IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 574 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 628 OF 2016

APCOTEX SOLUTIONS INDIA PRIVATE LIMITED ……… Petitioner

In the matter of the Companies Act, 1956 (1 of 1956) (and the rules made thereunder or any other Section for the time being in force)

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 Apcotex Solutions India Private Limited ("Transferor Company") with Apcotex Industries Limited ("Transferee Company") AND their respective Shareholders

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. D R Shah i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma Official Liquidator, present in all the Company Scheme Petitions

CORAM: A.K. Menon, J.

DATE: 27th October, 2016

1. Heard the Learned Advocate for the Petitioner Company. 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 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 to the Scheme of Amalgamation of Apcotex Solutions India Private Limited with Apcotex Industries Limited and their respective Shareholders.

3. The learned Advocate for the Petitioner states that the Petitioner in Company Scheme Petition No. 574 of 2016 is presently engaged in business of manufacture of Nitrile Rubber and Nitrile Powder and Nitrile/PVC Blends and High Sterene Rubber.

4. The rationale for the merger is that the amalgamation of Petitioner Company with the Transferee Company will result in reducing the multiple layer inefficiencies, consolidation and synergies of operations, administrative convenience and reduction in administrative cost and overheads.

5. The learned Advocate for the Petitioner further states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, Apcotex Industries Limited and its nominee and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and also in view of the judgement of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme for Petition by Apcotex Industries Limited, the Transferee Company was dispensed with, by order dated 22nd July, 2016 passed in CSD NO. 628 of 2016.

6. The Petitioner Company/Transferee Company approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petition of the Petitioner Company.

7. The learned Advocate for the Petitioner states that Petitioner Company has complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the order passed in Company Summons for Directions.

8. The learned Advocate for the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of this Court and has filed necessary affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

9. The Regional Director has filed an Affidavit on 21st October, 2016 stating therein that save and except as stated in paragraph 6(i) and 6(ii) of the said affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(i) and 6(ii) of the said affidavit it is stated that:

(i) That the Petitioner Companies had accepted the Purchase Method of accounting 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) The Office of the Asstt. Commissioner Income Tax, Circle 3(2)(2), Mumbai sent letter to this Directorate vide Letter No. ACIT 3 (2) (2)/Scheme of Amalgamation/2016-17 dated 23/08/2016, they have mentioned in the respective letter as mentioned at point (xiii) above. 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.

10. In-so-far as observations made in paragraph 6(i) of the Affidavit of the Regional Director are concerned, the Petitioner Company through its Counsel submits that the Transferee Company will comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.

11. In-so-far as observations made in paragraph 6(ii) of Affidavit of the Regional Director are concerned, the Petitioner Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of Mr. R. K.. Dalmia, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

13. The Official Liquidator has filed his report on 24th October, 2016 in the Company Scheme Petition No 574 of 2016 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) to (c) of the Petition.

16. The Petitioner Company/Transferee Company to lodge a copy of this order and 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 issuance of Order.

17. Petitioner Company/Transferee Company are 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

20. 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