IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 767 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 743 OF 2015

Supack International Private Limited ....Petitioner Company/
Transferor Company

WITH

COMPANY SCHEME PETITION NO.768 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 744 OF 2015

Michelman Chemicals Private Limited ....Petitioner Company/
Transferee Company

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation of Supack International Private Limited ("SIPL")

WITH

Michelman Chemicals Private Limited ("MCPL")

AND

their respective shareholders and creditors

Called for Hearing

Ms. Shruti Kelji, Advocate for the Petitioner.

Mr. H V Mehta, i/b. A. A. Ansari for the Regional Director in both Company Scheme Petition.

Mr. Vinod Sharma, Official Liquidator present in Company Scheme Petition No.767 of 2015.

Coram : K. R. Shriram, J.

Date : 26th February, 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 Supack International Private Limited ("SIPL") with Michelman Chemicals Private Limited ("MCPL") and their respective shareholders and creditors.

3. Learned Advocate for the Petitioner Companies states that the Transferor Company is carrying on the business of trading in packaging materials and the Transferee Company is engaged inthe business of chemicals.

4. The proposed scheme of amalgamation of the Transferor Company with Transferee Company will have the benefit that amalgamation will enable the integration of business operations and the consolidation of the business activities will lead to synergies of operations and a stronger and wider capital and financial base for future growth/expansion and cost savings from focused operational efforts, rationalization, standardization and

simplification of business processes, productivity improvements, improved procurement and integration and optimization of various support functions, resources and the assets and easier and speedier decision making at all levels and better management and co-ordination and garner the benefits arising out of economies of large scale and lower operating costs and pooling of the human talents in terms of manpower, management, administration and marketing to result in savings of costs and increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes and strengthening of financial position and the amalgamation will result in a avoiding duplication of administrative functions, reduction in multiplicity of legal and regulatory compliances and the amalgamation will facilitate integrated marketing strategies, integration of research and development activities, inter-transfer of resources and costs and optimum utilization of assets and bring uniformity in corporate policy and enhance the shareholder’s value.

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

6. The Learned Advocate for the Petitioners further 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 Order passed in Company Summons for Directions.

7. The Learned Advocate appearing on behalf of the Petitioners have stated that the Petitioners 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 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 4th January, 2016 in Company Scheme Petition No. 767 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.

9. The Regional Director has filed an Affidavit on 27th 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 14.2 of the scheme provides for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) The equity shareholders of both the Transferor and Transferee Company are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the transferee company to the shareholder of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulations 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."

10. As far as the observation made in paragraph 6(a) of the Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standards.

11. As far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Petitioner Companies through their Advocate undertakes to comply with applicable FEMA/RBI regulations for allotment of new shares to the shareholders of Transferor Company.

12. As far as the observations made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertakes and states that they 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. 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 Companies. The said undertakings given by the Petitioner Companies are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 767 of 2015 is made absolute in terms of prayer clause (a), (b) and (d) and Company Scheme Petition No.768 of 2015 is made absolute in terms of prayer clause (a) and (c).

16. The Petitioner Companies are directed 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 the order.

17. The Petitioner Companies are further directed to file a copy of this order along with a copy of the 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.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No.767 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.

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

20. All concerned regulatory authorities to act on a copy of this order along with 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 original signed order.

Uploaded by: Shankar Gawade, Stenographer