IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.861 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.762 OF 2015

PARAKH AGRO INDUSTRIES LIMITED

.....Petitioner/the Demerged Company

AND

COMPANY SCHEME PETITION NO.862 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.763 OF 2015

PARAKH FOODS AND OILS LIMITED

.....Petitioner/the Resulting Company.

In the matter of the Companies Act I of 1956.

AND

In the matter of Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956.

AND

In the matter of the Scheme of Arrangement between:
Parakh Agro Industries Limited.

AND

Parakh Foods and Oils Limited.

AND

their respective shareholders.

Called for Hearing

Mr. Chandrakant Mhadeshwar for the Petitioners.

Mr.M.S.Chunawala i/b Shri. A. A.Ansari for Regional Director in all the Petitions.

CORAM: K. R. SHRIRAM, J

DATE : 26th February, 2016

PC:

1. Heard learned counsel for parties. None appears 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 under Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956, to a Scheme of Arrangement between Parakh Agro Industries Limited and Parakh Foods and Oils Limited and their respective shareholders.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company is presently carrying on the business of manufacturing and trading of FMCG commodities viz Food Product and Packaging films and Energy Generation.The Resulting Company is presently carrying on business of manufacturing and trading of FMCG commodities viz Food Products catering to both domestic and international markets.

4. The learned Advocate for the Petitioner Companies further states that Scheme of Arrangement between Parakh Agro Industries Limited and Parakh Foods and Oils Limited and their respective shareholders will result in the Resulting Company taking over "Food Manufacturing Divisions in Maharashtra" and "Investment

Division" on going concern basis from the Demerged Company. Demerger of 'Food Manufacturing Divisions in Maharashtra' and 'Investment Division' would facilitate to pursue inorganic and organic growth opportunities in each of such business by the respective management. Focused management attention to the respective business.Efficient management control and system. Enhance values of all stake holders in the long run.

5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner in Company Scheme Petition No 861 of 2015, states that the Scheme includes reduction and cancellation of Share Capital of the Demerged Company to bring the capital within serviceable limits and is unrepresented by available assets and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 11th September, 2015 passed in CSD No 762 of 2015.

7. The Learned Advocate for the Petitioner in Company Scheme Petition No 862 of 2015, states that the Scheme includes reduction

and cancellation of Share Capital of the Resulting Company and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 11th September, 2015 passed in CSD No 763 of 2015.

8. The learned Advocate for the Petitioners 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.

9. The Learned Advocate appearing on behalf of the Petitioners has stated that they 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 the Rules made thereunder whichever is applicable. The said undertaking is accepted.

10. The Regional Director has filed his affidavit on 7th January, 2016 inter alia, stating therein that save and except as stated in paragraphs 6 (a) & (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6 (a) & (b) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

a) *The authorized capital of the Transferee Company is not sufficient for issue of further shares to the shareholders of the Transferor Company. Post amalgamation, the paid up capital of the Transferee Company would be Rs 8,20,00,000/- i.e before giving effect to clause 10 of the scheme. Hence the Transferee Company has to increase its authorized share capital suitably to issue further shares to the shareholders of Transferor Company and comply with the provisions of section 94/97 of the Companies Act, 1956 corresponding to section 61/64 of the Companies Act, 2013, in respect of filing of necessary forms with the Registrar of Companies afterpayment of necessary filing fee and stampldduty as applicable on the said forms.*

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 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.*

11. So far as the objection of the Regional Director,Western Region, Mumbai, as stated in paragraph 6(a) of his Affidavit is concerened, the Petitioner Companies through its learned advocate undertakes that the Resulting Company shall comply with provisions of Sections 94/97 of the Companies Act, 1956 corresponding to Sections 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of

Companies after payment of necessary fees and Stamp Duty as applicable on the said forms for increase of its Authorised share capital.

12. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. 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 they are satisfied with the undertakings and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings 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, the Company Scheme Petition No.861 of 2015 filed by the Demerged Company and Company Scheme Petition No.862 of 2015 filed by the

Resulting Company are made absolute in terms of prayer clauses (a) to (e)

16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, 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.

17. Petitioner is directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

18. The Petitioners in both the Company Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

19. The Petitioner in Company Scheme Petition Nos.861 of 2015 and 862 of 2015 to publish a notice of registration of order and form of minutes of reduction of capital annexed as Exhibit 'E' to Company Scheme Petition No.861 of 2015 and annexed as Exhibit 'I' to Company Scheme Petition No.862 of 2015 respectively by Registrar of Companies once each in the two local newspaper, viz, "The Economic Times", in English language and translation thereof

in “Maharashtra Times”, in Marathi language, both having circulation in Pune and also in the Maharashtra Government Gazette within 14 days of registration.

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

21. All concerned regulatory authorities to act on a copy of this order along with the Scheme and Form of Minutes annexed as Exhibit “E” and Exhibit “I” to the Company Scheme Petition Nos.861 of 2015 and 862 of 2015 respectively 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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