IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 35 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 923 OF 2015

In the matter of the Companies Act, 1956 (1 of 1956);

AND

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

AND

In the matter of Scheme of Arrangement between Henkel Surface Technologies Private Limited with Henkel Adhesives Technologies India Private Limited and their Respective Shareholders

Henkel Surface Technologies Private Limited..........Petitioner

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Ms. Priya V Sankpal i/b Mr. A.A. Ansari for Regional Director.

Mr. Vinod Sharma, Official Liquidator

CORAM: S.C. GUPTE , J.

DATE: 29th APRIL, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 of the Companies Act, 1956 to the Scheme of Amalgamation between Henkel Surface Technologies Private Limited with Henkel Adhesives Technologies India Private Limited and their Respective Shareholders and Creditors.

3. The learned counsel appearing on behalf of the Petitioner Company submits that by an order passed in the court on 11th December 2015 in Company Summons for Direction No. 923 of 2015, the filing of separate Company Summons for Direction and Company Scheme Petition in relation to the proposed Scheme by the Transferee Company, namely Henkel Adhesives Technologies India Private Limited was dispensed with as Transferee Company is 100% holding Company of the Transferor Company and in view of the Judgment passed by this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases (pages 16 to 18).

4. The learned Counsel for the Petitioner Company states that the Petitioner Company is presently engaged in the business of manufacturing of metal pre-treatment chemical. The Transferee Company is engaged in the business of manufacture and sale of industrial adhesives products and trading of hair care products in India

5. The rational for the Scheme is that the Transferor Company is a wholly owned subsidiary of the Transferee Company and the amalgamation, which shall be beneficial to the interest of the shareholders, employees and creditors, will result in legal integration of the metal pre-treatment chemical, adhesives and hair care product business, reduction of the shareholding layers and direct control of assets of the Transferor Company in the hands of the Transferee Company. The proposed amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities. There shall be a reduction in regulatory and legal compliances / filings including accounting, reporting requirements,

statutory and internal audit requirements, tax filings, etc and consequential reduction in administrative costs of both the companies. Creating value for shareholders of the Transferee Company. Creating better synergies across the group and optimal utilisation of resources. Further, the proposed amalgamation will also enable Transferee Company to takeover intangible assets in the form of trademark, technical know-how etc. housed in the Transferor Company for effective utilisation in the Transferee Company.

6. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

7. The Learned Counsel for the Petitioner further states that the Petitioner Companies have complied with all the directions passed in the respective 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.

8. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company 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 undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed an Affidavit on 23rd March, 2016 stating therein, save and except as stated in paragraphs 6 (a) and (b) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) and (b) of the said Affidavit, the Regional Director has stated that:-

(a) *That clause 6.5 of the Scheme provides for adjustment for differences in Accounting Polices 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) *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 observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Transferee Company through their Counsel undertakes to comply and follow the accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme.

11. As far as observations made in paragraph 6 (b) of Affidavit of the Regional Director is concerned, the Petitioner clarifies that the approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

12. 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 given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

13. The Official Liquidator has filed his report on 22nd April, 2016 stating therein 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.

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. None of the parties concerned has come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 35 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

16. The Petitioner 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 receipt of the order.

17. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. The Petitioner Company to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the official Liquidator. Costs to be paid within four weeks from today.

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

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

(S.C Gupte , J)

CERTIFICATE

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

Uploaded By: Shankar Gawde, Stenographer