IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 846 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 832 OF 2014

BRENNTAG INDIA PRIVATE LIMITED

.... Petitioner Company

AND

COMPANY SCHEME PETITION NO. 847 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 833 OF 2014

BRENNTAG INGREDIENTS (INDIA) PRIVATE LIMITED

.... Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of the Scheme of Amalgamation of Brenntag India Private Limited with Brenntag Ingredients (India) Private Limited and their respective shareholders.

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Mr. Ameya Lambhate, Advocates for the Petitioner

Mr. A. R. Varma i/b. H. P. Chaturvedi for the Regional Director in both the Company Scheme Petitions.

Mr. S. Ramakantha, Official Liquidator in CSP No. 846 of 2014

Coram : S. J. Kathawalla, J.

Date : 20th February, 2015

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted 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 a Scheme of Amalgamation of Brenntag India Private Limited with Brenntag Ingredients (India) Private Limited and their respective shareholders.

3. Learned Advocate for the Petitioner states that both the Transferor Company and the Transferee Company are engaged in the business of dealing in various types of chemicals.

4. The Learned Advocate states that the proposed scheme would help in bringing in more focus on the specialty business which would facilitate in exploiting the significant potential for growth and strengthened leadership in the chemical business, in terms of asset base, revenues, product range, production volumes, integrated supply chain and market share of the combined entity and further to leverage and optimise on its large asset base, diverse range of products, brands and vast pool of intellectual capital, optimise the value of the brands, enter into the domestic market with greater access to brands, which would enhance the shareholder value and greater integration, financial strength and flexibility for the amalgamated entity, which

would result in maximising overall shareholder value and will improve the competitive position of the combined entity and greater efficiency in 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 organic and inorganic growth opportunities, to maximize shareholder value and improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry and simplification of group structure by eliminating multiple companies having similar objectives.

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

6. The Learned Advocate for the Petitioner further states that the 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 Order passed in Company Summons for Directions.

7. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner has 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 their 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 Official Liquidator has filed his report on 11th February, 2015 in Company Scheme Petition No. 846 of 2014 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 an Affidavit on 18th February, 2015 stating therein, save and except as stated in paragraph 6 (a), (b), (c) and (d), it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 (a), (b), (c) and (d) reads as under :

6. That the Deponent further submits that,

(a) *With reference of clause 11.8 of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and deficit if any arising shall be debited goodwill account of the Transferee Company.*

(b) Clause 11.6 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.

(c) 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.

(d) *The shares of the Transferor Company is held by foreign body corporate. Hence for allotment of new shares to the shareholder of Transferor Company, the Transferee Company may be directed to comply with FEMA/ RBI regulations as applicable in this regard.*

10. As far as observations made in paragraph 6(a) of the Affidavit of the Regional Director are concerned, the Petitioner Companies through their Advocate undertake that the surplus if any arising out of the Scheme shall be credited to Capital Reserve Account of the Transferee Company and deficit if any arising shall be debited in Goodwill Account of the Transferee Company.

11. As far as observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Petitioner Companies through their Advocate undertake to follow the Accounting treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.

12. As far as the observations made in paragraph 6(c) of the Affidavit of the Regional Director are concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

13. As far as the observations made in paragraph 6(d) of the Affidavit of the Regional Director are concerned, the Petitioner Companies through the advocate undertake to comply with applicable FEMA / RBI regulations for allotment of new shares to the shareholders of Transferor Company.

14. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by

the Petitioner Companies as regards para 6(a) to 6(d) are concerned. The said undertakings given by the Petitioner Companies are accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 846 of 2014 is made absolute in terms of prayer clause (a), (b) and (d) and Company Scheme Petition No.847 of 2014 is made absolute in terms of prayer clause (a) and (c).

17. The Petitioner Companies are directed to file 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.

18. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

19. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in both the Company Scheme Petitions and to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 846 of 2014. Costs to be paid within four weeks from the date of the Order.

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

21. 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.)