IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 24.11.2016
Judgment Pronounced On: 18.01.2017

CO.PET. 73/2016

IN THE MATTER OF:-

CHEMTURA CHEMICALS INDIA PRIVATE LIMITED
… Petitioner/Transferor Company

AND

ARYSTA LIFESCIENCE INDIA LIMITED
… Non-Petitioner/Transferee Company

Through: Mr. Rishi Sood, Advocate for the petitioner.

Mr. Mayank Goel, Advocate for the Official Liquidator.

Ms. Aparna Mudium, Assistant Registrar of Companies for the Regional Director (NR).

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present petition under Sections 391, 392 and 394 of the Companies Act, 1956 (hereinafter referred to as 'the Act') has been filed by Chemtura Chemicals India Private Limited (hereinafter referred to as

'Petitioner/Transferor Company') for sanction to the proposed scheme of Arrangement (hereinafter referred to as 'the proposed scheme') between the Petitioner/Transferor Company and Arysta Lifescience India Limited (hereinafter referred to as 'Non-Petitioner/Transferee Company').

2. The registered office of the Petitioner/Transferor Company is situated at New Delhi, within the jurisdiction of this Court. However, the registered office of the Non-Petitioner/Transferee Company is situated at Maharashtra, outside the jurisdiction of this Court. Learned counsel for the Petitioner/Transferor Company states that a similar petition, being Company Scheme Petition no.114 of 2016, seeking sanction to the proposed scheme was filed by the Non-Petitioner/Transferee Company before the High Court of Judicature at Bombay, being the competent Court exercising territorial jurisdiction over them, which was allowed by way of order dated 05.08.2016. A copy of the said order has been placed on record.

3. The Petitioner/Transferor Company was incorporated under the provisions of the Act, on 20.04.2005, with the Registrar of Companies, Maharashtra at Mumbai, under the name and style of 'Crompton Specialty Chemicals India Private Limited'. Subsequently, the Petitioner/Transferor Company changed its name to 'Chemtura Chemicals India Private Limited' and a fresh certificate of incorporation, dated 31.03.2006, was issued in this behalf by the Assistant Registrar of Companies, Maharashtra at Mumbai. Thereafter, the Petitioner/Transferor Company shifted its registered office from the State of Maharashtra to Delhi and a fresh certificate, dated 18.11.2011, in this behalf was issued by the Registrar of Companies, N.C.T. of Delhi & Haryana at New Delhi.

4. The Non-Petitioner/Transferee Company was incorporated under the provisions of the Companies Act, 1913, on 07.11.1949, with the Registrar of Companies, Maharashtra, Mumbai under the name and style of 'DeviDayal (Sales) Limited'. Thereafter, the name of the Non-Petitioner/Transferee Company was changed to its present name and a fresh certificate of incorporation dated 11.02.2014, in this behalf, was issued by the Registrar of Companies, Maharashtra at Mumbai.

5. The authorized share capital of the Petitioner/Transferor Company, as on 31.03.2015, is Rs.1,00,00,00,000/-, divided into 1,00,00,000 equity shares of Rs.100/-each. The issued, subscribed and paid-up share capital of the Petitioner/Transferor Company, as on 31.03.2015, is Rs.97,85,36,700/- divided, into 97,85,367 equity shares of Rs.100/- each.

6. It has been averred on behalf of the Petitioner/Transferor Company that there are no proceedings pending against them, under Sections 235 to 251 of the Act (including their corresponding sections of the Companies Act, 2013), as on the date of filing of the present petition.

7. Copies of the Memorandum of Association and Articles of Association of the Petitioner/Transferor Company and the Non-Petitioner/Transferee Company have been filed on record. The audited balance sheet, as on 31.03.2015, of the Petitioner/Transferor Company, along with the report of the auditors, have also been filled.

8. A copy of the proposed scheme has been placed on record and the salient features thereof have been incorporated and detailed in the present petition. It has been stated on behalf of the Petitioner/Transferor Company that the proposed scheme will result in establishment of a larger company with larger resources, larger capital base and greater capacity to raise funds for expansion, modernization and development of businesses of the companies concerned. It has been further stated that the propose scheme will lead to economies of scale; reduction in overheads and other expenses; reduction in administrative and procedural work; and better and more productive utilization of various resources.

9. So far as the share exchange ratio is concerned, the proposed scheme provides that, upon coming into effect of the proposed scheme, the Non-Petitioner/Transferee Company shall issue and allot equity shares to the shareholders of the Petitioner/Transferor Company in the following ratio:-

> "50 Equity shares of face value of Rs. 10/- each in the Transferee Company for every 233 (Two Hundred & Thirty

> Three) Equity Shares of Rs.100/- (Hundred) each held in the Transferor Company."

10. The Board of Directors of the Petitioner/Transferor Company and the Non-Petitioner/Transferee Company in their separate meetings held on 27.08.2015 and 26.08.2015, respectively, have approved the proposed scheme. Copies of the resolutions passed at the meetings of the Board of Directors of the Petitioner/Transferor Company and the Non-Petitioner/Transferee Company have been placed on record.

11. To recapitulate, the Petitioner/Transferor Company had in the earlier round filed Company Application (M) no.187 of 2015, seeking directions of this Court to dispense with the requirement of convening meetings of their equity shareholders and creditors, to consider and if thought fit, approve, with or without modification, the proposed scheme. This Court, vide order dated 23.12.2015, allowed the said application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the Petitioner/Transferor Company. There being no secured creditor of the Petitioner/Transferor Company.

