IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION COMPANY

COMPANY SCHEME PETITION NO. 720 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 399 OF 2015

Pudumjee Pulp & Paper Mills Limited

… Petitioner Company/Transferor Company

AND

COMPANY SCHEME PETITION NO. 721 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 400 OF 2015

Pudumjee Industries Limited

… Petitioner Company/Transferee Company

AND

COMPANY SCHEME PETITION NO. 722 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 401 OF 2015

Pudumjee Hygiene Products Limited

… Petitioner Company/Transferee Company

AND

COMPANY SCHEME PETITION NO. 723 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 402 OF 2015

Pudumjee Paper Products Limited

… Petitioner Company/Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

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

AND

In the matter of the Scheme of Arrangement and Reconstruction (Demerger) between Pudumjee Pulp & Paper Mills Limited and Pudumjee Industries Limited and Pudumjee Hygiene Products Limited and Pudumjee Paper Products Limited and their respective shareholders and creditors.

CALLED FOR HEARING

Ms. Sonam Mhatre with Monil Punjabi i/b Dhaval Vussonji & Associates Advocates for the Petitioners.
D. R. Shah i/b A. A. Ansari for Regional Director in all Petitions.

CORAM: K.R. SHRIRAM J.
DATE : 8th January, 2016

P.C:-

1. Heard learned Counsel for parties. No objector has come before the Court to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

2. The sanction of this Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Arrangement & Demerger of Pudumjee Pulp & Paper Mills Limited and Pudumjee Industries

Limited and Pudumjee Hygiene Products Limited and Pudumjee Paper Products Limited and their respective shareholders and creditors.

3. The learned Counsel for the Petitioner Companies states that the First and Second Demerged / Transferor Companies are presently engaged in the business of manufacturing various kinds of papers and realty and investment and generation of wind power and the Third Demerged / Transferor Company is engaged in the business of trading in various kinds of tissue, non-tissue and allied products and the Transferee Company is engaged in the business of merger of undertaking of transferor companies for business of manufacturing and selling, pulp &paper &hygiene & allied products on sanction of the scheme of composite scheme.

4. The proposed scheme of arrangement & demerger of the Demerged Undertakings with Transferee Company will enable the Transferor Companies and the Transferee Company, which has been incorporated as a Special Purpose Vehicle for this Scheme, to streamline their business activities as the companies are presently carrying on different kind of businesses, each of which evinces interest from a separate class of investors and involves risks which are separate and distinct from each other and all the manufacturing assets and liabilities related to paper and hygiene related business will be housed under one entity i.e. the Transferee Company which will enable the Transferee Company to improve its business efficiency and all the Transferor companies will be able to focus on their remaining Businesses and would help in achieving and sustaining competitiveness and development of long term internal and core competencies.

5. The Petitioner Companies have approved the Scheme of Arrangement

& Demerger by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Orders passed in Company Summons for Direction and seeks sanction to the proposed Scheme.

7. The Learned Advocate appearing on behalf of the Petitioner Companies 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 through their Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 17th December, 2015 stating therein that save and except as stated in para 6(a) to 6(f), it appears that the scheme is not prejudicial to the interest of shareholders and public. In the light of aforesaid facts the Hon'ble Court may pass such order as may be deemed fit and proper.

In Para 6 of the said Affidavit, it is stated that:

(a) Clause No. 5.5.1.1, 6.5.1.1 and 7.5.1.1 of the Scheme states that the Transferee Company shall record the assets and liabilities of the Demerged Undertaking vested in them pursuant to this Scheme, at their respective book values, as appearing in the books of the Transferor Companies at its closure on the day immediately preceding the Appointed Date or at fair values as decided by the Board of Directors of

