IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.763 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.706 OF 2015

Liberty Agri Products Private Limited

…..Petitioner/ Transferor Company.

AND

COMPANY SCHEME PETITION NO.764 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.707 OF 2015

Kissan Warehouse Private Limited

… Petitioner/Transferee Company

In the matter of the Companies Act, 1956
AND
In the matter of Petition under Sections 391 to 394 of the Companies Act, 1956
AND
In the matter of Scheme of Amalgamation

OF

Liberty Agri Products Private Limited

… Transferor Company

WITH

Kissan Warehouse Private Limited

…Transferee Company

AND

Their Respective Shareholders

Called for Hearing

Mr. NaserAli Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

Mr. Arun Kumar Roy i/b. Mr. A.A. Ansari for Regional Director in the Petitions.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: K. R. SHRIRAM, J.

DATE: 18th December, 2015

PC:

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to an arrangement embodied in the Scheme of Amalgamation of Liberty Agri Products Private Limited, the Transferor Company with Kissan Warehouse Private Limited, the Transferee Company and their respective shareholders.
3. The learned Advocate for the Petitioner Companies states that the Transferor Company is engaged in the business of agricultural produce used for the consumption by human being and animals directly or after some process and the Transferee Company is engaged in the business of cold storage and warehouse of fruits vegetables and such other perishable items of all types and storage facility of all types.
4. The learned Advocate for the Petitioner Companies further states that the Scheme of Amalgamation would enable the consolidation of legal entities which would result in reduced number of entities within the group, minimize cost and administrative hassle of maintaining multiple legal entities, the consolidation would help in pooling of financial resources to ensure smooth operations and diversification of business; and would ultimately contribute to the future business and profitability of the merged entity. The

amalgamation of Transferor Company and Transferee Company is, therefore, beneficial in the long-term interests of the shareholders and all stake holders of these companies.

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

6. The learned Advocate for the Petitioners states that the 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 Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Advocate appearing on behalf of the Petitioners has stated that they 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 the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 8th December, 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.

9. The Regional Director has filed his Affidavit on 17th November, 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 interest of shareholders and public. In paragraphs 6 (a) and (b) of the said Affidavit, the Regional Director has stated that :

"*6. That the Deponent further submits that:-*

a) Clause 8.3 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.

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."

10. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its advocate undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard.

11. So far as the objection of the Regional Director as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. The Learned Counsel for Regional Director on instructions of Mr. M. 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 Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

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 No.763 of 2015 filed by the Transferor Company are made absolute in terms of prayer clauses (a) & (b) and Company Scheme Petition No.764 of 2015 filed by the Transferee Company is made absolute in terms of prayer clauses (a) & (b).

15. The Petitioner Companies to lodge a copy of this order along with the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court, 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/lodge a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay, 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 Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition Nos.763 of 2015 to pay costs of Rs.10,000/- 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 copy of this order along with the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K. R. SHRIRAM, J.)

CERTIFICATE

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

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