IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 372 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 200 OF 2016

WHITEHILLS ADVISORY SERVICES PRIVATE LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 373 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 201 OF 2016

ESSEL PROPACK LIMITED

………… Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation and Arrangement OF Whitehills Advisory Services Private Limited WITH Essel Propack Limited AND their respective shareholders

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 in the Company Scheme Petition No. 205 of 2016.

Ms. Shalaka Gujar, i/b Mr. A.K. Chaturvedi, Regional Director in both the Company Scheme Petitions.

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 read along with Sections 100 to 103 and other applicable provisions of the Companies Act, 1956 and other applicable provisions of the Companies Act, 2013 to the Scheme of Amalgamation and Arrangement of Whitehills Advisory Services Private Limited with Essel Propack Limited and their respective shareholders (the 'Scheme').

3. Learned Counsel for the Petitioner states that the Transferee Company is engaged in the business of producing plastic packaging materials in the form of multilayer collapsible tubes, laminates, caps and closures used primarily for packaging toothpaste, personal care, cosmetics, pharmaceuticals, household and industrial products. The Transferor Company, is incorporated to provide advice, consultancy in general administrative, commercial legal, economic, labour, industrial and public relations, scientific technical, direct, and indirect taxation etc.

4. Pursuant to proposed amalgamation of Whitehills Advisory Services Private Limited with Essel Propack Limited, the Trust established for the benefit of the individual Promoters would directly hold substantial shares in Essel Propack Limited hitherto held by Whitehills Advisory Services Private Limited. This would help in simplification of the holding structure and reduction of shareholding tiers.

5. Both the Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

7. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioners 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 23rd August, 2016 stating therein that save and except as stated in para 6 (i) to 6 (v) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In para 6 (i) to 6 (v) of the said Affidavit, it is stated as under:

That the Deponent further submits that,

(i) In the Director's affidavit of Transferee Company, details of disputed Income Tax liability, sales tax, duty of excise and value added tax as on 25.05.2016 which may be perused for directions

(ii) Petitioner in Clause No. 7 of the Scheme inter alia has mentioned that On the Scheme becoming effective, the equity shares of the Transferee Company held by the Transferor Company shall stand cancelled. Accordingly, the share capital of the Transferee Company shall stand reduced to the extent of face value of shares held by the Transferor Company in the Transferee Company and so cancelled. Whereas it is observed from the Scheme and the Balance Sheet of the Transferor Company, no such investment is disclosed. Therefore, deponent prays that the Hon'ble Court may pass such orders as deem fit.

(iii) Petitioner in Clause No. 6.1 of the Scheme inter alia has mentioned that upon the Scheme becoming effective and in consideration for merger of the Transferor Company with the Transferee Company, the Transferee Company shall, without any application or deed, issue and allot shares, credited as fully paid up, to the extent indicated below, to the members of the Transferor Company whose names appear in the register of members, on the Effective Date or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title as the case may be recognized by the Board of Directors of the Transferee Company in the following proportion viz.:

<u>For equity shareholders of the Transferor Company:</u>

"88,829 fully paid up equity shares of face value of Rs 2/- each of EPL to be issued and allotted to shareholders of the Transferor Company holding 10,000 equity shares of Rs. 10 each, in the proportion of the number of equity shares held by the shareholders in the Transferor Company"

<u>For preference shareholders of the Transferor Company:</u>

"888,29,014 fully paid up equity shares of face value of Rs 2/- each of EPL to be issued and allotted to shareholders of the Transferor Company holding 10,00,000, 0.01% Participating Preference Shares of Rs.100/- each, in the proportion of the number of preference shares held by the shareholders in the Transferor Company"

Whereas in the letter dated 29.10.2015 regarding recommendation by the Auditor, it is inter alia mentioned in point of 3.3 that considering that the preference shares issued by Whitehills are participating in nature, we recommend following share exchange ratio based on the proportion of paid up value of equity and preference share capital

(a) For equity shareholders of Whitehills

88,829 fully paid up equity shares of face value of Rs 2/- each of EPL to be issued and allotted to shareholders of Whitehills in the proportion of the number of equity shares held by the shareholders in Whitehills.