12. The Petitioner/Transferor Company has thereafter filed the present petition seeking sanction to the proposed scheme. Vide order dated 01.02.2016, notice in the present petition was directed to be issued to the Regional Director, Northern Region and the Official Liquidator. Furthermore, citations were directed to be published in Delhi edition of the newspapers, namely, "Business Standard" (English) and "Jansatta" (in Hindi). Affidavit of service and publication, dated 12.07.2016, has been filed by the Petitioner/Transferor Company, showing compliance regarding service on the Regional Director, Northern Region and the Official Liquidator and also regarding publication of citations in the aforesaid newspapers. Copies of the newspaper clippings, regarding publication carried out on 28.05.2016 have also been filed alongwith the said affidavit.

13. Pursuant to the notices issued in the present petition, the Official Liquidator sought information from the Petitioner/Transferor Company. Based on the information received, the Official Liquidator has filed a report dated 12.07.2016, wherein, it has been stated that no complaint has been received against the proposed scheme from any interested person/party; and that the affairs of the Petitioner/Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its member, creditors or public interest as per second proviso of Section 394(1) of the Act.

14. In response to the notices issued in the petition, the Regional Director, Northern Region, Ministry of Corporate Affairs, sought information from the Petitioner/Transferor Company; Registrar of Companies, N.C.T. of Delhi and Haryana; and the Income Tax Department. Based on the information received from the Registrar of Companies, NCT of Delhi and Haryana and the

Petitioner/Transferor Company, the Regional Director, Northern Region has filed an affidavit dated 13.07.2016, not raising any objection to the proposed scheme. However, the Regional Director in para 8 and 9 of the said affidavit has made the following observations: -

> "**8.** That the Deponent states that the Petitioner Company vide para 24 of its reply stated that affidavit of service in respect of issue of individual notice of date of hearing of the petition by petitioner company to the creditors will be filed to the court prior to date of hearing.
>
> It is further stated that the newspaper publication has not been published till date and that the company will publish the same in newspaper before the date of hearing & submit the copies of publication in the due course.
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> **9.** That the Deponent states that the Registrar of Companies, Delhi & Haryana vide para 31 of his report has stated observed that the Transferor Company is a subsidiary of Netherlands based company. Accordingly, it is required to comply with the RBI rules and regulations in respect of allotment of shares, if any, to the said entity.
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> In this regard, the petitioner company has vide para 18 of its reply stated that presently 100% shareholding of the Transferor Company & Transferee Company is held by the foreign entity and after post amalgamation also 100% shareholding will be held by the same foreign entities, which is already in compliance of FDI Policy under the automatic route."

15. Pursuant to the said report dated 13.07.2016, this Court by way of order dated 15.07.2016, directed the Petitioner/Transferor Company to issue individual notices to its creditors, who have not given their consent to the proposed scheme, if such individual notices have already not been issued. If issued, then Petitioner/Transferor Company was directed to file an affidavit in this behalf within 2 weeks from the date of the said order dated 15.07.2016. It is in this behalf, that the Petitioner/Transferor Company has filed an affidavit dated 20.08.2016, showing compliance regarding service of individual notices on the 12 unsecured creditors of the Petitioner/Transferor Company, consents of whom were not obtained to the proposed scheme.

16. The Petitioner/Transferor Company has further filed an affidavit dated 16.11.2016, undertaking that, pursuant to the proposed scheme getting sanctioned, it will comply with all the RBI rules and regulations in respect of allotment of shares, if any, to its holding company which is a foreign entity. In view of the aforesaid, the observations/objections made by the Regional Director stand satisfied.

17. It has been noted that no other objections have been received to the proposed scheme from any other party. The Petitioner/Transferor Company, vide affidavit dated 20.08.2016, has stated that neither the Petitioner/Transferor Company nor their counsel have received any objection to the proposed scheme pursuant to publication of citations in the newspapers on 28.05.2016.

18. Considering the approval accorded by the shareholders and creditors of the Petitioner/Transferor Company to the proposed scheme; the report filed by the Official Liquidator, having not raised any objection to the proposed scheme;

and in light of the observations made by the Regional Director to the proposed scheme, which stand satisfied, as noted herein above, there appears to be no impediment to the grant of sanction to the proposed scheme. Consequently, sanction is hereby granted to the proposed scheme. The Petitioner/Transferor Company will comply with all the statutory requirements in accordance with law. Upon the sanction becoming effective from the appointed date of the proposed scheme, i.e. 1st April, 2015 the Petitioner/Transferor Company shall stand dissolved without undergoing the process of winding up.

19. A certified copy of the order, sanctioning the proposed scheme, be filed with the Registrar of Companies, within 30 days of its receipt.

20. Notwithstanding the above, if there is any deficiency found or, violation committed *qua* any enactment, statutory rule or regulation, the sanction granted by this Court to the proposed scheme will not come in the way of action being taken, *albeit*, in accordance with law, against the concerned persons, directors and officials of the Petitioner/Transferor Company and the Non-Petitioner/Transferee Company.

21. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or even compliances that may have to be made, as per the mandate of law.

22. The Petitioner/Transferor Company shall deposit a sum of Rs.50,000/- by way of costs with Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi, within a period of two weeks from today.

23. Consequently, the petition is allowed in the aforesaid terms and is accordingly disposed of.

SIDDHARTH MRIDUL, J

JANUARY 18, 2017
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