IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 773 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.784 OF 2014

Lata Medical & Pharmaceutical Products Private Limited

..... Transferor Company No.1 / Petitioner Company

AND

COMPANY SCHEME PETITION NO. 774 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.785 OF 2014

Mid Land Animal Nutrition Private Limited

...Transferor Company No.2 / Petitioner Company

AND

COMPANY SCHEME PETITION NO. 775 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.786 OF 2014

Spectrum Trimpex Private Limited

...Transferee Company /Petitioner Company

In the matter of the Companies Act, 1956;

And

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

And

In the matter of the Scheme of Amalgamation of:

LATA MEDICAL & PHARMACEUTICAL PRODUCTS PVT LTD

And

MID LAND ANIMAL NUTRITION PVT LTD

(Transferor Companies)

With

SPECTRUM TRIMPEX PRIVATE LIMITED

(Transferee Company)

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Mr. Ameya Lambhate Advocates for the Petitioner.

Mr. Shivraj Patil i/b. A. A. Ansari for the Regional Director.

Mr. Vinod Sharma, Official Liquidator present.

Coram : G. S. Patel, J.

Date : 18th March, 2016

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Lata Medical & Pharmaceutical Products Pvt Ltd and Mid Land Animal Nutrition Pvt Ltd (Transferor Companies) with Spectrum Trimpex Private Limited (Transferee Company)

3. Learned Advocate for the Petitioner Companies states that the First Transferor Company is engaged in the business of investing in shares and providing unsecured loans to corporates and the Second Transferor Company is engaged in the business of import

and trading and animal food supplements, investing in shares, providing unsecured loans and Transferee Company is engaged in the business of carrying on the business of providing secured financial related solution as it is NBFC company.

4. The proposed scheme of amalgamation of the Transferor Companies with Transferee company will have the benefit that they engaged in the same line of business and it would consolidate of the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to a more efficient utilization of capital and create a stronger base for future growth of the amalgamated entity and reduce administrative time and costs of managing multiple entities and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and it would benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization and it would save the cost from more focused operational efforts, rationalization and standardisation of administrative expenses.

5. The Petitioner Companies has approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Advocate for the Petitioner further states that the Petitioner Companies has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions has been filed in consonance with the Order passed in Company Summons for Directions.

7. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company through its Advocate undertake 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.

8. The Official Liquidator has filed his report on 16th March, 2016 in Company Scheme Petition Nos. 773 of 2015 and 774 of 2015 stating therein that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 14th January, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

"6. That the Deponent further submits that:-

a) Clause No. 15.4 r.w. 15.5 of the scheme states that the surplus if any arising will be credited to general reserve account of the Transferee Company. Similarly, deficit if any arising will be debited to general reserve account of transferee Company. In this regard, it is submitted that the surplus if any arising out of the scheme is only due to transfer of capitals assets from Transferor Company to Transferee Company and therefore such reserve shall be credited to *capital reserve account of Transferee Company and shall not form part of free reserve of Transferee Company. Similarly, deficit if any arising shall be debited to goodwill account of transferee Company and amortize over a period of 5 years.*

b) *The Transferee Company is non-deposit taking NBFC company registered with the Reserve Bank of India, Transferee Company may be therefore directed to file a copy of the scheme along with the copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of RBI Act.*

c) *It has been observed from the material papers provided by the petitioner companies, in the equity capital of transferee company, the 1st Transferor Company is holding 410,000 no. of equity shares of Rs. 10 each amounting to 9.56% of the capital of the capital and 2nd transferor Company is holding 6,28,000 no. of equity shares of Rs. 10/- each amounting to 14.66% of capital of the transferee company. On amalgamation, the shares held by the transferor companies in the capital of Transferee Company has to be cancelled consequently there will be reduction of capital attracting provisions of section 100 of the Companies Act, 1956 corresponding to Section 66 of the Companies Act, 2013. However, the scheme is silent as to reduction of capital. Petitioner Company may be directed to incorporate the suitable clause in the Scheme.*

d) *Clause 12.2 of the Scheme provides for payment of cash consideration in respect of any fractional shares entitlement arising out of such allotment of shares and the same shall be* *paid in cash by the "Gateway" in accordance with the book value. From the shareholders list of 2nd transferor company it has been found that Gateway Leasing Private Limited is one of the group companies and the same is not forming part of the scheme. Consideration shall be payable only by the transferee company only and hence in place of "Gateway" the name of the transferee company shall be substituted.*

