

CORAM: K. R. Shriram, J.

DATE: 12th February, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 the Scheme of Amalgamation of Nutech Colors Private Limited with Hercules Pigment Private Limited and their respective shareholders.
3. The Learned Counsel for the Petitioners states that both the Petitioner Companies are presently engaged in the business of supplying, manufacturing all types of Pigments.
4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely enable the Transferee Company to enhance its services across different class of customers more efficiently. The Transferee Company will benefit from synergies, economies and consolidation of management. The Transferee Company will benefit from this synergy in its products. The brand name enjoyed by the Transferee Company would further enhance the marketability of products manufactured by the Transferor Companies.

The Amalgamation of companies will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace by Combining the activities and operations of the Transferor Companies and the Transferee Company in a single company would provide synergistic linkage besides economies in costs by combining the total business functions and related operations and activities contributing to an overall growth and profitability, coupled with better working capital management and better administration of sales for the merged entity; The Amalgamation would result in an optimum utilization of the facilities, reserves, financial, managerial, technological and marketing expertise, marketing networks, manpower and other resources which will be conducive to enhance the capability to face competition in the market more effectively, thereby strengthening the combined market position and growth prospects; It would also lead to growth prospects for the personnel and organisations connected with these companies and thus, be in the interest of and for the welfare of, the employees of the companies concerned in this Scheme, and will also be in the larger interest of the public; and The combined managerial and financial resources will enhance the capability of the Transferee Company to invest in larger and more sophisticated projects to ensure rapid growth, and will consolidate the strategic strength of the Transferee Company.

5. 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.
6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.
7. The Learned Counsel appearing on behalf of the Petitioners has 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 undertakes 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.
8. The Official Liquidator has filed his report on 23rd November, 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.

9. The Regional Director has filed an Affidavit on 27th January, 2016 stating therein, save and except as stated in paragraphs 6 thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that:-

“6. 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.

10. As far as observations made in paragraph 6 of Affidavit of the Regional Director, the Petitioners clarifies that the approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, 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

Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

12. 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.
13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 701 of 2015 & 702 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.
14. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 receipt of the Order.
15. Petitioner is 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 INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.
16. The Petitioners in Company Scheme Petitions No. 701 of 2015 & 702 of 2015 to pay costs of Rs.10,000/- each to the Regional Director,

Western Region, Mumbai and Petitioners in Company Scheme
Petition No. 701 of 2015 to pay cost of Rs.10,000/- to the Official
Liquidator, High Court, Bombay. Costs to be paid within four weeks
from today.

17. Filing and issuance of the drawn up order is dispensed with.
18. All concerned regulatory authorities to act on a copy of this order
along with the Scheme duly authenticated by the Company Registrar,
High Court (O. S.), Bombay.

(K. R. Shriram, J.)

CERTIFICATE

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

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