IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 141 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 70 OF 2016.

PPG ASIAN PAINTS PRIVATE LIMITED

.... the Petitioner Company

In the matter of the Companies Act, 1 of 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between FAABER PAINTS PRIVATE LIMITED, the Demerged Company and PPG ASIAN PAINTS PRIVATE LIMITED, the Resulting Company and their respective Shareholders and Creditors

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. G.R. Dwiwedi i/b Mr. A.A. Ansari for Regional Director.

CORAM: S. C. Gupte, J.

DATE: 4th May, 2016

PC:

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

2. The sanction of the Court is sought to a Scheme of Arrangement between FAABER PAINTS PRIVATE LIMITED, the Demerged Company and PPG ASIAN PAINTS PRIVATE LIMITED, the Resulting Company and their respective Shareholders and Creditors, under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioner states that the Demerged Company has been carrying business as manufacturers, dealers, importers, exporters, agents and sellers of paints for auto and other industrial applications, automotive refinishes, both chemicals and water treatment chemicals and the Resulting Company and has been engaged in business as manufacturers, dealers, importers, exporters, agents and sellers of paints for auto and other industrial applications, automotive refinishes, both chemicals and water treatment chemicals.

The proposed scheme of Arrangement will result in various benefits including ensuring core competency in the respective businesses of each company and to facilitate their further expansions and both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company. The amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies. The combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

4. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Arrangement and by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner further states that, Petitioner Company have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioner have stated that the Petitioner Company 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 Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed an Affidavit on 3rd day of May, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. . That the Deponent further submits that,

(a) That the Registered Office of the Demerged Company is situated in the State of Tamil Nadu. Hence the Demerged Company has to file similar petitioner before the Hon'ble High Court of Madras for approving the said scheme.

(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 Companies.

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Demerged Company had already filed similar petition before the Hon'ble High Court of Madras for approving the said scheme and the same is pending. The learned counsel for the Petitioner Company further submits that this scheme of Arrangement be approved subject to sanctioning of the said Scheme by Hon'ble High Court of Madras.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the Petitioner Company are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states

that they are satisfied with the undertakings given by the Petitioner. The above undertakings are accepted.

11. 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. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is made absolute in terms of prayers clause (a) to (c) subject to sanctioning of the Scheme by the High Court of Madras.

13. The Petitioner Company 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 days from the date of the Order.

14. The Petitioner Company is directed to file a copy of order along with a copy of the Scheme of Arrangement 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.

15. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Cost 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 along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.