IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 58 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 914 OF 2015.

IMCD GROUP B.V

....Petitioner/ the Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 59 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 915 OF 2015.

IMCD INDIA PRIVATE LIMITED

....Petitioner/ the Transferee Company

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

And

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

And

In the matter of the Scheme of Arrangement between IMCD GROUP B.V., a company incorporated on 07 June 2000 under the laws of Netherlands and having its registered office at Wilhelminaplein 32, 3072 DE Rotterdam, Netherlands, through its branch office in India at Unit No. 1402, 14th floor, Parinee Crescenzo, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 400051, India and IMCD INDIA PRIVATE LIMITED and THEIR RESPECTIVE SHAREHOLDERS

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mrs. Nisha Valani i/b Mr. A.A. Ansari for the Regional Director.

CORAM: B. P. Colabawalla, J.
DATE: 7th April, 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 Petitions.

2. The sanction of the Court is sought to a Scheme of Arrangement between IMCD GROUP B.V., a company incorporated on 07 June 2000 under the laws of Netherlands, through its branch office in India and IMCD INDIA PRIVATE

LIMITED, and THEIR RESPECTIVE SHAREHOLDERS, under Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company is the head office of the IMCD group, which is engaged in the sales, marketing and distribution of specialty chemicals and food ingredients worldwide. The Indian branch Office supplies specialty chemicals including food and pharmaceutical ingredients to industrial manufacturers in India and does not engage in any retail trading and the Transferee Company has been carrying on the business of sales, marketing and distribution of specialty chemicals and food ingredients in India. The proposed scheme of Arrangement will have the benefit as per the opinion of the management that including ensuring core competency in the respective businesses of each company and to facilitate their further expansions and provide integration synergies and operational efficiencies with respect to India operations and enable the Indian business to be carried out more conveniently and efficiently with focused management capabilities and provide greater visibility on the performance of India operations and enhance the scale of operations, reduce administrative costs and garner greater visibility in the India market and also provide scope for expansion of business in future.

4. The Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies 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 undertake 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.

7. The Regional Director has filed an Affidavit on 1st day of April, 2016 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that

(a) *The Reserve Bank of India vide its letter No. FE Co. FID/18851/10.83.122/2007-08 dated 12/02/2008 has granted permission to the Transferor Company to establish a branch office in India. That branch office is now proposed to be merged with Resulting Company. As per clause 11 of the scheme, the Resulting Company proposes to issue 4,213,814 equity shares of Rs.10/- each to foreign body corporate. In this regard, the petitioner company may be directed to comply with FEMA/RBI Regulation as applicable.*

(b) *It has been observed from the Registrar of Companies, NCT of Delhi and Haryana that the Transferor Company has not yet filed its annual return in e-form FC-4 from the year 2013 onwards in terms of the provisions of sub-section(2) of section 384(2) of the Companies Act, 2013. Thus there is prima facie violation of section 384(2) of the Companies Act, 2013 and Rule 7 of the Companies (Registration of Foreign Companies) Rules, 2014. The petitioner company may be directed to file the overdue returns with Registrar of Companies, Registrar of Companies, NCT of Delhi and Haryana before giving effect to the Scheme.*

(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.*

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that Reserve Bank of India vide its letter No. FE Co. FID/18851/10.83.122/2007-08 dated 12/02/2008 has granted permission to the Transferor Company to establish a branch office in India and as per clause 11 of the scheme, the Resulting Company proposes to issue 4,213,814 equity shares of Rs.10/- each to foreign body corporate and that the Petitioner Company will comply with FEMA/ RBI regulations in accordance with law as applicable.

9. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Company has filed e-form FC-4 form from the year 2013 onwards in terms of the provisions of sub-section(2) of section 384(2) of the Companies Act, 2013 and they have submitted the copies of the said e-form FC-4 to the Regional Director's office vide their Advocate letter dated 29th March, 2016.

10. So far as the observation in paragraph 6 (c) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner

Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. 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 undertakings given by the Petitioners. The above undertakings are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 58 and 59 of 2016 are made absolute in terms of prayers clause (a) to (c).

14. The Petitioner Companies to file 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.

15. The Petitioners are directed to file a certified copy of 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.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the 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 Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B. P. Colabawalla, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.