

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 838 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 772 OF 2015

ROHM AND HAAS INDIA PRIVATE LIMITED,

....Petitioner Company.

WITH

COMPANY SCHEME PETITION NO. 839 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 773 OF 2015.

DOW CHEMICAL INTERNATIONAL PRIVATE LIMITED,

....Petitioner Company.

In the matter of the Companies Act 1 of 1956 and other relevant provisions of Companies Act 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Rohm and Haas India Private Limited, the Transferor Company;

WITH

Dow Chemical International Private Limited the Transferee Company.

Called for hearing

Mr. Gaurav Joshi, Senior Counsel along with Ms. Shiraz Patodia with Anusuya Sadhu i/b Anil T. Agarwal for Petitioner Company.

Mr. Vinod Sharma, Official Liquidator, present in Company Scheme Petition No. 838 of 2015.

Mr. G. Hariharan i/b Mr. A. A. Ansari for Regional Director in all the Petitions.

Mentioned out of turn and called out at 3.00 p.m.

CORAM: K. R. SHRIRAM, J.

DATE: 22nd JANUARY 2016

PC:

1. Heard learned counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Rohm and Haas India Private Limited, the Transferor Company with Dow Chemical International Private Limited, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. The Transferor Company and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioners further states that, 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 respective Company Summons for Directions.

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and Transferee Company have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rule made there under whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 11th January, 2016 in Company Scheme Petition No. 838 of 2015 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 30th December, 2015 stating therein, save and except as stated in paragraph 6(a) and 6(b), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In

paragraph 6(a) and 6(b) of the said Affidavit, it is stated as under.

“6. (a) *The equity shares of both the Transferor company are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulations as applicable in this regards.*

(b) 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 Authorities and the approval of the Scheme by this Hon'ble 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”.

8. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Company through their counsel undertakes that while allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company will comply with FEMA/RBI regulations as applicable in this regards.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law

10. The Learned Counsel for Regional Director on instructions of Mr. M. 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 undertaking given by the Advocate for the Petitioner Company. the said undertaking is accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute in terms of prayer clauses (a).

13. The Petitioner Companies 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.

14. Petitioners are directed to file a copy of this order along with a copy of the amended Scheme of Amalgamation 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.

15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 838 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 the date of the Order.

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

17. 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.

(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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