IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 166 of 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 494 OF 2015

Nandalal Fruit Processors Private Limited. …Petitioner No. 1 / Transferor Company

AND

COMPANY SCHEME PETITION NO. 167 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 495 OF 2015

Kamdhenu Pickles and Spices Industries Private Limited.

…Petitioner No. 2/Transferee Company

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

AND

In the matter of Sections 391 to 394 of the Act;

AND

In the matter of Scheme Amalgamation of Nandalal Fruit Processors Private Limited (Transferor Company)

WITH

Kamdhenu Pickles and Spices Industries Private Limited (Transferee Company)

AND

Their respective shareholders

<u>Called for Hearing</u>

Ms.Prachi Manekar, Advocates for the Petitioners.

Mr. Pawan Patil i/b, Pankaj Kapoor for the Regional Director.

Mr.Vinod Sharma, Official Liquidator present.

CORAM: A. K. Menon, J.

DATE: 27th October, 2016

P.C:

1. Heard Counsel for the parties. Neither any objector has come before the court to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Section 391 to 394 of the Companies Act, 1956 to the scheme of Amalgamation of Nandalal Fruit Processors Private Limited with Kamdhenu Pickles and Spices Industries Private Limited and their respective shareholders.

3. The Learned Counsel for the Petitioners states that the Petitioner No. 1 Transferor Company i.e. Nandalal Fruit Processors Private Limited is currently carrying out business of manufacturing, marketing and selling of Pickles and the Petitioner No. 2 Transferee Company i.e. Kamdhenu Pickles and Spices Industries Private Limited is presently engaged in the business of manufacturing and processing of Pickles.

4. The Learned Counsel for the Petitioners states that the proposed scheme will have the benefit of greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in improved overall shareholder value, benefit of operational synergies to the combined entity and streamlining of operations and reduction in operational cost of legal entities.

5. The Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective 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.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956/ 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 20/09/2016 stating therein save and except as stated in para 6(i) to (viii) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6 (i) to 6 (viii) of the said Affidavit, the Regional Director has stated that

"

(i) *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.*

(ii) *The Petitioner in clause 11.3 of the scheme has interalia mentioned that The transferee company shall, if and to the extent required, apply for and obtain any approvals from concerned regulatory authorities for the issue and allotment of equity shares to the members of the transferor companies.*

(iii) Deponent prays that the Hon'ble Court direct the company to make compliance of provisions of the Companies Act for increasing Authorised share capital of transferee company.

Petitioner in Clause No.13 of Part B of the Scheme interalia has mentioned that upon the scheme becoming effective that the clauses relating to main objects of the transferor company shall stand inserted as Clause 1A immediately after the main object Clause No.1 of the Memorandum of Association of the transferor company. It is further mentioned that the approval of members of transferee company to the scheme shall be deemed to be their consent, approval also to the alteration as may be required under the Act.

(iv) Deponent prays that the Hon'ble Court direct the Company to make compliance of provisions of the Companies Act for altering the Memorandum of Association of the transferee company.

(v) The petitioner in clause 14.5 interalia has mentioned that the Board of Directors of the transferor company may alter or modify the provisions of the clause 14 in consultation with the Auditors, as may deem fit and consider necessary, to settle any question /difficulty arising out of the scheme to comply with the relevant laws, Income Tax Act and Accounting Standards.

(vi) Deponent prays that the Hon'ble court direct the company to make compliance of provisions of the Accounting Standards-14 issued by the Institute and the Govt.

(vii) The Transferor Company and Transferee Company are regular in filling the statutory returns as required under the Companies Act. However, the appointed date is 01.04.2014.

(viii) Deponent prays that the Hon'ble Court may pass such orders as deem fit".

9. As far as the observations made in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Company is 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.

10. As far as the observations made in paragraph 6(ii)& 6(iii) of the Affidavit of the Regional Director is concerned, the Learned Advocate submits that Under the Companies Act 1956, there were several judgments such as Eye Foundation Ltd V Lasik Centre (India) P.Ltd [MANU/TN/2220/2012 and Mekaster Valves and Engineering Services Private Limited MANU/GJ/0354/2008 wherein it was categorically held that the Chapter V of the 1956 Act dealing with compromise and arrangement provided a complete code and a single window clearance. Upon the scheme coming into effect, there is no further increase in the Authorized share capital of the Transferee Company, other than the combined authorized share capital which shall stand automatically enhanced without any further act or separate procedures to be followed.

11. As far as the observations made in paragraph 6(iv) of the Affidavit of the Regional Director is concerned, the Learned Advocate submits that Under the Companies Act 1956, there were several judgments such as Eye Foundation Ltd V Lasik Centre (India) P.Ltd [MANU/TN/2220/2012 and Mekaster Valves and Engineering Services Private Limited MANU/GJ/0354/2008 wherein it was categorically held that the Chapter V of the 1956 Act dealing with compromise and arrangement provided a complete code and a single window clearance. Separate procedures were not required to be followed for various activities like increase of authorized capital and alteration of memorandum of association. However, the Petitioner No. 2 undertakes to file form MGT-14 alongwith revised copy of memorandum of association of Petitioner No. 2 within 30 days from the date of receipt of certified true copy of the order.

12. As far as the observations made in paragraph 6(v) & (vi) of the Affidavit of the Regional Director is concerned, the Petitioner Company undertakes that in addition to compliance of Accounting Standards 14, the Transferee Company

shall pass such accounting entries as may be necessary in connection with the scheme of amalgamation to comply with any other applicable accounting standards.

13. As far as the observations made in paragraph 6(vii) & (viii) of the Affidavit of the Regional Director is concerned, the Petitioner Company undertakes that Petitioner Company is 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.

14. The Learned Counsel for the Regional Director on instructions of, Smt. P. Sheela, Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

15. The Official Liquidator has filed his report on 07/10/2016 in Company Scheme Petition No. 166 of 2016 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.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 166 of 2016 filed by the Transferor Companies is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 167 of 2016 filed by the Transferee Company is made absolute in terms of prayer clause (a) to (b).

18. The Petitioner Companies are directed 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.

19. The Petitioner/ Transferee Company is 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 copy, as per the relevant provisions of the Companies Act, 1956 / 2013, whichever is applicable.

20. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region Mumbai, in Company Scheme Petition No. 166 of 2016 and 167 of 2016 and the Petitioner Companies in the Company Scheme Petition No. 166 of 2016 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.

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

22. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, (O.S), Bombay.

(A. K. Menon, J.)

C E R T I F I C A T E

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

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