IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 85/2015

Reserved on 11th August, 2015
Date of pronouncement: 11th September, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391 to 394 of the Companies Act, 1956

Scheme of Amalgamation of:

Chemico Manufacturers (India) Limited
Petitioner/Transferor Company

WITH

Vimal Organics Limited
Petitioner/Transferee Company

Through Mr. Saurabh Kalia, Advocate for the petitioners
Mr. Atma Sah, Assistant Registrar of Companies for the Regional Director
Mr. Rajiv Bahl, Advocate for the Official Liquidator

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391 to 394 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Chemico Manufacturers (India) Limited (hereinafter referred to as the transferor company) with Vimal Organics Limited (hereinafter referred to as the transferee company).

2. The registered offices of the transferor and transferee companies are situated at New Delhi, within the jurisdiction of this Court.

3. The transferor company was originally incorporated under the Companies Act, 1956 on 16th September, 1974 with the Registrar of Companies, Uttar Pradesh at Kanpur under the name and style of Chemico Manufacturers (India) Private Limited. The company changed its name to Chemico Manufacturers (India) Limited and obtained the fresh certificate of incorporation on 2nd February, 1995. Thereafter, the company shifted its registered office from the State of Uttar Pradesh to NCT of Delhi and obtained a certificate in this regard from the Registrar of Companies, NCT of Delhi & Haryana at New Delhi on 28th February, 2006.

4. The transferee company was originally incorporated under the Companies Act, 1956 on 30th January, 1984 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Vimal Organics Private Limited. The company changed its name to Vimal Organics Limited and obtained a fresh certificate of incorporation on 30th December, 1994.

5. The present authorized share capital of the transferor company is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is

Rs.25,00,000/- divided into 2,50,000 equity shares of Rs.10/- each fully paid-up.

6. The present authorized share capital of the transferee company is Rs.5,00,00,000/- divided into 50,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid up capital of the company is Rs.2,60,60,000/- divided into 26,06,000 equity shares of Rs.10/- each.

7. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, have also been filed.

8. A copy of the Scheme of Amalgamation has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted by the petitioners that the proposed scheme will improve the financial position of the companies through restructuring and will strengthen the business and financial operations of the company.

9. So far as the share exchange ratio is concerned, the Scheme provides that the transferor company is a wholly owned subsidiary of the

transferee company. Accordingly, pursuant to the amalgamation of the transferor company into the transferee company, no shares of the transferee company shall be allotted in respect of its holding in the transferor company. Accordingly, all the shares held by the transferee company in the transferor company shall stand cancelled, upon this scheme becoming effective.

10. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

11. The Board of Directors of the transferor and transferee companies in their separate meetings held on 29th December, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

12. The petitioner companies had earlier filed CA (M) No. 13/2015 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Amalgamation. Vide order dated 6th February, 2015, this court allowed the application and dispensed with the requirement of convening

and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation.

13. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 23rd February, 2015, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and (Hindi) editions. Affidavit of service has been filed by the petitioners showing compliance regarding service on the Official Liquidator and the Regional Director, Northern Region and also regarding publication of citations in the aforesaid newspapers on 23rd March, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

14. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 8th July, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor company

do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

15. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 22nd July, 2015. Relying on Clause 5.1 of Part-II of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 13.1 of Part-III of the Scheme, it has been stated that upon the Scheme becoming effective and with effect from the appointed date, the amalgamation of the transferor company with the transferee company shall be accounted as per the Accounting Standard-14 issued by the Institute of Chartered Accountants of India. He further submitted that in Clause 21 of Part-IV of the Scheme, it has been stated that upon this scheme becoming effective, the transferor company shall stand dissolved without the process of winding up.

16. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies in the affidavit dated 23rd July, 2015 of Mr. Shrawan Kumar Aggrawal, authorized signatory of the

petitioner companies have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 23rd March, 2015.

17. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region, and the Official Liquidator not raising any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the amended Scheme of Amalgamation. Consequently, sanction is hereby granted to the amended Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in accordance with law. Upon the sanction becoming effective from the appointed date of Amalgamation, i.e. 1st April, 2014, the transferor company shall stand dissolved without undergoing the process of winding up.

18. Learned counsel for the Official Liquidator prays that costs may also be imposed keeping in view the fact that the matter has involved

examination of extensive records and prioritized hearings. He submits that at least costs of Rs.25,000/- should be paid by the petitioners. Learned counsel for the petitioners states that the same is acceptable to him. Looking to the circumstances, the petitioners shall deposit a sum of Rs.25,000/- by way of costs in the Common Pool Fund of the Official Liquidator, within two weeks.

19. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

September 11, 2015