IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 390 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 310 OF 2016

Keva Fragrances Private Limited
……….Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 391 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 311 OF 2016

K. V. Arochem Private Limited
…………Petitioner / Transferee Company

In the matter of the Companies Act, 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 provisions of the Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation between Keva Fragrances Private Limited and K. V. Arochem Private Limited and their Respective Shareholders and Creditors

Called for Hearing

Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocates for the Petitioner.

Mr. Chirag J shah , i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator, present in the Company Scheme Petition No. 390 of 2016

CORAM: A.K. Menon, J.

DATE: 22 SEPTEMBER, 2016

1. Heard the learned counsel for the Petitioner Companies. 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 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation between Keva Fragrances Private Limited and K. V. Arochem Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner states that the Transferor Company is engaged in the business of manufacture and sale of aroma ingredients. The Transferee Company is an export oriented unit and is engaged in the business of manufacture and export of fragrances and flavours.

4. The management proposes to merge Transferor Company with Transferee Company will have the benefits of a) Optimal utilisation of existing resources through consolidation of operations into a single legal entity b) provide an opportunity to leverage and pool skilled and experienced manpower of the respective companies; and c) Derive operational and financial synergies through prudent financial management and cost reduction.

5. The Petitioner Companies approved the said Scheme by passing Board Resolution which are annexed to the respective Company Scheme Petition.

6. The learned Advocate for the Petitioner Companies states that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Petition has been filed in consonance with the orders passed in the Company Summons for Directions.

7. The learned Advocate appearing on behalf of the Petitioner Companies has stated that it has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 20th September, 2016 stating therein that in view of paragraphs 6(i) to 6(vi) of the said affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

9. In paragraph 6(i) to 6(vi) of the said affidavit, it is 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 Transferor Company and Transferee Company are regular in filing the statutory returns as required under the Companies Act., However, the appointed date is 01.05.2015. Deponent prays that the Hon'ble Court may pass such orders as deem fit.

iii) Petitioner in clause 5 of the scheme inter alia has mentioned that the Board of Transferee company shall, if and to the extent required, apply for and obtain approval from concerned department /regulatory authorities for the issue and allotment of shares to the Transferor company.

Deponent prays that the Hon'ble Court direct the company to obtain approval of shareholders for increase in authorized share capital of the Transferee company.

iv) Petitioner in Clause no. 6 of Part II of the scheme inter alia has mentioned

(a) That the excess arising on transfer of the assets and liabilities would be credited to Capital Reserve account of the Transferee Company. The deficit if any shall be debited by the transferee company to its goodwill account if any shall be amortized over a period not exceeding 5 years in accordance with AS-14.

(b) Accounting policy of the transferee company would be applicable and in case of difference, if any between accounting policy of transferor company and transferee company, and the difference till the appointed date will be quantify and adjusted in the general reserve account

and any other reserve as may be determined by the Board of transferee company.

However petitioner company nor mentioned the particular accounting standards that would be applied above.

Deponent prays that the Hon'ble Court direct the company to undertake to comply with applicable accounting standards apart from AS-14 issued by the ICAI/Government.

v) Petitioner in Clause no. 7 of Part II of the scheme inter alia has mentioned that with effect from the appointed date and up to and including the effective date all the profits or income accruing or arising to the Transferor company or expenditure or losses or taxes arising or incurred or suffered by the Transferor company shall for all purposes be treated and be deemed to be accrued as the income or profit or losses or expenditure or taxes as the case may be of the Transferee company. Deponent prays that the Hon'ble Court pass such orders as they deem fit.

vi) Petitioner in clause 13 of part II of the Scheme inter alia has mentioned that :-

(a) The name of the company shall stand changed to Keva Fragrances Private Limited or such other name as may be decided upon by the Board or committee and by the Registrar of Companies and Memorandum of Association will be substituted by such name. Further stated that the consent of the shareholders to the scheme shall be deemed to be sufficient for this purpose.

Deponent prays that the Hon'ble Court may direct the company to make compliance of the relevant/applicable provisions of the Companies Act, 2013 in this regard

10. In so far as observations made in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Counsel submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.

11. In so far as observations made in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Counsel submit that the Transferor Company and Transferee Company shall comply with necessary statutory requirements under Companies Act to the extent applicable upto the Appointed Date.

12. In so far as observations made in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Counsel submit that the Transferee Company undertakes to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to Section 94/97 of Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fees and stamp duty as applicable under law on the said forms for increase / alteration / modification of the authorised capital, if necessary to issue and allot equity shares pursuant to the Scheme.

13. In so far as observations made in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Counsel submit that the Transferee Company shall comply with AS 14 of the Companies (Accounting Standard) Rules issued by ICAI/government and other generally accepted

accounting principles to give effect to the accounting treatment as provided for in the Scheme.

14. In so far as observations made in paragraph 6(v) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its Counsel submit that with effect from the Appointed Date, the entire business of Transferor Company shall stand transferred to and vested in the Transferee Company. Hence, with effect from Appointed Date and upto Effective Date, all the profits or income accruing or arising to the Transferor company or expenditure or losses or taxes arising or incurred or suffered by the Transferor company shall for all purposes be treated and be deemed to be accrued as the income or profit or losses or expenditure as the case may be of the Transferee company.

15. In so far as observations made in paragraph 6(vi) of the Affidavit of Regional Director is concerned, the Petitioner Companies undertake to comply with the relevant / applicable provisions of the Companies Act, 2013 for change of name of Transferee Company.

16. In view of undertakings and clarifications given by the Petitioners, the Counsel for the Regional Director on instructions of Mrs. P. Sheela, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions given by the Petitioner Company. The said undertakings given by the Petitioner are accepted.

17. The Official Liquidator has filed his report on 20th September, 2016 in Company Scheme Petition No. 390 of 2016 stating therein that the affairs of the Petitioner / Transferor Company

have been conducted in a proper manner and that the Petitioner / Transferor Company may be ordered to be dissolved.

18. 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 has come forward to oppose the Scheme.

19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 390 and 391 of 2016 are made absolute in terms of prayer clause (a) of the respective Petitions.

20. 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 issuance of Order.

21. Petitioner Companies are 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

22. The Petitioner Companies in both the Company Scheme Petitions to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in the Company Scheme Petition Nos. 390 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

24. All concerned authorities 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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