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."*

10. As far as the observation made in paragraph 6(a) of the Regional Director is concerned, the Petitioners undertake that the surplus if any arising out of the scheme shall not be transferred to General Reserve Account and the same will be transferred to capital reserve account of the Transferee Company. The Petitioners further undertake that the reserve arising on transfer of capital assets from Transferor Company to the Transferee Company will not be construed as a free reserve and will not form part of the net worth of the Company.

11. As far as the observation made in paragraph 6(b) of the Regional Director is concerned, the Petitioner Companies undertake to serve the copy of the final order alongwith the scheme upon the Reserve Bank of India.

12. As far as the observation made in paragraph 6(c) of the Regional Director is concerned, the Counsel on behalf of the Petitioner Transferee Company states that the shares held by the Transferor Company No.1 and Transferor Company No.2 will be cancelled pursuant to the effect of the Scheme. Hence, the Learned Counsel for the Petitioner Companies seek to amend by inserting the following clauses after Clause No. 15.5:

15.6 The equity shares of the Transferee Company, held by the Transferor Companies, i.e.410000 Equity Shares of Rs.10/- each amounting to Rs.41,00,000/- of 1st Transferor Company and 628000 no. of equity shares of Rs.10/- each amounting to Rs.62,80,000/- of the 2nd Transferor Company as on the Effective Date shall stand cancelled and there shall be no further obligation in that behalf.

15.7 The reduction of paid up equity capital of Transferee Company, due to cancellation as stated in Clause 15.6 above shall be effected as an integral part of the Scheme only and the Order of the Court sanctioning the Scheme, shall be deemed to be an order under Section 102 of the Act confirming the reduction. Since the said cancellation shall be effected as an integral part of the Scheme itself and as the same does not have either diminution of liability in respect of unpaid share capital or payment to any shareholder of paid-up share capital, the provisions of Section 101 of the Act, shall not be applicable.

15.8 It is hereby clarified that, on approval of this Scheme by the shareholders of the Transferor and Transferee

Companies, it shall be deemed that the shareholders of all the companies have also accorded all such consents required and all compliances in connection with the reduction of share capital in terms of Sections 94 and 100 read with 101 of the Act (or any corresponding provision of Companies Act, 2013 as notified / as may be notified) since such consents / compliances are intertwined and form an integral part of this Scheme.

13. As far as the observation made in paragraph 6(d) of the Regional Director is concerned, the Counsel on behalf of the Petitioner Companies states that the name mentioned in the Clause 12.2 of the Scheme i.e. “Gateway” will be substituted as “Spectrum Trimpex” and the Learned Counsel seeks leave to amend the same.

14. As far as the observations made in paragraph 6 (e) of the Affidavit of the Regional Director is concerned, the Petitioner Company is 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.

15. The Learned Counsel for the Petitioner Companies to amend the Scheme as mentioned in Paragraph No. 12 and 13 hereinabove. The leave is granted, the amendment to be carried out within three weeks and all the incidental and consequential amendments are granted.

16. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the

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

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 773 of 2015 and 774 of 2015 is made absolute in terms of prayer clause (a), (b) and (d) and Company Scheme Petition No. 775 of 2015 is made absolute in terms of prayer clause (a) and (c).

19. The Petitioner Company is directed to lodge a copy of this order and the amended 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.

20. The Petitioner Company is further directed to file a copy of this order along with a copy of the amended Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

21. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme

Petition Nos. 773 of 2015 to 775 of 2015 and Rs.10,000/- each to the Official Liquidator, High Court, Bombay in Company Scheme Petition Nos. 773 of 2015 and 774 of 2015. Costs to be paid within four weeks from the date of the Order.

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

23. All concerned regulatory authorities to act on a copy of this order along with amended Scheme duly authenticated by the Company Registrar, High Court, (O.S.), Bombay.

(G. S. Patel, J.)

CERTIFICATE

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

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