IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY

ORIGINAL CIVIL JURISDICTION COMPANY

COMPANY SCHEME PETITION NO. 270 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 747 OF 2014

Remco Paper & Board Industries Private Limited

…Petitioner Company/Transferor Company

AND

COMPANY SCHEME PETITION NO. 271 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 748 OF 2014

Revival Papers Mill Private Limited …Petitioner Company/Transferee Company

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

AND

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

AND

In the matter of the Scheme of Arrangement & Demerger between Remco Paper & Board Industries Pvt. Ltd. and Revival Papers Mill Pvt. Ltd. and their respective shareholders and creditors.

CALLED FOR HEARING

Gautam Ankhad a/w Sonam Mhatre i/b VND & Associates Advocates for the Petitioners.

G. Hariharan a/w P. Khosla i/b A. A. Ansari for Regional Director in both the Petitions.

CORAM : S. C. Gupte J.
DATE : 28th September, 2015

P.C:-

1. Heard learned Counsel for parties. No objector has come before the Court to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

2. The sanction of this Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Arrangement & Demerger among Remco Paper & Board Industries Pvt. Ltd. (hereinafter referred to as "**the Transferor Company**" or "**the Petitioner Company**") and Revival Papers Mill Private Limited (hereinafter referred to as the "**Transferee Company**" or "**the Resulting Company**" or **"the Petitioner Company"**) and their respective shareholders and creditors. The aforesaid Scheme of arrangement shall hereinafter for the sake of brevity be referred to as "**the Scheme**".

3. The learned Counsel for the Petitioner Companies states that the Transferor Company is engaged in the business of manufacturing and trading in different kinds of duplex Paper Board, Mill Paper Board/ Kraft Paper Board, importing and exporting, converting, processing, coating, lamination, and dealing in all

kinds and class of papers, boards, newsprint, pulp and other cellulosic materials including but not limited by writing & printing papers bleached and unbleached paper, kraft papers, packing and wrapping papers, absorbent paper, tissue papers, filter paper, coated paper, art paper, ledger paper, cartridge papers, cloth line paper, wovan paper, gummed paper, tracing paper, carbon paper, laminated paper, litmus paper, decorative papers, paper board duplex and triplex board grey board, straw board, mell board cardboard, box board, chromoboard, enamel board and leather board, decorative board and industrial board and other cellulose materials used in the manufacture or processing or treatment of pulps, paper boards, cards and other allied product. **The Transferee Company** is engaged in all kinds and classes of papers including writing paper, newsprint paper, wrapping papers, tissue paper, cover paper, blotting paper, antique paper, ivory finish paper, coated paper, art paper, bank and bond paper, badami, brown or buff paper, bible paper, cartridge paper, cloth line papers, azurelaid and wove paper, cream laid and wove paper, grease proof paper, gummed paper, handmade paper, parchment paper, drawing paper, Kraft paper, manila paper, envelope paper, tracing paper, velum paper, water proof paper, carbon paper, sensitized paper, chemically treated paper, and all kinds of articles in the manufacture of which in any form paper is used.

4. The benefits of the proposed Scheme is a measure of corporate restructuring, more efficient use of existing resources, operation on a broader scale,

increasing efficiency in business operations and to realize the potential for further growth, the Transferor Company has decided to demerge its Plant 1 Division. The scheme will achieve reduced administrative costs, avoid duplication of costs and result in internal economies and optimize profitability.

5. Both the Transferor Company and the Transferee Company have approved the Scheme by passing Board Resolutions, which are annexed to the respective Company Scheme Petitions.

6. Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the Orders passed in the said Company Summons for Direction and seeks sanction to the proposed Scheme.

7. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all the requirements as per directions of this Court and have filed necessary Affidavits of compliance in Court. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or the Companies Act, 2013 and the Rules made thereunder, whichever is applicable. The said undertaking is accepted.

8. Learned Counsel for the Petitioner states that, Company Application No. 742

of 2015 in Company Scheme Petition No. 270 of 2015 and Company Application No. 713 of 2015 in Company Scheme Petition No. 271 of 2015 have been made absolute and the said Company Applications were disposed of on 31st July 2015 by this Court. This court acknowledges the submissions of learned Counsel and takes due note of the same.

9. The Regional Director has filed an Affidavit on 15th September, 2015 stating therein that save and except as stated in para 6(a) & (b), it appears that the scheme is not prejudicial to the interest of shareholders and public. In the light of aforesaid facts the Hon'ble Court may pass such order as may be deemed fit and proper.

In Para 6 of the said Affidavit, it is stated that:

"(a)(i) Clause No. 2 B of the scheme provides for appointed date as 01/01/2010 or such other date as may be approved by the Hon'ble High Court. In this regard it is respectfully submitted that the retrospective date prescribed in the scheme is not in consonance with the provisions of the Income Tax Act and hence the Hon'ble Court may direct the Petitioner Company to adopt an appointed date which is very close to available audited balance Sheet of Petitioner Company, in this case it may be as per the Balance Sheet as at 31/03/2014.

(ii) It is further submitted that the provisions of Income Tax requires for demerger, that the assets and liabilities of the demerged company has to be transferred on "going concerned basis". Therefore, it is necessary that as per the latest audited balance sheet of the demerged company the assets and liabilities are required to be transferred on book value basis and hence the latest practicable date shall be considered as on appointed date. In this case it may be as per the Balance sheet as at 31/03/2014 and hence, it would be more appropriate to have the appointed date as 01/04/2014.

(iii) It is also pertinent to note that the scheme of demerger is not in compliance with provisions of Income Tax Act in as much as the scheme was originally formulated pursuant to the memorandum of undertaking dated 01/12/2009 which was subsequently amended on 9/8/2013, by that

time the financial year 31/03/2010, 31/03/2011, 31/03/2012 and 31/03/2013 were completed and there is no justification for transferring the assets and liabilities of demerged company with retrospective date.

(b) Deponent further respectfully submit that the tax issue 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 return 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. Learned Counsel for the Petitioner Company states that Transferor Company's assets and liabilities are being transferred on a going concern basis to the Transferee Company in accordance with the provisions of section 2(19AA) of the Income Tax Act. The proposed Scheme is a result of a memorandum of understanding between a family of shareholders which Scheme is approved by all the shareholders and creditors including unsecured creditors. From the point of view of Sections 391 to 394 of the Companies Act, 1956, there is nothing wrong with the particular date chosen as the appointed date. Learned Counsel for the Petitioner Companies undertakes that the Company will not seek any advantage from the point of view of the provisions of income tax act and all taxation issues arising out of the scheme shall be subject to final decision of Income Tax Authorities and in accordance with the appropriate law. The approval of the scheme by this Hon'ble Court shall not in any way impair the contentions of the Income tax Authority concerning the taxation of the Companies as a result of the Scheme. The Income Tax Authority shall assess the Companies on the basis of the applicable provisions of law. The undertakings given on behalf of the Petitioner Companies are accepted.

11. Subject to what is mentioned above, 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.

12. Company Scheme Petition Nos. 270 of 2015 and 271 of 2015 are accordingly made absolute in terms of prayer clauses (a) to (j) and prayer clauses (a) to (g) respectively.

13. The Petitioner Companies 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 (sixty) days from the date of the Order.

14. The Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically, alongwith E-Form 21/ INC 28 in addition to the physical copy, as per relevant provision of the Companies Act, 1956 or Companies Act, 2013, whichever is applicable.

15. The Petitioner Companies to pay costs of Rs. 10,000/- each to Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

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

17. All concerned regulatory authorities to act on a copy of this Order alongwith Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.C. Gupte. J)