

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 178 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 216 OF 2016

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation
of

IMA Industries India Private Limited (“IMA Industries” or “the Transferor Company”)

with

IMA-PG India Private Limited (“IMA-PG” or “the Transferee Company”)

and

their respective shareholders

IMA INDUSTRIES INDIA PRIVATE LIMITED

.....Petitioner Company

Called for Hearing

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

Ms. Priya Sankpal i/b Mr. Pankaj Kapoor for the Regional Director.

Mr. Vinod Sharma Official Liquidator, present.

CORAM: B. P. Colabawalla.

DATE: 22nd July, 2016

1. Heard counsel for the party. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of IMA Industries India Private Limited, the Transferor Company with IMA-PG India Private Limited, the Transferee Company and their respective shareholders.
3. Learned Counsel for the Petitioner states that the Transferor Company and the Transferee Company are engaged in the business of sale and service of packaging machinery and manufacturing of packaging machinery respectively. The rationale for the Scheme is consolidation of businesses, maximize synergies, to reduce administrative cost and to achieve operational and management efficiency.
4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and the Transferee Company have approved the said Scheme by passing Board Resolutions, which were annexed to the Company Scheme Petition.
5. Learned Counsel for the Petitioner further states that since the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, IMA-PG India Private Limited along with its nominees and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by the Transferee Company was dispensed with vide order dated 1st day of April, 2016 passed in CSD No. 216 of 2016.

6. The learned Counsel for the Petitioner further states that, 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 orders passed in Company Summons for Direction.
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 undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever applicable. The said undertaking is accepted.
8. The Official Liquidator has filed his report on 12th day of July, 2016 in Company Scheme Petition stating that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.
9. The Regional Director has filed an affidavit on 16th June, 2016 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said affidavit it is stated that:
 - a) *Clause 6.4 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.*
 - b) *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 observation in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to follow the accounting treatment provided in the Scheme and to comply with the requirements of the relevant Accounting Standards applicable to the Scheme.
11. As far as the observation in paragraph 6(b) of the affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits 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.
12. The Learned Counsel for Regional Director on instructions of Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai have not raised any further objections to the submissions made by the Petitioner Company. The said submissions and undertakings of the Petitioner Company are 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, the Company Scheme Petition filed by the Petitioner Company are made absolute in terms of prayer clauses (a) , (c) and (d) subject to sanction of scheme by the Bombay High Court.
15. The Petitioner Company 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.

16. The Petitioner is 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.
17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay. Cost 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)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.