

In the matter of Section 391 to 394 of the Companies Act, 1956, (Corresponding Section 230 to 232 of the Companies Act, 2013)

AND

In the matter of Scheme of Amalgamation and Arrangement between Vaid Overseas Private Limited (First Transferor Company) and Vaid Finance Private Limited (Second Transferor Company) and Vijay Elastomer Processors Private Limited (Third Transferor Company) (Demerged Company) with Vaid Elastomer Processors Private Limited (Transferee/ Resulting Company) and Their Respective Shareholders And Creditors.

Order Date: 16th November, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

Call for Hearing

Mr. Sachin Mhaske Advocate for the Petitioner Companies in all Four Petitions

Mr. S. Ramakantha Joint Regional Director, RD Mumbai in all Four Petitions.

Mr. Santosh Dalvi, Representative Official Liquidator.

Mr. Ramesh Gholop Dy. Registrar, ROC Mumbai in all Four Petitions.

Per : V. Nallasenapathy, Member (T)

ORDER

1. Heard the learned Advocate for the Petitioner Companies. The Tribunal has not received any Objection to oppose the Petition and none of the Petitioner Companies have contravened any averments made in the Petitions.
2. The Sanction of the Tribunal, is sought under Section 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation and Arrangement between Vaid Overseas Private Limited (First Transferor Company) and Vaid

Finance Private Limited (Second Transferor Company) and Vijay Elastomer Processors Private Limited (Third Transferor Company) (Demerged Company) with Vaid Elastomer Processors Private Limited (Transferee/ Resulting Company) and Their Respective Shareholders And Creditors.

3. Learned Advocate for the Petitioner Companies states that Vaid Overseas Private Limited is engaged in the business of all types and grads of Natural, Synthetic Rubber, and all types of Rubber Goods, Rubber Compounds and Molding, Rubber Extrusions and all types of Polymer and its Chemicals, Plastics and Plastic Goods including Plastic Liners. Vaid Finance Pvt. Limited company is engaged in business as negotiate loans, to draw, accept, endorse, discount, buy, sell, and deal in bills of exchange, promissory notes, bonds, debentures, hundies, coupons, and other negotiable instruments and securities, to issue on commission, subscribe for purchase, take, acquire and hold, sell, exchange and deal in shares, stock, bonds, debentures, obligations or securities of any government, local authority or other interest in any other company. Vijay Elastomer Processors Private Limited is engaged in the business of Manufacture, Process, refine, buy, sell, Import, export and deal in all types & grades of Natural Rubbers, Synthetic rubber, rubber substances, rubber substitutes and any other rubber products and rubber chemicals and all types of polymer and its chemicals. Vaid Elastomer Processors Private Limited is engaged in the business of Manufacture, process, refine, buy, sell, import, export, and generally to deal in all types and grades of Natural Rubbers, Synthetic Rubbers, Rubber Substances, Rubber Substitutes & any other Rubber and Rubber Chemicals and all Types of Polymer and its Chemicals.
4. The Petitioner Companies have approved the said Scheme of Amalgamation and Arrangement by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioners states that the petitions have been filed in consonance with the order passed in their Company Summons for Direction No. 622 of 2016, 623 of 2016, 624 of 2016 and 625 of 2016.

6. The Learned Advocate appearing on behalf of the Petitioners Companies further states that the Petitioner Companies have complied with all requirements as per directions of Hon'ble High Court of Judicature of Bombay and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Advocate undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under, whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.
7. The Official Liquidator has filed his Report on 15th June, 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Transferor Companies may be ordered to be dissolved.
8. Pursuant to transfer of the Company Scheme Petition to the Hon'ble Tribunal, the Regional Director has filed his report on 31st May, 2017 stating therein, save and except as stated in Paragraph IV (a) to (e), it appears that the Scheme is not prejudicial to the interest of Shareholders and public. In paragraph IV, of the said Report it is stated that:
 - (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-) etc.*
 - (b) *As per Clause 2.2, Definitions, of the scheme. "Appointed Date" means the 1st day of April, 2015, or such other date as may be approved by the NCLT. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2015.*
 - (c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation and Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 3rd April, 2017 has served a Copy Company Scheme Petition No. 777 to 780 of 2016 alongwith relevant orders etc., further the Regional Director has also issued a reminder 12/05/2017, to IT Department.*

(d) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court or NCLT may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*

