

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 586 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 556 OF 2015.

HEMANI AGRO CHEM PRTVATE LIMITED,
....Petitioner/ First Transferor Company.

AND

COMPANY SCHEME PETITION NO 587 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 557 OF 2015.

LORD ENCLAVE PRIVATE LIMITED,
....Petitioner/ Second Transferor Company

WITH

COMPANY SCHEME PETITION NO 588 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 558 OF 2015.

HEMANI CHEMIORGANIC PRTVATE LIMITED
....Petitioner/ Transferee Company.

In the matter of the Companies Act 1 of
1956;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation
and Arrangement of
HEMANI AGRO CHEM PRTVATE LIMITED

AND

LORD ENCLAVE PRIVATE LIMITED

WITH

HEMANI CHEMIORGANIC PRTVATE
LIMITED

AND

Their Respective Shareholders and Creditors

Called for hearing

Mr. Rahul Oak, Advocate for the Petitioner

Mr. Vinod Sharma, Official Liquidator, present in CSP Nos. 586 and 587 of 2015

Mrs. S. V. Bharucha i/b Shri. A. A. Ansari for Regional Director in both the Petitions.

CORAM: B. P. COLABAWALLA, J.

DATE : 01st April, 2016

PC:

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme and nor has any party controverted any averments made in the Petition.
2. The sanction of the Court is sought to a Scheme of Amalgamation and Arrangement of Hemani Agro Chem Private Limited and Lord Enclave Private Limited with Hemani Chemiorganic Private Limited and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.
3. Transferor Companies and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The learned Advocate for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition have been filed in consonance with the orders passed in

respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and the Transferee Company have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rule made there under whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 30th March, 2016 in Company Scheme Petition Nos. 586 of 2015 and 587 of 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 1st February, 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, it is stated as under.

“6. That the Deponent further submits that:-

(a) Clause 11.4 of the scheme provides for adjustment for difference in accounting policies between Transferor Company and Transferee company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting Standard such as AS-5 etc.

(b) That the Deponent further submits that the tax issue if any arising out of this Scheme is subject to final decision of Income Tax Authorities and approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to this scheme of amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Company.

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards

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

10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Advocate for the Petitioner Company. The said undertaking is accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 586 of 2015, 587 of 2015 and 588 of 2015 are made absolute in terms of prayer clauses (a) to (c).

13. The Petitioner Companies 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.

14. 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 21 or INC 28 in addition

to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 586 of 2015 and 587 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

17. 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.

(B. P. COLABAWALLA, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer.