IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 181 OF 2016

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 29 OF 2016

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

AND

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

AND

In the matter of Scheme of Amalgamation of Aura Chem Private Limited (Transferor Company) with Solex Chemicals Private limited (Transferee Company) and their respective shareholders

Aura Chem Private Limited…..Petitioner/Transferor Company

Called for Hearing

Mr. Hemant Sethi and Mr. Ajit Singh Tawar i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. Vinod Sharma, Official Liquidator, present.

Mr. D.R. Shah, i/b Mr. Pankaj Kapoor, Regional Director

CORAM: A.K. MENON, J

DATE: 1ST SEPTEMBER , 2016

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

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 Scheme of Amalgamation of Aura Chem Private Limited (Transferor Company) with Solex Chemicals Private limited (Transferee Company) and their respective shareholders (the ‘Scheme’).

3. Learned Counsel for the Petitioner states that the Petitioner Company is engaged in the business of manufacturer, Importer, exporter, commission agent of

insecticide chemicals and other chemical. The Transferee Company is engaged in the business of manufacturer, Importer, exporter, commission agent of insecticide chemicals and other chemical.

4. The Rationale for the Scheme is that Aura and Solex are the companies engaged in the field of manufacturing of chemicals and insecticide chemicals and other chemical. Solex has a license to manufacture Technical insecticides issued by the Government of West Bengal, Dept. of Agriculture, no. MPP/ILC/221/M-5 dated 21/05/2007 and is already commences above manufacturing at Kolkata from December 2013. Aura has built a manufacturing plant at Kolkata to manufacture the above Products which has been given on lease to Solex. As both the companies have a common object of manufacturing and sale of chemicals and that where is one owns the plant and another holds manufacturing licenses, it is a synergy that both the companies merged for better utilization of resources, savings in cost and other expenses. Both the companies are under common management and the merger will reduce the administrative cost and will achieve the operational and management efficiency.

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

6. The learned Counsel for the Petitioner further states that, Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Summons for Directions.

7. The learned Counsel 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, Petitioner Company 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 Regional Director has filed an affidavit on 31st August, 2016 stating therein that save and except as stated in paragraph 6 (a) and 6 (b) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In para 6 (a)

and 6 (b) of the said Affidavit, it is stated as under:

That the Deponent further submits that,

(a) 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 the approval of the Scheme by the 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.

(b) In respect of compounding application mentioned in paragraph 29 of the Registrar of Companies Report. The Transferor Company may pleased be directed to get the compounding order u/s 621A of the Companies Act, 1956. As the Transferor Company, on coming into effect of the scheme shall stand dissolved without winding up thereby the Regional Director will not have any jurisdiction to deal with the compounding application.

9. So far as the observation in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner through its Counsel undertakes that it is bound to comply with all applicable provisions of the Income-tax Act, 1961 and all issues arising out of the Scheme will be met and answered in accordance with law.

10. As far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner relies upon clause 11 of the Scheme, which inter-alia states the, if any legal or other proceedings of whatever nature, whether civil or criminal (including before any statutory or quasi-judicial authority or tribunal) (the "Proceedings") by or against the Transferor Company is pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the Undertaking or of anything contained in the Scheme, but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would be or might have been continued, prosecuted and enforced by or against the Transferor Company as if the Scheme had not been made. On and from the Effective Date, the Transferee Company shall and may initiate any legal proceedings for and on behalf of the Undertaking. The Counsel for the Petitioner submits that merely if the Transferor Company is dissolved without

winding up, the proceedings shall continue against the Transferee Company.

11. The Counsel for the Petitioner on instructions states that the Company and its Directors have sou moto filed all 6 applications for compounding of offence under Section 297 of the Companies Act, 1956 between the period 15th October 2015 to 28th July 2016.

12. The learned Counsel for the Regional Director on instruction from Shri S. Ramakantha, Regional Director, Western Region, in the office of Ministry of Corporate Affairs states that they are satisfied with the undertaking and clarifications given by the Petitioner Company.

13. The Official Liquidator has filed his report on 16th August, 2016 in the Company Scheme Petition No. 205 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 by this Court.

14. 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. None of the parties concerned have come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Transferor Company is made absolute in terms of prayer clause (a) of the Petition.

16. The Petitioner Companies 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 receipt of the order.

17. Petitioner Company are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of companies, electronically, along with E-form INC-28 in addition to the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director and to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of the Order.

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

20. All authorities concerned to act on a copy of this order along with Scheme duly

authenticated by the Company Registrar, High Court (O. S.), Bombay.

(A.K. Menon, J)

CERTIFICATE

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

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