(e) *In view of the observations raised by the ROC, Mumbai, enclosed as Annexure – "A" (mentioned at para 13) Hon'ble NCLT may pass appropriate order/orders as deem fit. Observation of the ROC, Mumbai as under :-*

Composite scheme of amalgamation and demerger:-

1. Record Date was not fixed in the Scheme itself: - Company is required to undertake the following compliance before Hon'ble NCLT in view of the following. With reference to the para no. 1.1.14, 2.2.1 and 3.2.1 of the scheme, it is noticed that the averments in respective para(s) are contrary as they refer the record date as a date to be decided by the board(s) of demerged company/ transferor companies and the said record date is also referred as effective date as well. Appointed date needs to be considered as Record date considering if there is no further issue of shares or alternatively share exchange ratio need to be amended.

2. Aggregate amount of Rs. 1.35 Cr for combination of share capital of both the transferor companies are incorrect :-

Company is required to undertake the following compliance before Hon'ble NCLT in view of the following. With reference to the para no. 2.5.1 of the scheme, providing for combination of share capital (authorized capital) of all the transferor companies to the tune of Rs. 1.35 Cr, it is noticed from the para no. 1.3.1 and 1.3.2 of the scheme pertaining all both transferor company 1 and transferor company 2 (third company being not a transferor company but a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH AT MUMBAI**

T. COMPANY SCHEME PETITION NO. 263 OF 2017

CONNECTED WITH

HIGH COURT COMPANY SCHEME PETITION NO. 777 OF 2016

IN

COMPANY SUMMONS FOR DIRECTION NO. 622 OF 2016

Vaid Overseas Private Limited ... Petitioner Company

T. COMPANY SCHEME PETITION NO. 264 OF 2017

CONNECTED WITH

HIGH COURT COMPANY SCHEME PETITION NO.778 OF 2016

IN

COMPANY SUMMONS FOR DIRECTION NO. 623 OF 2016

Vaid Finance Private Limited Petitioner Company

T. COMPANY SCHEME PETITION NO.265 OF 2017

CONNECTED WITH

HIGH COURT COMPANY SCHEME PETITION NO. 779 OF 2016

IN

COMPANY SUMMONS FOR DIRECTION NO. 624 OF 2016

Vijay Elastomer Processors Private Limited ... Petitioner Company

(Demerged Company)

T. COMPANY SCHEME PETITION NO. 266 OF 2017

CONNECTED WITH

COMPANY SCHEME PETITION NO. 780 OF 2016

IN

COMPANY SUMMONS FOR DIRECTION NO. 625 OF 2016

Vaid Elastomer Processors Private Limited ... Petitioner/Transferee
Company

In the matter of Companies Act, 2013

AND

demerged company whose share capital of Rs. 10 Lakhs cannot be combined as there is no dissolution and hence cannot be under section 222(3) (i) of the C.A. 2013) that such capital is accordingly aggregating to Rs.1.30 Cr only instead of Rs.1.35 Cr mentioned in para no.2.5.1 of the Scheme.

Consequently the para no.2.5.2 and 2.5.4 of the scheme disclosing the cumulative of authorized capital of the transferee company (post amalgamation) is also incorrect and require amendment/compliance as it should be shown as Rs.6.30 Cr (equity) instead of Rs. 6.35 Cr wrongly shown in para no. 2.5.2 & 2.5.4 of the Scheme. Further, it should also show Rs. 2 Cr (preference shares) instead of not showing anything in those para(s) of the scheme.

3. Abbreviated name of the Companies are wrongly given in para no. 3.1.1 of the scheme and also at various other places/paras in the scheme:-

Company is required to amend/make compliance before the Hon'ble NCLT in view of the following With reference to para no. 3.1.1 of the scheme to the extent typed/printed in page no.14 of the scheme contain typographical error as it should be written as VEPPL(2 times) instead of VIEPPL (2 times) wrongly typed. Further it should be written as VIEPPL (1) time instated of VEPPL (1 time) wrongly typed. Transferee / resulting company being VEPPL.

Similarly, at various other places in para no(s).3.1.2, 3.1.3, 3.1.4, 3.1.5, 3.1.6, 3.2.1, 3.5.1 of the scheme, abbreviated names were wrongly mentioned as VEPPL instead of VIEPPL and vice versa.