the Transferee Company. In this regard, it is submitted that said clauses are not in compliance with the provisions of Section 2(19AA) of the Income Tax Act, 1961, as per which the assets and liabilities of the Transferor Company shall be recorded on book value basis only and not on fair value basis. It is also pertinent to note that, as per clause No. 5.5.2.1, 6.5.2.1 and 7.5.2.1, the Transferor Companies shall reduce the book value of assets and liabilities pertaining to the respective Demerged Undertakings transferred to the Transferee Company. Therefore, on the same line of Accounting Treatment, it shall be recorded on book value in the books of the Transferee Company instead of recording it on fair value basis. Accordingly, the Advocate for the Petitioner companies vide para "A" of its letter dated 30/11/2015 has undertaken that the Resulting/Transferee Company will record the assets and liabilities at book value only. Copy of the said letter is annexed hereto and marked as Exhibit E. Hence, the Petitioner Companies may be directed to amend the Scheme accordingly and ensure compliance of the aforesaid provisions of the Income Tax Act, 1961.

(b) Clause No. 5.5.1.2, 6.5.1.2 and 7.5.1.2 of the Scheme states that the Transferee Company shall credit to the Share Capital Account, the aggregate face value of shares issued and allotted by it pursuant to Clause 5.4.1 of the Scheme and credit to Securities Premium Account, the excess of the aggregate value of the shares over their face value. In this regard, it is submitted that the difference between the face value and fair value of shares issued by the Transferee Company shall not be recorded as Securities Premium Account of Transferee Company as the Transferee Company is not receiving any cash or cash equivalent by issuing those shares. Hence, the creation of creation of Securities Premium Account is against the provision of Section 52 of the Companies Act, 2013, which recognizes creation of Securities Premium Account, if cash or cash equivalent is received by the Transferee Company while issuing shares. Accordingly, the Advocate for the

Petitioner companies vide para "B" of its letter dated 30/11/2015 has undertaken that the Transferee Company will credit the difference between the aggregate values of shares issued over their face value to capital Reserve Account. Copy of the said letter is annexed hereto and marked as Exhibit E. In view of the above, it is also submitted that the words, "at a premium of Rs. 19/- each per equity share" appearing in Clause 5.4.1, 6.4.1 and 7.4.1 be deleted. Consequently, the following words, "and credit to Securities Premium Account, the excess of the aggregate value of the shares over their face Value" appearing in Clause 5.5.1.2, 6.5.1.2 and 7.5.1.2 deleted. Hence, the Petitioner Companies may be directed to do necessary amendment to the Scheme/ Petition accordingly.

(c) Clause no. 5.6.1 and 6.6.1 of the Scheme provides for transferring the unissued authorized share capital of First Transferor/Demerged Company and Second Transferor/ Demerged Company to the extent of Rs.1,80,00,000/- and Rs.21,00,00,000/-respectively to the authorized share capital of Transferee/Resulting company without payment of any registration fees/stamp duty by the Transferee Company for increasing its authorized capital to that extent. Cancelling the authorized share capital of the respective Demerged/ Transferor Company and thereafter, transferring the same to the authorized share capital of the Resulting / Transferee Company is unknown to law and hence, that part of the Scheme shall be deleted. Accordingly, the Advocate for the Petitioner companies vide para "C" of its letter dated 30/11/2015 has undertaken that the Transferor company 1 and Transferee company 2 will not transfer their unissued authorized share capital to the Transferee company under the Scheme. Copy of the said letter is annexed hereto and marked as Exhibit E.In this regard, it is submitted that the Petitioner Companies may be directed to make suitable Corrections in the Scheme/Petition by deleting entire Clause No. 5.6 and 6.6 of the Scheme.

(d) *Clause no. 5.4.1, 6.4.1 and 7.4.1 of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorized share capital of Transferee/Resulting Company may not be sufficient to issue further shares as provided in said clauses. In this regard, it is suggested that the Transferee/ Resulting Company may, if necessary and to the extent required, increase its Authorized Share Capital to facilitate issue and allotment of Shares under this Scheme. In this connection, the Transferee/ Resulting Company may be directed to comply with provision of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

(e) *It is respectfully submitted that the tax issue, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferor/Demerged Companies and Transferee/Resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

(f) *Clause 18 of the Scheme provided for Modification and Amendments to Scheme wherein the Board of Directors of Transferor/Demerged Companies and Transferee/Resulting Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.*

