IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 532 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 359 OF 2016

Agarwal Petrochem Private Limited ....Petitioner/ Transferor Company

WITH

COMPANY SCHEME PETITION NO. 533 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 360 OF 2016

Agarwal Industrial Corporation Limited ....Petitioner/ Transferee Company

In the matter of the Companies Act, 1956 (to the extent not repealed) and/or the Companies Act, 2013 (to the extent notified);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 as amended and the corresponding provisions of the Companies Act, 2013 upon their notification (including any statutory modifications(s) or re-enactment(s) thereof;

AND

In the matter of Scheme of Amalgamation of Agarwal Petrochem Private Limited with Agarwal Industrial Corporation Limited and their respective shareholders and creditors.

Called for hearing

Mr. Rahul R. Mahajan alongwith Mr. Amit Surve and Mr. Vishal Shah, i/b Fortitude Law Associates, Advocates for the Petitioners in both the Petitions.
Mr. Vinod Sharma, Official Liquidator, present in Company Scheme Petition No. 532 of 2016.
Ms. Priya Sankpal, i/b by Mr. A.K. Chaturvedi for the Regional Director in both the Petitions.

CORAM: A.K. MENON, J.
DATE: OCTOBER 20, 2016

PC:

1. Heard Learned Counsel for the parties. 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 a Scheme of Amalgamation of Agarwal Petrochem Private Limited with Agarwal Industrial Corporation Limited and their respective shareholders and creditors.

3. The Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of manufacturing and trading of Bitumen and Bituminous products and wind power generation. The Transferee Company is engaged in the business of manufacturing and trading of Bitumen and Bituminous products, transportation and logistics of Bitumen & LPG & Wind Power Generation.

4. The Learned Counsel for the Petitioners states that the proposed Scheme of Amalgamation will have benefits such as simplification of corporate structure by reducing the number of legal entities, significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferor and Transferee Company, elimination of duplication in administrative costs, concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities.

5. The Transferor Company and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

consonance with the orders passed in the respective Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioners undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under wherever applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 4th October, 2016 in Company Scheme Petition No. 532 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.

9. The Regional Director has filed an affidavit on 4th October, 2016 stating therein that, save and except as stated in paragraphs 6(i) to (iv), it appears according to the Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(i) to (iv) of the said affidavit, the Regional Director has stated as under:

"(i) That the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, Deponent prays that the Hon'ble Court may pass such orders as deem fit.

(ii) It is observed that Authorised Capital as per Balance Sheet of the Transferee Company as on 31.03.2016 is 700 Lacs however as per the scheme as on 31.03.2015, it is 600 Lacs. Further, ROC-Mumbai had given observation as "Company has, through the Scheme, increased the Authorized Capital from Rs. 8 Crore to 12 Crores without following the procedure of law. The Company should file the relevant form and pay necessary fee to avoid loss to exchequer. Therefore, the Deponent prays that the Hon'ble Court may pass orders to comply with the sec 61, read

with sec 13, sec. 64 and other applicable sections of the Companies Act, 2013."

(iii) *The shares of the Transferee Company are held by foreign body corporate as its shareholders. Hence for allotment of new shares to the shareholder of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulations, etc. as applicable in this regard.*

(iv) *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 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."*

10. So far as the observation in paragraph 6(i) of the affidavit of the Regional Director is concerned, the Petitioners through its Learned Counsel undertakes to pass accounting entries as mentioned in AS-5 of the Accounting Standards.

11. So far as the observation in paragraph 6(ii) of the affidavit of the Regional Director is concerned, the Petitioner / Transferee Company through its Learned Counsel undertakes to comply with the relevant provisions of the Companies Act, 2013 and to file the forms and pay the appropriate stamp duty as applicable to the increase of authorised share capital from Rs. 8,00,00,000 to Rs. 12,00,00,000 of the Transferee Company as reflected in Clause 6.1.1 of the Scheme.

12. So far as the observation in paragraph 6(iii) of the affidavit of the Regional Director is concerned, the Petitioner / Transferee Company through its Learned Counsel undertakes that while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company shall comply with the provisions of FEMA/ RBI regulations as may be applicable in this regard.

13. So far as the observation in paragraph 6(iv) of the affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner / Transferee Company submit that the Petitioner is bound to comply with all applicable

provisions of the Income Tax Act, 1961 and all tax issues arising out of Scheme will be met and answered in accordance with law.

14. The Learned Counsel for Regional Director on instructions of Mr. Rajesh Kumar Dalmia, Joint Director 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 Learned Counsel for the Petitioners in paragraphs nos. 10 to 13 herein above. The undertakings given by the Petitioners are accepted.

15. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 532 of 2016 filed by the Transferor Company is made absolute in terms of the prayer clauses (a), (b) and (c) and the Company Scheme Petition No. 533 of 2016 filed by the Transferee Company is made absolute in terms of the prayer made under clauses (a) to (c).

17. The Transferee Company to file 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.

18. The Petitioners are directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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, 2013.

19. The Petitioners to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 532 of 2016 to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

21. 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 the original signed order.

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