4. All movable assets of the demerged undertaking are sought to be transferred in a manner to be decided by the Board(s) of demerged & resulting companies.

Company is required to amend/make compliance before the Hon'ble NCLT in view of the following with reference to the paragraph no.3.1.5 of the Scheme providing for future determination of transfer/appointed date in respect of movable

properties of the demerged undertaking (investment undertaking), it is noticed that the same is in contravention of section 232(6) of the scheme, as such transfer of movable properties should be effective from the appointed date, once the scheme is sanctioned by the Hon'ble NCLT.

5. Remaining business undertaking of demerged company (VIEPPL) remain insignificant:

Company is required to explain / amend/make compliance before the Hon'ble NCLT in view of the following. Averments in para no.1.1.7 of the scheme seems incomplete/misleading as the combined reading of para no.1.1.7 and 1.1.5 of the scheme reveal that the remaining business left with the demerged company (VIEPPL) was in fact mere investment remain with the demerged company (VIEPPL) so as to enable it to carry on any business as mandated in its main objects.

6. Accounting Treatment proposed in the scheme is erroneous vis-à-vis company name(s) and is incorrect and against the Generally Accepted Accounting Principle (GAAP) as well :-

- (i) Companies are required to amend the /make compliance before the Hon'ble NCLT in view of the following. With reference to the para no.3.3.1 & 3.3.2 of the Scheme, the difference of net assets stated there in needs to be considered in the books of VEPPL as Goodwill/Capital Reserve as the case may be (instead of adjusting to General Reserve Account partially and adjusting the remaining different directly to P & L Account or instead of credited to General Reserve Account as proposed in the Scheme) as to be considered in case of demerger / scheme of arrangement, instead of debit/card to the profit and loss account as to be considered in case of direct sale not falling under scheme of arrangement/demerger. Transfer of assets and liabilities under the scheme of demerger/amalgamation being not in the nature of revenue /business transaction of the company, the same should not be reflected in P & L Account / adjusted

to General Reserve Account which are available for distribution as dividend.

Further, the proposed reduction of book value has no basis as proposed in para no.3.31 of the scheme as the same is actually applicable in the books of VIEPPL instead of as proposed to carry out in the books of VEPPL. This needs amendment/correction.

- (ii) Company is required to amend/rectify the abbreviated name wrongly mentioned as VEPPL instead of VIEPPL. Further, VIEPPL being demerged company need not record afresh the details of assets in its books under transfer to VEPPL, instead require to reduce the books value of net assets from its books. The same is not mentioned in this para and instead the same was wrongly mentioned under para no.3.3.1 pertaining to the treatment of account in resulting company (VIEPPL).

Accordingly and due to the issues as noticed above, all proposed accounting treatment in para no.3.4.1 to 3.4.4 are totally inapplicable to the demerged company (VIEPPL) and further treatment/adjustment to General Reserve/ P & L Account is not allowed.

- (iii) Accordingly, the entire accounting treatment proposed in the scheme is not only erroneous vis-à-vis company name and also against the GAAPs.

7. Power to amend the Scheme in the hands of Board is against the Law: - Para no.4.7 of the Scheme authorizing the Board(s) to carry out amendments/modifications to the scheme is against the provisions of section 231(1) and 231 (2) of the companies act, 2013 as such powers are vested with Hon'ble NCLT. This required amendment.
8. Nullity Clause / invalidity of Scheme needs to be amended :- 30.9.2015 date was mentioned as cut-off date to enforce nullity clause which is against the provision of section of section 231(1)

and 231 (2) of the companies act, 2013 read with section 232(6) of the C.A. 2013. This requires deletion/amendment.

9. Procedure: - Petition Nos. /Notice of hearing in NCLT were served on RoC Mumbai office only on 17.3.2017 and accordingly the 30 days limit may be required to be counted from that date only i.e. up to 16.4.2017.
9. So far as the observation in paragraph IV (a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that it shall pass such accounting entries which are necessary in connection with this Scheme to comply with any other applicable Accounting Standards such as AS-14 (IND As -103) including the Accounting Standards AS-5 (IND As -8).
10. So far as the observation in paragraph IV (b) of the Affidavit of the Regional Director is concerned, the Petitioner companies through their counsel submits that as per the provisions of Section 232 (6) of the Companies Act, 2013 the appointed date of the scheme shall be 1st April, 2015.
11. So far as the observation in Paragraph IV (c) of the Affidavit of the Regional Director is concerned, the petitioner companies states that the all the concerned Income Tax Officer and also filed Affidavit of Service in the Petitions. The Petitioner companies states that no objection so far has been received by them from the concerned Income Tax Office. In any event the Petitioner Company submits that the petitioner is undertakes 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.
12. So far as the observation in paragraph IV (d) of the Affidavit of the Regional Director is concerned, the Petitioner Company submits that the petitioner company undertakes 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. So far as the observation in paragraph IV (e) of the Affidavit of the Regional Director is concerned, the Petitioner Company states and submits to the observations raised by the ROC, Mumbai, in Point No. 29 (enclosed separately), as undertake and complied as under that :-