9. With respect to Para 6(a) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies state that the Transferee Company undertakes to record the assets and liabilities of

the Demerged Undertakings vested in them pursuant to this Scheme, at their respective book values, as appearing in the books of the Transferor Companies at its closure on the day immediately preceding the Appointed Date. The Transferee / Resulting Company will record the assets and liabilities at book value in order to ensure compliance of the aforesaid provisions of the Income Tax Act, 1961. The Petitioner Companies undertake to delete the words "or at fair values as decided by the Board of Directors of the Transferee company thereof on the basis of significant accounting policies of the Transferee Company" as appearing in clause nos.5.5.1.1, 6.5.1.1 and 7.5.1.1 of the Scheme, and the Scheme shall stand amended accordingly.

10. With respect to Para 6(b) of the Affidavit of the Regional Director, the Petitioner Companies through their Learned Counsel state that the Transferee Company undertakes to credit the difference between the aggregate values of shares issued over their face value to capital reserve account. The Petitioner Companies undertake to delete the words *"at a premium of Rs.19/- each per equity share"* appearing in Clause 5.4.1, 6.4.1 and 7.4.1 and seeks leave to add the following words into brackets after the words equity shares appearing in the sixth line in each of the aforesaid clauses:
"(of the fair value of Rs.20/- as determined in the Valuation Report issued by SSPA & Co., Chartered Accountants)".
The Petitioner Companies further undertake through their Advocate that the words *"and credit to Securities Premium Account, the excess of the aggregate value of the shares over their face Value"* appearing in Clause 5.5.1.2, 6.5.1.2 and 7.5.1.2 will be deleted and replaced by the words *"and credit to Capital Reserve Account, the excess of the aggregate value of the shares over their face Value"* appearing in Clause 5.5.1.2, 6.5.1.2 and 7.5.1.2. The Scheme shall stand amended accordingly. Further wherever the words "Securities Premium" are appearing in the Scheme will be replaced by the words "Capital

reserve”.

11. With respect to Paras 6(c) and 6(d) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies undertakes that the First Transferor Company/Demerged Company and Second Transferor Company/Demerged Company both undertake to not transfer their unissued authorized share capital to the Transferee Company under the Scheme. The Resulting/Transferee Company undertakes to pay the necessary stamp duty and registration fees for increase in its authorized share capital to accommodate the new shares arising out of the Scheme. The Resulting/Transferee Company undertakes to increase the authorized share capital before issue of shares arising out of the Scheme. The Petitioner Companies further undertake that the Transferee Company will comply with the provisions of section 61 /64 of the companies Act, 2013 corresponding to Section 94/97 of Companies Act 1956, in respect of filing necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

12. With respect to Para 6(e) of the Affidavit of the Regional Director, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

13. With respect to Para 6(f) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies undertake that the Board of Directors will not amend the scheme without taking prior approval from this Hon’ble High Court.

14. The Learned Advocate for the Petitioner submits that they are bound

to comply with all the above objections and prays for amendment as suggested. Hence, leave to amend granted to be carried out within two weeks from the date of order.

15. The Learned Counsel on instructions of Mr. 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 undertakings given by the Advocate for the Petitioner Companies. The undertakings given on behalf of the Petitioner Companies are accepted.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions Nos. 720 of 2015 to 723 of 2015 be made absolute in terms of prayer clauses (a) to (e) and (f) in the abovementioned Company Scheme Petitions.

18. 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 sixty days from the date of the Order.

19. The Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court, Bombay with the concerned Registrar of Companies, electronically, alongwith E-Form INC 28 in addition to the physical copy, as per the relevant provisions of the Companies Act 1956/ 2013, whichever is applicable.

20. The Petitioner Companies to pay costs of Rs.10,000/- each to Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

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

22. All concerned regulatory authorities to act on a copy of this Order alongwith Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(K.R. SHRIRAM J.)

CERTIFICATE

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

Uploaded by:- S. Gawde
Stenographer