(b) For preference shareholders of Whitehills

888,29,014 fully paid up equity shares of face value of Rs 2/- each of EPL to be issued and allotted to shareholders of Whitehills in the proportion of the number of preference shares held by the shareholders in Whitehills. Deponent observed that the ratio is not exactly of Auditor's recommendation. Therefore, Deponent prays that Hon'ble court may pass orders as may *deem fit.*

(iv) In the recommendation of Share Exchange ratio of Manish P. Jain & Associates vide letter inter alia has mentioned at para 4 the sources of information is based on unaudited financial statements of EPL as on June 30, 2015 & Whitehills as on October 28, 2015. Deponent prays the Hon'ble Court may direct the Transferor Company to file the annual return and balance sheet upto 31.03.2015 and also audited financial status upto 30.10.2015 or as may deem fit.

(v) 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 Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies

9. So far as the observation in paragraph 6(i) of the Affidavit of the Regional Director is concerned, through its Counsel undertakes that the proposed amalgamation would not have any adverse impact on disputed Income Tax liability, sales tax, duty of excise and value added tax as shown in the Directors' affidavit, since the said liabilities pertains only to Transferee Company (which will remain in existence even after proposed amalgamation). Further, the Transferee Company is hereby duty bound to comply with all applicable provisions of the Income-tax Act, Sales Tax Act, Central Excise Act and Value added Tax Act along with rules and regulations (applicable in this behalf).

10. So far as the observation in paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Transferee Company through its Counsel wish to state that the preamble to the scheme comprises the details of investments held by Transferor Company into Transferee Company. Further, the said Investments in Transferee Company has also been disclosed in Note 5 of the Transferor Company's audited financial statements for the year ended 31.03.2015 along with number of shares held by Transferor Company in Transferee Company.

11. So far as the observation in paragraph 6(iii) of the Affidavit of the Regional Director is concerned, the Transferee Company through its Counsel request to note that there are only two equity shareholders in Whitehills who

collectively holds 10,000 equity shares and they would be issued 88,829 equity shares. Further, there is only one shareholder holding 10,00,000 preference shares who would be issued 888,29,014 equity shares of Transferee Company. Hence, the share exchange ratio mentioned in the Scheme is effectively the same as provided by the valuers in their recommendation.

12. So far as the observation in paragraph 6(iv) of the Affidavit of the Regional Director is concerned, the Transferor Company through its Counsel submits that both annual return and balance sheet of Transferor Company upto 31.03.2015 has already been filed vide MGT7 SRN no. G04743654 dated 06.06.2016 and AOC-4 SRN no. G04767877 dated 06.06.2016 respectively. As regards filing of audited financial statements upto 30.10.2015, the Transferor Company through its Counsel undertakes to do the necessary compliance, as applicable.

13. So far as the observation in paragraph 6(v) of the Affidavit of the Regional Director is concerned, through its Counsel undertakes is hereby duty bound to comply with all applicable provisions of the Income-tax Act read with Income Tax rules issued in that behalf.

14. The Counsel for the Regional Director on instructions from Mr. V. S. Hajare, Deputy Director in the office of Regional Director stated that they are satisfied with the undertakings given by the Petitioner Companies. The said undertaking given by the Petitioner Companies are accepted.

15. The Official Liquidator has filed his report on July 27, 2016 in the Company Scheme Petition No. 372 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.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 372 of 2016 filed by the Petitioner Company are made absolute in terms of prayer (a) and the Company Scheme Petition No. 373 of 2016 filed by the Petitioner Company are made absolute in terms of prayer (a).

18. 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 receipt of the Order.

19. The Petitioner Companies are directed to file a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with INC – 28 in addition to physical copy as per the relevant provisions of the Companies Act, 2013/1956.

20. The Petitioner Companies in both the Company Scheme Petitions to pay costs of INR 10,000/- to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 372 of 2016 to pay cost of INR 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

22. 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.

(A. K. Menon, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer