

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 208 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 135 OF 2016**

Add Sales And Marketing Private Limited ...Petitioner Company

AND

**COMPANY SCHEME PETITION NO. 209 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 136 OF 2016**

Add Pens 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 Scheme of Amalgamation of Add Sales And Marketing Private Limited ("ASMPL")

WITH

Add Pens Private Limited ("APPL")

AND

their respective shareholders and creditors

Called for Hearing

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

Mr. Chandrakant Chavan, i/b. Pankaj Kapoor for the Regional
Director in both Company Scheme Petitions.

Mr. Vinod Sharma, Official Liquidator present in Company Scheme
Petition No. 208 of 2016.

Coram : B. P. Colabawalla, J.

Date : 5th August, 2016

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 Company Scheme 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 Add Sales And Marketing Private Limited ("ASMPL") with Add Pens Private Limited ("APPL") and their respective shareholders and creditors.
3. Learned Advocate for the Petitioner Companies state that the Transferor Company is engaged in the business of merchants and traders in all kinds of commodities, products, raw materials, semi-finished and wastages and Transferee Company is engaged in the business of Manufacturers, Processors, Traders, Designers, Consultants, Reconditioners, Distributors and Intermediaries of and dealers in Ball Pens, Gel Pens, Roller Pens.

4. The amalgamation will enable the integration of business operations and it would result in consolidation of the business activities will lead to synergies of operations and cost savings from focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement and integration and optimization of various support functions, resources and the assets and easier and speedier decision making at all levels and better management and co-ordination and would result in pooling of the human talents in terms of manpower, management, administration and marketing to result in savings of costs and further would result in a avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances and would facilitate integrated marketing strategies and costs and optimum utilization of assets and bring uniformity in corporate policy.
5. The Petitioner Companies have approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.
6. The Learned Advocate for the Petitioner further states that the Petitioner Company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the Order passed in Company Summons for Direction.
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

affidavit of compliance in the Court. Moreover, the Petitioner Company through its Advocate 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 18th July, 2016 in Company Scheme Petition No. 208 of 2016 stating therein that the affairs of the Transferor Company have 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 28th June, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

(a) Clause No. 14.2 of the Scheme provides for adjustment for differences in Accounting policies between Transferor Company and Transferee Company. In this regards, it is submitted that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) 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.”

10. As far as the observations made in paragraph 6(a) 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 including Accounting Standard 5.
11. As far as the observations made in paragraph 6(b) 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.
12. The Learned Counsel for the Regional Director on instructions of Mrs. P Sheela, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 208 of 2016 is made absolute in terms of prayer clause (a), (b), (c) and (d) and Company Scheme

Petition No. 209 of 2016 is made absolute in terms of prayer clause (a) to (c).

15. The Petitioner Company is 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 receipt of the order.
16. The Petitioner Company is further directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay 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.
17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No.208 of 2016 and Company Scheme Petition No.209 of 2016 and pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 208 of 2016. Costs to be paid within four weeks from the date of the Order.
18. Filing and issuance of the drawn up order is dispensed with.
19. 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.

(B. P. Colabawalla, 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.

Uploaded by: Shankar Gawade, Stenographer