IN THE HIGH COURT OF JUDICATURE AT MUMBAI
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 311 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 270 OF 2016

BASF Asia Pacific (India) Private Limited
.... Petitioner /Transferor Company

AND

COMPANY SCHEME PETITION NO. 312 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 271 OF 2016

BASF Catalysts India Private Limited
.... Petitioner /Transferee Company

In the matter of the Companies Act of 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013);

AND

In the matter of Sections 391 to 394 read with Sections 78, 100 to 104 of the Companies Act, 1956(Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013);

AND

In the matter of Scheme of Arrangement of BASF Asia Pacific (India) Private Limited (Transferor Company) with BASF Catalysts India Private Limited (Transferee Company) and their respective Shareholders and Creditors.

Called for hearing:
Ms. Alpana Ghone along with Mr. Arvind Talgaonkar i/b. M/s. Crawford Bayley & Co., Advocate for the Petitioners in both the Petitions.
Mr. Vinod Sharma, Official Liquidator, present in CPS No. 311 of 2016.

Mr. D. R. Shah i/b. Mr. Pankaj Kapoor for Regional Director in all the Petitions.

CORAM: S. C. Gupte J.
DATE: 19th August, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Arrangement and to contravene any averments made in the Petitions.

2. The sanction of the Court is sought to the Scheme of Arrangement of BASF Asia Pacific (India) Private Limited (Transferor Company) with BASF Catalysts India Private Limited (Transferee Company) and their respective Shareholders and Creditors, under Sections 391 to 394 read with Sections 78, 100 to 104 of the Companies Act, 1956 (Or re-enactment Thereof upon Effectiveness of Relevant Provisions of the Companies Act, 2013).

3. The Learned Counsel for the Petitioners states that the Transferor Company is presently not carrying any business activity whereas, the Transferee Company at present is carrying on business of manufacture and sale of automotive exhaust catalysts for controlling the emissions of petrol and diesel driven combustion engines.

4. The Learned Counsel for the Petitioners states that as the Transferor Company and the Transferee Company are the group companies and the Amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create

a stronger financial base which will result in economy of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources and in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor and Transferee Company.

5. The Board of Directors of Petitioner Companies have approved the said Scheme of Arrangement by passing 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 states that the Petitioners have complied with all requirements as per directions of this Hon'ble Court and that the Petitioners have filed necessary Affidavits of compliance in this Hon'ble Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said Undertaking is accepted.

8. The Regional Director has filed an Affidavit on 11th August, 2016 stating therein that save and except as stated in paragraphs 6. (a), (b), (c), (d), (e) and (f) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 (a), (b),(c), (d), (e) and (f) of the affidavit, the Regional Director has stated as under:

6.

(a) Petitioner Companies in clause 3.2 of the scheme inter alia has mentioned that authorised sharecapital of the company is as on 31/01/2016-500000 equity shares of Rs. 100/- each whereas in amount it is mentioned as Rs. 50,00,000/- also mentioned against issues, subscribed and paid-up sharecapital number of equity shares is 4,20,000 of Rs. 10/- each had the amount is Rs. 40,000,20/- whereas in the Balance Sheet, Authorised Sharecapital is mentioned as 500,000 equity shares of Rs. 10/- for which the Company may be asked to correct the scheme.

(b) Petitioner Companies in the affidavit mentioned the registered address of the Companies are situated at Andheri whereas per the Petition, registered address of the Companies is located at Bandra. The Petitioner Companies may be asked to make compliance of the provisions of the Act read with rules.

(c) Petitioner Companies in the scheme inter alia has mentioned that unless otherwise stated hereinunder, with effect from the appointed date and upto and including the Effective Date. All the profits or income accruing or arising to BAPL or

expenditure or losses incurred by BAPL shall for all purpose be treated and deemed to be the profits or income or expenditure or losses (as the case may be) of BCIPL. Deponent prays that the Hon'ble court may pass such orders as may be deemed fit.

(d) In the Auditor's letter no. DTTILLP/200/237 dt. 18.03.2016 under the heading background, auditors inter alia has mentioned that the issues, subscribed and paid up equity share capital of BCIPL as at 30th November, 2015 is c. INR 92 million consisting of 91,17,710 equity shares of INR 10/- each fully paid up of which 60% is held by BAPIPL, 30% is held by BASF Catalysts LLC, Japan. We have been further informed that there has been no change in the above equity share capital of BCIPL since the Valuation has provided the details of this report whereas in the reply, the Transferee Company has provided the details of equity shareholders as on 23rd May, 2016 as under:

Sr. No.	***Name of Shareholder***	***No. of Equity share held***
1.	*BASF Asia Pacific (India) Private Limited*	*55,06,260*
2.	*NE Chemcat Corporation*	*9,17,710*
3.	*Engelhard Asia Pacific LLC*	*27,53,130*

Deponent prays that Hon'ble court may ask the Transferee Company to provide details of transfer and the compliance of Companies Act made by the Company.

(e) *99.99% Shares of Transferor Company is held by Engelhard Asia Pacific LLC and therefore Deponent prays that the Hon'ble Court may ask the Companies to make compliance of FEMA Act/RBI read with rules and regulations, etc.*

(f) *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 the approval of the scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinise the returns filed by the petitioner company after giving effect to the amalgamation the decision of the Income Tax Act Authority is binding on the petitioner company.*

9. In so far as observation made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Authorised Share Capital of the Transferor Company mentioned as 500,000 equity shares of Rs. 10/- in the Balance Sheet is accurate and also undertake to amend the scheme to the extent of the clause 3.2 of the scheme inter alia has mentioned that Authorised Share Capital of the Transferor Company as on 31/01/2016 is 5,00,000 equity shares of Rs. 100/- where the face value of the equity share required to be amended to 'Rs. 10/-' instead of 'Rs. 100/-'.

10. In so far as observation made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner companies' registered office were situated at 3rd Floor, Vibgyor Towers, Plot No. C-62, G-Block,

Bandra Kurla Complex, Mumbai - 400098, Maharashtra, India till 31st March, 2016 and the same were shifted to Plot No. 37, Chandivali Farm Road, Chandivali, Andheri (East), Mumbai - 400072, Maharashtra, India on 1st April, 2016 after a due compliance of the provisions of the Companies Act, 2013 read with rules viz. filing e-form INC 22 with the Ministry of Corporate Affairs on 13th April, 2016.

11. In so far as observation made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that in addition to the compliance of Accounting Standard – 14, the Transferee Company undertake to pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard as may be applicable.

12. In so far as observation made in paragraph 6 (d) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the said information about the shareholding of Transferee Company has been mentioned in the valuation report provided by an independent valuation expert vide their *letter no. DTTILLP/200/237 dt. 18.03.2016*. It may be noted that the scope of engagement of an independent valuation expert was to arrive at a share exchange ratio in connection with the Scheme of Arrangement of BASF Asia Pacific (India) Private Limited with BASF Catalysts India Private Limited and while arriving at the share exchange ratio, they have not undertaken to certify the shareholding

pattern of both the Companies. In the said valuation report, they have erroneously mentioned one of the shareholder holding 30% of the share capital of Transferee Company as 'BASF Catalyst LLC, USA' instead of 'Engelhard Asia Pacific LLC, USA'. The annual accounts of BASF Catalyst India Private Limited for the financial year ended 31st March, 2015, which has been audited by auditor reflects the true and correct shareholding pattern of BASF Catalyst India Private Limited, which is in line with the details mentioned in the Scheme of Arrangement as well as in the respective Petitions, filed with this Hon'ble Court. The independent valuation expert issued a clarificatory letter bearing *Ref. No. DTTILLP/G-200/368* interalia stating that, *"The issued, subscribed and paid up equity capital of BCIPL as at 30th November, 2015 is INR. 92 million consisting of 91,17,710 equity shares of INR. 10/- each fully paid up of which 60% is held by BAPIPL, 30% is held by Engalhard Asia Pacific LLC, USA and 10% is held by NE Chemcat Corporation, Japan."* A photocopy of the said letter is taken on record and marked 'X' for purpose of identification. In view the above the details of transfer and the compliance of Companies Act are not required.

13. In so far as observation made in paragraph 6 (e) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that Petitioner companies are bound to comply with all applicable provisions of the FEMA/RBI read with rules and regulations for allotments of new shares by the Transferee Company to the shareholders of Transferor Company being foreign body corporate.

14. In so far as observation made in paragraph 6 (f) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner companies are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the scheme and/or from the scrutiny of the returns filed by the petitioner company will be met and answered in accordance with law.

15. The Learned Counsel for Regional Director on instructions of Mr. Ramakantha, 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 Petitioners and also agree with the amendment required to be carried out as mentioned in para 9 herein above. The above undertakings are accepted.

16. The Learned Counsel for the Petitioner Companies states that, the amendments as mentioned herein above is required to satisfy the objection which is necessary to carry out and seek leave of this Hon'ble Court to substitute 'the Face Value of the Equity Share Rs. 10/- each' of the Transferor Company in the Scheme as referred above in para 9.

17. In view of the above the leave to amend the Scheme as per clause 9 herein above is granted. The amendment is to be carried out within the Two weeks from the date of

final hearing. The undertakings given by the Petitioner Company in para 7 and 9 are accepted.

18. The Official Liquidator has filed his report on 18th July, 2016 in Company Scheme Petition No. 311 of 2016 stating 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 without winding up.

19. 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.

20. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 311 of 2016 is made absolute in terms of prayer clauses (a), (b) and (d), and 312 of 2016 is made absolute in terms of prayer clauses (a) and (c).

21. The Petitioner Companies to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court (O.S.), Mumbai, 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 the order by the Registry.

22. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Arrangement and form of minutes with the concerned Registrar of

Companies, electronically, along with E-form INC-28, in addition to physical copy as per the provisions of the Act.

23. The Petitioners in all the Petitions to pay costs of INRs.10,000/- each to the Regional Director, Western Region, Mumbai, and the Petitioners in the Company Scheme Petition Nos. 311 of 2016 to pay cost of INRs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

25. All the concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.),Mumbai.

(S. C. Gupte J.)

<u>CERTIFICATE</u>

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

Uploaded by: Shankar Gawde, Stenographer.