IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.827 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.547 OF 2015

Target Marketing Private Limited …Petitioner Company
("TMPL" or the Transferor Company No.1)

AND

COMPANY SCHEME PETITION NO.828 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.548 OF 2015

Sparkling Stars Seafoods Private Limited …Petitioner Company
("SSSPL" or the Transferor Company No.2)

AND

COMPANY SCHEME PETITION NO.829 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.549 OF 2015

Mentor Exports & Services Private Limited …Petitioner Company
("MESPL" or the Transferor Company No. 3)

AND

COMPANY SCHEME PETITION NO.830 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.550 OF 2015

Pickwick Hygienic Products Private Limited …Petitioner Company
("PHPPL" or the Transferee Company)

<u>CALLED FOR HEARING</u>

Ms. Nikita Kadam i/b Malvi Ranchoddas & Co., Advocates for the Petitioner.

Mr. Vinod Sharma, Official Liquidator, Present.

Mr. N. R. Prajapati i/b A. A. Ansari for Regional Director in all the Petitions.

Coram : K. R. Shriram, J.

Date : 4th March, 2016

P.C : -

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

2. The sanction of this Hon'ble Court is sought under Sections 391 to 394 of the Companies Act, 1956, to a Scheme of Amalgamation of Target Marketing Private Limited ("TMPL" or the Transferor Company No.1), Sparkling Stars Seafoods Private Limited ("SSSPL" or the Transferor Company No.2), and Mentor Exports & Services Private Limited ("MESPL" or the Transferor Company No.3) with Pickwick Hygienic Products Private Limited ("PHPPL" or the Transferee Company").

3. The Learned Counsel for the Petitioner Companies states that the Transferee Company is engaged in the business of buying, selling, preparing for market and to deal in foodstuffs, food products and farinaceous foods of all kinds and description. It is one of the leading manufacturer and supplier of an elaborate range of wafer biscuits and wafer rolls. It has state-of-the-art manufacturing plant equipped with sophisticated machinery capable of executing bulk orders customized to fulfill client specification. It has made a mark in the international market by adhering to National and International quality standards. It is also engaged in exporting/trading of engineering goods like zinc, machinery, spare parts etc.

4. The Proposed Scheme of Amalgamation of Target Marketing Private Limited ("TMPL" or the Transferor Company No.1), Sparkling Stars Seafoods Private Limited ("SSSPL" or the Transferor Company No.2),

and Mentor Exports & Services Private Limited ("MESPL" or the Transferor Company No.3) with Pickwick Hygienic Products Private Limited ("PHPPL" or the Transferee Company") is with a view to streamline IB Service Group LLC operations in India and with an intention to reorganize and restructure its business in India. The proposed Scheme of Amalgamation will optimise costs, eliminate repetitive administrative expenses and result in pooling of financial resources and skilled manpower. The proposed Scheme of Amalgamation will result in eliminating managerial overlaps which are necessarily involved in running multiple entities. The proposed amalgamation will lead to a greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value, and will improve the competitive position of the combined entity.

5. The Transferor Companies and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions, which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in 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 and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Hon'ble Court and have filed necessary Affidavits of compliance in this Hon'ble Court. Moreover, the Petitioner Companies through their Counsel undertake to comply with all

statutory requirements, if any, as required under the Companies Act, 1956 or the Companies Act, 2013 as applicable and the Rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 14th January, 2016, *inter alia,* stating therein that save and except as stated in paragraphs 6(a), (b) & (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, it is stated as under :

"6. That the Deponent further submits that,

(a) Clause 8.1 of the Scheme provides for amendment of object clause of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with provisions of section 13(1), (6) and 15 of the Companies Act, 2013 and to file amended copy of Memorandum of Association alongwith Form No.21 with the Registrar of Companies.

(b) The shares of the petitioner companies are held by foreign body corporate. Hence while giving effect to the scheme, by issuing shares by the Transferee Company to the Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulation as applicable in this regard .

(c) 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."

9. The Ld. Counsel appearing for the Transferee Company has submitted that the contents of paragraph 6 of the Affidavit of the Regional Director, are not in the nature of objections but are in the nature of compliances that are required to be complied by the Transferee Company.

(i) With reference to paragraph 6(a) of the Affidavit filed by the Regional Director, the Counsel for the Transferee Company submits that the provisions of Sections 391-394 is a complete code in itself and this Hon'ble Court has the wide powers to approve of a scheme even if there are other things, which for effectuation require a special procedure to be followed, the whilst sanctioning a scheme, has powers to approve the same and that it would not be necessary for the Company to resort to the other provisions of the Companies Act or to follow other procedures prescribed for bringing about the changes requisite for effectively implementing the scheme that is sanctioned by the Court. (PMP Auto Industries Limited. In re (1994)80 Comp Cas 280. Accordingly the Counsel for the Transferee submits that there is no requirement for the adoption of a special resolution for amending the object clause of the Memorandum of Association and that the Hon'ble Court can permit such alteration without the Company having to adopt a special resolution. The Counsel for the Transferee however undertakes that the Transferee Company will upon the Scheme being sanctioned file the amended Memorandum of Association along with the requisite Form INC 28 with the Registrar of Companies;

(ii) With reference to paragraph 6(b) of the Affidavit filed by the Regional Director, the Counsel for the Transferee submits that under the Scheme the Transferee Company is required to issue and allot shares to IB Service Group LLC, which holds 100% of the shares of the Transferor companies. The said IB Service Group LLC is a foreign company. Accordingly the Transferee Company undertakes that whilst issuing the shares as aforesaid it will comply with FEMA/RBI Regulations as may be applicable;

(iii) With reference to paragraph 6(c) of the Affidavit filed by the Regional Director, the Counsel appearing for the Transferee Company undertakes that tax issues if any arise out of the Scheme, then the same shall be subject to the final decision of the Income Tax Authority and that the approval of the Scheme by this Hon'be Court will not deter the Income Tax Authority from scrutinizing the tax returns filed by the Petitioner Company after giving effect to the amalgamation.

10. 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 he is satisfied with the undertakings and submissions made on behalf of the Transferee Company through its advocate. In view thereof, the said undertakings are accepted.

11. The Official Liquidator has filed his report on 25th January, 2016, in Company Scheme Petition Nos. 827, 828 and 829 of 2015 stating therein 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.

12. From the material on record, the Scheme of arrangement 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, Company Scheme Petition Nos. 827 to 829 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (k) and Company Scheme

Petition No. 830 of 2015 is made absolute in terms of prayer clauses (a) and (m).

14. The Transferee Company 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 this order.

15. Petitioner Companies 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 or Companies Act, 2013 whichever is applicable.

16. The Petitioner Companies in each of the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and additionally the Petitioner Companies in Company Scheme Petition Nos. 827 to 829 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 date of the order.

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.)

C E R T I F I C A T E

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

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