IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 454 of 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 249 OF 2016

Speciality Urethanes Private Limited. …Petitioner No. 1 / Demerged Company

AND

COMPANY SCHEME PETITION NO. 455 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 250 OF 2016

Speciality Innotech Private Limited. ….Petitioner No. 2 / Resulting Company

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

AND

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

AND

In the matter of Scheme of Arrangement betweenSpeciality Urethanes Private Limited ("The Demerged Company")

AND

Speciality Innotech Private Limited ("The Resulting Company")

AND

Their respective shareholders

Called for Hearing

Ms. Prachi Manekar, Advocate for the Petitioners.

Mr. P. Khosla i/b. Pankaj Kapoor, for the Regional Director.

CORAM: A. K. Menon, J.

DATE: 8th September, 2016

P.C:

1. Heard Counsel for the parties. Neither any objector has come before the court to oppose the Scheme of Arrangement, nor has any party controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Section 391 to 394 and Section 100 to 103 of the Companies Act, 1956 to the Scheme of Arrangement between Speciality Urethanes Private Limited with Speciality Innotech Private Limited and their respective shareholders.

3. The Learned Counsel for the Petitioner states that the Demerged Company is engaged in the business of trading, manufacturing and processing of polyurethane castings and allied products and the Resulting Company would carry on the business of CMV undertaking consisting Custom Molded Polyurethane products, Hardware & MPU products and vibration Isolation Solution Products.

4. The Learned Counsel for the Petitioners states that the proposed scheme of Arrangement will ensure focused management attention and resources as well as skill set allocation on WCRA undertaking and CMV undertaking. The scheme would also help achieve economies of scale for the respective undertakings.

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

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the Company Scheme Petitions have

been filed in consonance with the Orders passed in respective Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Hon’ble Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertakes 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 undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 31/08/2016 stating therein, save and except as stated in para 6(a) & 6(b), according to Regional Director, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) and 6 (b) of the said affidavit, the Regional director has stated that:
"

(a) Clause 10 of the scheme the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to goodwill account of Resulting Company.

(b) That the Deponent further submits that the Tax implication 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.”

9. As far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner / Transferee Company through their Counsel undertakes that surplus if any arising out of the scheme shall be credited to the Capital Reserve Account of Resulting Company and deficit if any arising shall be debited to the goodwill account of Resulting Company.

10. As far as observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Petitioner through their Counsel submits that the Petitioner is bound to comply with all the applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of Arrangement will be met and answered in accordance with law.

11. The Learned Counsel for the Regional Director on instructions of S. Ramakantha, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Westerns Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

12. From the material on record, the Scheme appears to be fair and reasonable and is not violating any provisions of law and is not contrary to public policy.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 454 of 2016 and Company Scheme Petition No. 455 of 2016 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c), filed by the Resulting Company is made absolute in terms of prayer clause (a) to (c) respectively.

14. The Petitioner Companies are directed 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.

15. The Petitioner Companies are further 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.

16. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region Mumbai, in Company Scheme Petition No. 454 of 2016 and 455 of 2016. Costs to be paid within four weeks from the date of the Order.

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

18. All 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), Bombay.

(A.K. Menon, J.)

C E R T I F I C A T E

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

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