IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 665 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 629OF 2015

KSH DISTRIPARKS PRIVATE LIMITED

………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO 666 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 630OF 2015

KAMAL DIESELPRIVATE LIMITED

………… Petitioner / the Resulting Company / the Transferor Company

AND

COMPANY SCHEME PETITION NO 667 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 631 OF 2015

KSH LOGISTICS PRIVATE LIMITED

………… Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013 and Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Composite Scheme of Arrangement and Amalgamation between KSH Distriparks Private Limited and Kamal Diesel Private Limited and KSH Logistics Private Limited andtheir Respective Shareholders

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners in all the Petitions.

Mr. Vinod Sharma, Official Liquidator present in Company Scheme Petition Nos. 666 of 2015.

Ms. NishaValani, Panel Counsel for Regional Director in both the Company Scheme Petitions.

CORAM: **B. P. Colabawalla**, J.

DATE: 1st April, 2016

1. Heard the learned Counsel for the Petitioner Companies. 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 read with Section 52 of Companies Act, 2013 and Sections 100 to 103 of Companies Act, 1956, to the Composite Scheme of Arrangement and Amalgamation between KSH Distriparks Private Limited and Kamal Diesel Private Limited and KSH Logistics Private Limitedand their respective shareholders.

3. Learned Counsel for the Petitioners states that the Petitioners in Company Scheme Petition No. 665 of 2015is engaged in the business of container freight station and port services, transportation, warehousing services as well as logistics business

carried on therein as well as logistics business carried out through investments in KSH Logistics Private Limited. The Petitioner in Scheme Petition No. 666 of 2015 is presently engaged in the business of servicing fuel injection pumps that go into various applications – trucks, tractors, genets etc. The Petitioner in Scheme Petition No. 667 of 2015 is presently engaged in the business of Logistics arrangements, transportation and warehousing

4. The rationale for the Scheme is that all the Petitioner Companies under this Composite Scheme of Amalgamation and Arrangement are part of KSH Group ('the Group'). The Group believes that the restructuring would benefit the companies and its stakeholders on account of simplification of group structure, reduction of administrative, operative and marketing costs, greater administrative efficiency, retention of the identity and track record of CSD Business of the Demerged Company and operational rationalization, organizational efficiency and optimal utilization of various resources.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. Learned Advocate for the Petitioner in Company Scheme Petition No. 665 of 2015, states that the Scheme includes reduction of capital of the Demerged Company which does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 31st July, 2015 passed in CSD No. 629 of 2015. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'E' to the Petition filed by the Petitioner Company.

7. Learned Advocate for the Petitioner in Company Scheme Petition No. 666 of 2015, states that the Scheme includes reduction of share capital of the Transferee Company which does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 31st July, 2015 passed in CSD No. 630 of 2015. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'K' to the Petition filed by the Petitioner Company.

8. Learned Advocate for the Petitioner in Company Scheme Petition No. 667 of 2015, states that the Scheme includes reduction of share capital of the Transferee Company which does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 31stJuly, 2015 passed in CSD No. 631 of 2015. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'E' to the Petition filed by the Petitioner Company.

9. The learned Advocate for the Petitioners states that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

10. Counsel appearing on behalf of the Petitioners has 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, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies

Act, 1956 / 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

11. The Official Liquidator has filed his report on 30th October, 2015 in Company Scheme Petition No. 666 of 2015 stating therein 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 by this Court.

12. The Regional Director has filed an Affidavit dated 18th November, 2015 stating therein that save and except as stated in paragraph 6 (a) to 6(e) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

That the Deponent further submits that:

a) As per clause 8.3 of the scheme, the value of assets and liabilities transferred from the books of account of the Demerged Company shall be first adjusted in the Capital Reserve and balance if any against the securities premium account of Demerged Company. However, the scheme is silent withrespect to reduction of securities premium account as provided under section 78 read with section 100 of the Companies Act, 1956 corresponding to section 52 of the Companies Act, 2013.

b) Clause 19.1 of the scheme provides for transferring the assets and liabilities on fair value basis. In this regard it is suggested that the Resulting Company/Transferor Company received the assets and liabilities from the demerged company on book value basis. The resulting company is not having any other substantial assets except what has been transferred to resulting company by way of demerger. While demerging the assets and liabilities of the demerged company it may transferred following book value method. As the entire assets and liabilities of again transferred to resulting company to transferee company in all fairness it shall be on book value basis only. Hence the *petitioner company may be directed to transfer the assets and liabilities of Transferor Company on book value basis.*

c) *Clause 7 of the scheme appears to have been provide for increase in the authorized capital of Resulting Company. However, the caption provided in that clause is not specific and hence petitioner company may be directed to suitably amend that clause to reflect" increase in authorized capital of Resulting Company". Besides, the scheme is silent as to quantum of amount and the break up of proposed authorized capital of resulting company. In this regard also the petitioner company may be directed to amend the scheme.*

d) *Clause 17.1 of the scheme provides for reorganization of existing equity share of the transferee Company. The entire equity share capital held by demerged company in the capital of transferee Company will get cancelled post demerger of the demerged undertaking as defined in clause 1.6 of the scheme, by which the investment held by demerged company in the transferee company at the first instant will be transferred to resulting company and thereafter the shares originally held by demerged company transferred to resulting company will get cancelled. This reduction of capital is effected as an integral part of the scheme, In this regard, it is observed that the caption provided in clause 17 of the scheme is not correct:*

** The word "Transferor Company" be substituted the word "Transferee Company".*

**As the appointed date for demerger and amalgamation is one and the same date i.e. 01/04/2015. It is necessary on the part of the Resulting Company and Transferee Company to ensure that the name of the "Demerged Company recorded as shareholders of Transferee Company representing 1,30,00,0000 be substituted by Resulting Company" in the records of the Registrar of Companies by filing necessary forms.*

e) 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 company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the/petitioner company.

13. As far as the observation in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner Company states that the shareholders of the Demerged Company have passed a special resolution for adjustment of any amount against the Securities Premium Account, as required under this Scheme. The said special resolution is attached as Exhibit 'E' to the Company Summons for Direction filed by the Demerged Company. Further, this High Court has granted a dispensation from the procedures prescribed under Section 101(2) of Companies Act, 1956. Accordingly, Clause 8.3 of the Scheme shall stand revised as under:

8.3 The aggregate excess or deficit of the book value of net assets determined as per sub-Clause 8.1 above after considering sub-Clause 8.2 above, shall be first adjusted in the Capital Reserve and then balance, if any, against Securities Premium Account and Profit & Loss Account of the Demerged Company. The cancellation of share capital (reduction of balance lying in Securities Premium Account), if required, shall be effected as an integral part of the Scheme in accordance with the provisions of Sections 100 to 103 of the Act and the Order of the High Court sanctioning the Scheme shall be deemed to be also the Order under Section 102 of the Act for the purpose of confirming the reduction of capital. The reduction would not involve either a diminution of liability in respect of unpaid share capital or *payment of paid-up share capital and the provisions of Section 101 of the Act will not be applicable.*

14. As far as the observation in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertake to transfer the assets and liabilities of Transferor Company to Transferee Company at book value instead of fair value.

15. As far as the observation in paragraph 6(c) of the affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertake to Clause 7 of the Scheme shall be amended and shall read as under:

7. INCREASE IN AUTHORISED CAPITAL OF RESULTING COMPANY

7.1. The provisions of this Clause shall operate notwithstanding anything to the contrary in any other instrument, deed or writing.

7.2. It is clarified that no special resolution under Section 61 of the Companies Act, 2013 shall be required to be passed by the Resulting Company separately in a general meeting for issue and allotment of equity shares to the shareholders of the Demerged Company pursuant to Part B of the Scheme. The word and figure in Clause V of the Memorandum of Association of the Resulting Company shall be substituted to read as follows:

V. The Authorised Share Capital of the company is Rs.5,00,000/- (Rupees Five Lakh only) divided into 5,000 (Five thousand only) Equity Shares of Rs. 100/- (Rupees One hundred only) each with power to increase or reduce the capital of the company and to divide the shares in the capital for the time being into several classes and to attach thereto respectively such preferential, deferred, qualified or special

> *rights, privileges or conditions, as may be determined by or in accordance with the Articles of Association of the Company and to vary, modify or abrogate any such rights, privileges or conditions in such manner as may for the time being to be provided by the Articles of Association of the Company."*

Hence, the Learned Counsel for the Petitioner Companies prays for amendment and to replace the Clause 7 of the Scheme as above.

16. As far as the observation in paragraph 6(d) of the affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertake to substitute the word "Transferee Company" instead of the word "Transferor Company" in Clause 17 of the Scheme and the Scheme shall be amended accordingly. Hence, the Learned Counsel for the Petitioner Companies prays for amendment and to replace the word in Clause 17 of the Scheme as above.

    The Petitioner Company through its Counselalso undertakes to file the requisite forms with the Registrar of Companies, Maharashtra.

17. As far as the observation in paragraph 6(e) of the affidavit of the Regional Director is concerned, thePetitioner Companies submit that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

18. The Counsel for the Regional Director on instructions ofMr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertakings given by the Petitioner Companiesare accepted.

19. 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.

20. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 665 of 2015filed by the Petitioner Company are made absolute in terms of prayer clauses (a) to (c) and the Company Scheme Petition No. 666 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) to (c) and the Company Scheme Petition No. 667 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) to (c).

21. 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 issuance of Order.

22. Petitioner Companies 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.

23. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbaiand the Petitioner Company in Company Scheme Petition No. 666 of 2015 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.

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

25. All concerned 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.

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