

THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.733 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 772 OF 2014.

GYANADA AGRO SERVICES PRIVATE LIMITED,
....Petitioner/ First Transferor Company.
AND
COMPANY SCHEME PETITION NO.734 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 773 OF 2014.

GYANADA HOLDINGS PRIVATE LIMITED,
....Petitioner/ Second Transferor Company.
AND
COMPANY SCHEME PETITION NO.735 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 774 OF 2014.

GYANADA LOGISTICS SERVICES PRIVATE LIMITED,
....Petitioner/ Third Transferor Company.
AND
COMPANY SCHEME PETITION NO.736 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 775 OF 2014.

GYANADA PHARMA PRIVATE LIMITED,
....Petitioner/ Fourth Transferor Company.
AND
COMPANY SCHEME PETITION NO.737 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 776 OF 2014.

GYANADA SOFTWARE PRIVATE LIMITED,
....Petitioner/ Fifth Transferor Company.
WITH
COMPANY SCHEME PETITION NO.738 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 777 OF 2014.

IKHLAS PROPERTIES AND SERVICES PRIVATE LIMITED,
....Petitioner/ Sixth Transferor Company.

In the matter of the Companies Act 1 of
1956;

AND
In the matter of the Companies Act 1 of 1956;

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

AND
In the matter of Scheme of Amalgamation and Arrangement of Gyanada Agro Services Private Limited,

AND
Gyanada Holdings Private Limited,

AND
Gyanada Logistics Services Private Limited,

AND
Gyanada Pharma Private Limited,

AND
Gyanada Software Private Limited,

WITH
Ikhlas Properties and Services Private Limited and their Respective Shareholders and Creditors.

Called for hearing

Mr. Rahul Oak, Advocate for the Petitioners in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 733 of 2014 to 737 of 2014 .

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

CORAM: S. J. Kathawalla, J.

DATE : 13th February, 2015

PC:

1. Heard learned counsel for the parties. No objector has come 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 to a Scheme of Amalgamation and Arrangement of Gyanada Agro Services Private Limited and Gyanada Holdings Private Limited and Gyanada Logistics Services Private Limited and Gyanada Pharma Private Limited and Gyanada Software Private Limited with Ikhlas Properties and Services Private Limited and Their Respective Shareholders and Creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. Learned Counsel for the Petitioners states that the First Transferor Company is in business of providing Agricultural Services and Second Transferor Company is in business of online information services and Third Transferor Company is in business of logistics proposal and Fourth Transferor Company is in business of logistics services to pharmaceutical industry and Fifth Transferor Company is in business of application software and the Transferee Company is in business of on trade in properties. The proposed scheme of Amalgamation will have the benefit that The integration of the operations of Transferor Companies and Transferee Company would have the benefit of eliminating duplication of processes resulting in cost savings and a simplified corporate structure and improved management focus and centralizing the activities of the two companies is expected to lead to improvement in operational and cost efficiency through economies of scale, optimization of resources, expansion of asset base and a stronger balance sheet of the enlarged company.

4. The Transferor Companies and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

6. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and Transferee Company 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 rule made there under whichever is applicable. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 05th February, 2015 in Company Scheme Petition Nos. 733 of 2014 to 737 of 2014 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

8. The Regional Director has filed an Affidavit on 16th January, 2015 stating therein, save and except as stated in paragraph 6, it appears that

the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 of the said Affidavit, it is stated as under.

“6. (a) Clause 11.4 of Scheme provides that, “upon the scheme becoming effective, the main objects as well as relevant incidental objects of the Memorandum of Association of the Transferor Company shall form part of the Memorandum of Association of the Transferee Company”. The relevant incidental objects which will become part of the Memorandum of Association of Transferee company is unknown at this stage even for the petitioner. In this regard, it is submitted that the Transferee Company shall pass necessary resolution for amendment of object clause and further it may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

(b) It is observed from the affidavit submitted by Ms. Mohini Hemdev, Authorized Signatory of the Transferee company to the Deponent that the Transferee Company is not having tax liabilities pending towards the Income Tax, Sales Tax or any other Government Tax. Copy of the said affidavit is annexed hereto as 'Exhibit-C6'. However, the Income Tax Department vide its letter no. ITO5(2)-2/Scheme of Amalgamation/2014-15 dated 01/12/2014, annexed hereto as Exhibit- D, has informed the deponent herein that the Transferee company is having outstanding dues of an amount of Rs. 52,151/- for the Assessment Year 2010-11 and an amount of Rs. 1,137/- for the Assessment Year 2009-10. It is therefore evident that the Transferee company is suppressing material facts and therefore it may be directed to submit the factual position before this Hon'ble High Court. However, it is noticed that as the dues are arising from the accounts of the Transferee Company which will continue to be in existence, the Tax Authorities can enforce their rights to recover the same from the Transferee company.

(c) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income tax Authority is binding on the petitioner Companies.”

9. So far as the observation in paragraph 6 of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel for the undertakes to pass a special Resolution independently and comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

10. So far as the observation in paragraph 6(b) and 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law

11. 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 by the Advocate for the Petitioner Company. the said undertaking is accepted.

12. The counsel for the Petitioner submits that there typographical mistake in share exchange ratio mentioned in tabular form in Clause 12.1 of the Scheme. Hence, counsel for the Petitioner seeks leave to delete the share exchange ratio mentioned in tabular form in Clause 12.1 of the Scheme and amend the same as per draft schedule amendment tendered herein.

The draft amendment tendered by the Advocate is taken on record and marked "X" for identification. The amendment is allowed in terms of draft amendment. Amendment to be carried out within period of two weeks from date of the order.

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, Company Scheme Petition Nos. 733 of 2014 to 738 of 2014 are made absolute in terms of prayer clauses (a) and (c).

15. The Petitioner Companies 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 the order.

16. Petitioners are 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 relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the

Company Scheme Petition Nos. 733 of 2014 to 737 of 2014 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

(S. J. Kathawalla, J.)