IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 582 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 409 OF 2016.

JINDAL LABORATORIES PRIVATE LIMITED

....Petitioner/ the First Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 583 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 410 OF 2016.

TIEN YUAN INDIA PRIVATE LIMITED

....Petitioner/ the Second Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 584 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 411 OF 2016.

MIDDLE EAST TRADERS PRIVATE LIMITED

....Petitioner/ the Third Transferor Company

WITH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 585 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 412 OF 2016

JINDAL DRUGS PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of JINDAL LABORATORIES PRIVATE LIMITED, the First Transferor Company and TIEN YUAN INDIA PRIVATE LIMITED, the Second Transferor Company and MIDDLE EAST TRADERS PRIVATE LIMITED, the Third Transferor Company with JINDAL DRUGS PRIVATE LIMITED, the Transferee Company.

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Neelesh V Kalaniri i/b Mr. Pankaj Kapoor for the Regional Director.

Vinod Sharma, the Official Liquidator.

CORAM: S. C Gupte, J.

DATE: 22nd November, 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 Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of JINDAL LABORATORIES PRIVATE LIMITED, the First Transferor Company and TIEN YUAN INDIA PRIVATE LIMITED, the Second Transferor Company and MIDDLE EAST TRADERS PRIVATE LIMITED, the Third Transferor Company with JINDAL DRUGS PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the First Transferor Company at present is in the business of Lease of Premises and the Second Transferor Company at present is in the Manufacturing of Menthol and other Essential Oil products and the Third Transferor Company is presently not carrying on any business activity and is not earning any income and the Transferee Company at present is an Export House with status of “Three Star Export House”. The proposed scheme of Amalgamation will have

the benefit that the amalgamation will enable the transferee company to consolidate the businesses and lead to synergies in operations and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that the Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies and the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

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

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

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit 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 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed an Affidavit on 17th day of November, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. . That the Deponent further submits that,

(i) In addition to compliance of AS-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.

(ii) The office of the Dt. Commissioner of Income Tax Panvel Circle, Panvel, Dist-Raigad sent letter to this Directorate vide Letter No.Pnl/DCIT/TYIPL/2016-17/448 dated 07/09/2016, they have mentioned in the respective letter as mentioned at point (xix) above.

That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of the 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.

(iii) ROC-Mumbai had given observation in its report vide letter no.ROC/JTA(M)/28621/391/394/1505 dated 02.09.2016 in point (29) as "Statutory Auditor of the Transferee Company has opined that "Note No.1(e) regarding non-provison of gratuity liability on the basis of actuarial valuation, the company has not followed the AS-15 and the impact thereof on the profits is not ascertainable." The Board has not clarify on it. Hence, there is a violation of section 211(3A) read with AS-15 and 211(2AA)(3) of the Companies Act, 1956.

8. So far as the observation in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the Petitioner Companies had accepted the accounting policy as set out in AS 14 however the Petitioner Companies shall also pass accounting entries as mentioned in AS-5 of the Accounting Standards.

9. So far as the observation in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

10. So far as the observation in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Regional Director has wrongly mentioned section 211(2AA)(3) instead of section 217(2AA)(3) of the Companies Act, 1956. The Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes to file for the Compounding of an offence with the National Company Law Tribunal in respect of violation of section 211(3A) read with AS-15 and Section 217(2AA)(iii) of the Companies Act, 1956.

11. The Learned Counsel for Regional Director on instructions of Mr. Dalmiya, 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. The above undertakings are accepted.

12. The Official Liquidator has filed his report on 24th day of October, 2016 in Company Scheme Petition Nos. 582 to 584 of 2016 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

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

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 582 to 584 of 2016 are made absolute in terms of prayers clause (a) to (d) and 585 of 2016 is made absolute in terms of prayer clauses (a) to (c).

15. The Petitioner Companies 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.

16. The Petitioners are directed to file a certified copy of 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, 1956/2013 whichever is applicable.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition Nos. 582 to 584 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

19. 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.

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer