr. Darshan Ashar i/b M/s Sanjay Udeshi & Co, Advocate for the Petitioners.

Ms. C.J. Joy i/b Mr. A.A. Ansari for the Regional Director.

Mr. S. Ramakantha Official Liquidator present in C.S.P. No. 29 and 30 of 2015.

CORAM : S.J. KATHAWALLA J.

DATE : 8th May, 2015

P.C.:

1. Heard Counsel for the parties. None appears before the Court to oppose the Scheme nor any party has contraverted 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 Scheme of Amalgamation of Duracell Investments and Finance Private Limited, Transferor Company No. 1 and Mrinal Exim Private Limited, Transferor Company No. 2 with Seel Investment Private Limited, Transferee Company and their respective shareholders and creditors.

3. The Learned Counsel for the Petitioners state that the Transferor Company No. 1, engaged into carrying on the business as Investment Company and the Transferor Company No. 2 is engaged into carrying on the business as buyers, sellers, traders, distributors, merchants, agents, brokers, sub-brokers, stockists, commission agents, franchisee, dealers, C&F agents, various types of agencies, network marketing and marketing associates and the Transferee Company is engaged in the business as investment Company.

4. The Proposed Scheme of Amalgamation will be beneficial to the Petitioner Companies since the Amalgamated Company will have greater efficiency in overall business including economies of scales, cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business, which can be deployed more efficiently to fund financing, leasing, manufacturing, import export activities and construction related activities and their growth opportunities in the businesses of the Companies, to maximize shareholder value and the Transferor Companies as well as Transferee Company share common fundamental management philosophies. Both the Companies share common corporate values and the Companies have a good experience of working together, and being same management this will contribute to smooth integration of the Companies.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

6. The Learned counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Summons for Direction.

7. Counsel appearing on behalf of the Petitioner Companies state that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Companies through its counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 6th day of May, 2015 stating therein save and except stated in paragraph 6 (a) and (b), of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 (a) and (b) of the said Affidavit, it is stated that;-

"6. That the Deponent further submits that,

a) With Reference to clause 9 (e) of the Scheme, it is submitted that the surplus if any arising out of the scheme be credited to Capital reserve Account of the Transferee Company

b) The Deponent further submits that the Tax issue if any arising out of the Scheme shall be subject to final decision of Income Tax Authority and approval of the Scheme by the 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. As far as the content of paragraph 6 (a) of the Affidavit of Regional Director is concerned, counsel appearing for the Petitioner Companies undertakes that the Surplus, if any arising out of the scheme be credited to Capital Reserve Account of the Transferee Company.

10. As far as the content of paragraph 6 (b) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes that the Petitioner Companies are bound to comply with the applicable provisions of the income Tax Act and all tax issues arising out of Scheme will be met and answered in accordance with the law.

11. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandana muthu, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with undertaking given by the Petitioner Companies mentioned hereinabove. The said undertaking is accepted.

12. The Official Liquidator has filed his report dated 15th day of April, 2015 stating therein 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.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 29 of 2015, 30 of 2015 and 31 of 2015 are made absolute in terms of prayer clause (a) and (c).

15. The Petitioner to lodge 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 this Order.

16. Petitioner is directed to file a copy of this order alongwith a copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form 21, in addition to physical copy, as per the provision of the Act.

17. Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to pay a sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay, in Company Scheme Petition No. 29 and 30 of 2015 towards their costs. Costs to be paid within four weeks from today.

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

19. All concerned regulatory authorities to act on a copy of this order

alongwith the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(S.J. Kathawalla J.)