- i. In so far as Paragraph No. 29 (1), The Petitioner Company undertakes through their counsel that the record date as well as appointed date to be same i.e. dated 1st April, 2015 as per Section 232(6) of the Companies Act, 2013
- ii. In so far as Paragraph No. 29 (2), the Petitioner Company submits that there is typographical mistake in aggregated amount for combination of share capital the Scheme submitted before the Hon'ble Tribunal and the Petitioner Company say that authorised share capital of all the Transferor Companies aggregating to Rs. 1,30,00,000/- (Rupees One Crore Thirty Lacs Only) comprising of 13,00,000 (Thirteen Lakhs) Equity Shares, is corrected in the amended scheme submitted before the before the Hon'ble NCLT on 18th September 2017.
- iii. In so far as Paragraph No. 29 (3), the Petitioner Company submits due to the typographical mistake in abbreviated name of the Demerged and Transferee companies are wrongly given in paragraphs as mentioned. Petitioner Company say that same is corrected in the amended scheme submitted before the Hon'ble NCLT on 18th September 2017.
- iv. In so far as Paragraph No. 29 (4), the Petitioner Company submits that the correction is made as the transfer of movable properties should be effective from the appointed date,
- v. In so far as Paragraph No. 29 (5), the Demerged Company submits and undertakes that the order passed by the Hon'ble NCLT is binding upon the petitioner company and undertakes to comply all the necessary changes in Main Objects of Memorandum of Association and Article of Association to carry on the Rental business of the demerged company as per the provisions of the Companies Act, 2013.

vi. In so far as Paragraph No. 29 (6), the petitioner companies accepted the accounting treatment as per applicable accounting standard treatment and undertakes 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 as undertaking submitted before the Hon'ble NCLT.

vii. In so far as Paragraph No. 29 (7), the Petitioner Company submits that there is that Clause/Paragraph 4.7 of the Scheme gives power to the Board of Directors of the Petitioner Companies to amend any part of the Scheme. The Learned Counsel for the Petitioner Companies on behalf of the Petitioner Company say that the necessary correction has been carried out in amended scheme submitted before the Hon'ble NCLT on 18th September 2017 and as such powers are vested with Hon'ble National Company Law Tribunal

viii. In so far as Paragraph No. 29 (8), The Petitioner companies submit that the cutoff date is extended up to 31st December 2017 and same is incorporated in amended scheme submitted before the before the Hon'ble NCLT on 18th September 2017.

ix. In so far as Paragraph No. 29 (9), The Petitioner company the learned counsel for the petitioner companies that Petition Nos. / Notice of hearing in Hon'ble NCLT were served on RoC Mumbai as per procedure and the same has been complied as per the provisions of the Companies Act, 2013 and the Hon'ble NCLT consider the service upon the Office of ROC Mumbai on interest of justice and request to the Hon'ble Tribunal sanction the scheme of Amalgamation and Arrangement.

14. From the material on record, the Scheme of Amalgamation and arrangement appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 263 of 2017, 264 of 2017, 265 of 2017 and

266 of 2017 has been made absolute in terms of prayer of the petitions mentioned therein.

16. Petitioner Company is directed to file a copy of this order alongwith a copy of the scheme of Amalgamation and Arrangement with the concerned Registrar of the Companies, electronically, alongwith E- Form INC – 28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
17. The Petitioner Company to lodge a copy of this order and the scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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.
18. The Petitioner Companies to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor companies to pay cost of Rs. 25, 000/- to the Official Liquidator, High Court Bombay.
19. Costs to be paid within four weeks from the date of receipt of the order.
20. All authorities concerned to act on a certified copy of this order alongwith scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)