

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH,  
MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO 17 OF 2017

ARISING FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 944 OF 2016

MeadWestvaco India Private Limited ...Transferor Company

CONNECTED WITH

TRANSFERRED COMPANY SCHEME PETITION NO 19 OF 2017

ARISING FROM

THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SUMMONS FOR DIRECTIONS NO 945 OF 2016

MWV India Paperboard Packaging Private Limited ...Transferee Company

In the matter of the Companies Act, 1956;

And

In the matter of Sections 391 to 394 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013;

And

In the matter of the Scheme of Amalgamation under sections 391 to 394 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 and the Companies Act, 2013, of MeadWestvaco India Private Limited and MWV India Paperboard Packaging Private Limited and their respective shareholders and creditors

**Called for Hearing**

Mr. Peshwan Jehangir, Mr. Himanshu Vidhani, Ms Atika Vaz i/b Khaitan & Co, Advocates for the Transferor Companies and the Transferee Company.

Mr. Ramesh Golap, Assistant Director in the office of the Regional Director present

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

**Date: 21 June 2017**

1. Heard Learned Counsel for the Parties.
2. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.
3. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, as amended and the corresponding provisions of the Companies Act, 2013 for the Scheme of Amalgamation between MeadWestvaco India Private Limited i.e., the **Transferor Company** and and MWV India Paperboard Packaging Private Limited, i.e. the **Transferee Company** and (together "**Petitioner Companies**") and their respective shareholders and creditors ("**Scheme**").
4. The Learned Counsel for the Petitioner Companies states that Transferee Company is presently, *inter alia*, engaged of manufacturing kraft paper, corrugated boxes, and supply of paper machine parts. The Transferor Company is presently, *inter alia*, engaged in the business of providing packaging solutions and support services for market exploration and sourcing activities in the form of liaison, sale promotion and technical services to customers in India.
5. The Learned Counsel for the Petitioner Companies states that proposed Scheme is beneficial since, *inter alia*, the proposed Amalgamation will enable the better and efficient management, control and running of the businesses to attain operational efficiencies, cost competitiveness, create synergies, will be beneficial for capitalizing on the growth opportunities to the fullest extent and facilitate inter-unit transfer of resources thereby resulting in operational synergies. The proposed amalgamation will result in simplification of the group structure and will eliminate duplication of regulatory and procedural compliances, which will result into conserving of time, resources, and cost.
6. The Petitioner Companies have approved the Scheme by passing Board Resolutions which are annexed to the Company Scheme Petitions.
7. The Learned Counsel for the Petitioner Companies further states that, the 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 order passed in the respective Company Summons for Directions.

8. The Learned Counsel appearing on behalf of the Petitioner Companies have further stated that the Petitioner Companies have complied with all the requirements as per directions of the Hon'ble Bombay High Court and also of this Hon'ble Tribunal and they have filed necessary affidavits of compliance. Moreover, the Petitioner Companies undertake to comply with all applicable statutory requirements, if any, under the Companies Act, 1956 and 2013, and rules made thereunder. The said undertaking is accepted.
9. The Regional Director has filed his report dated 28<sup>th</sup> April 2017 wherein it is stated that save and except as provided in the objections, it appears that the Scheme is not prejudicial to the interest of shareholders and public.
10. In the report dated 28<sup>th</sup> April 2017, save and except as stated in paragraphs IV (a) to (f), it appears that the Scheme is not prejudicial to the interest of the shareholders and the public.

“.....

- (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-8) etc.*
- (b) *Regarding Clause 10 of the scheme, it is submitted that the surplus, if any, arising out of the scheme shall be credited to the capital reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against the Reserves of the Transferee Company.*
- (c) *As per the existing practice, the Petitioner Companies are required to serve notice for the scheme of Arrangements to the Income Tax Department for their comments. It appears that the Company vide a letter dated 31<sup>st</sup> January 2017 and 1<sup>st</sup> February 2017 has served copy Company Scheme Petition No 17 to 19/2017 along with relevant orders etc., further this Directorate has also issued a reminder 27.04.2017 to IT department.*
- (d) *The tax implications 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 Tribunal 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) As per part/I definitions and interpretations. Clause 1.1 of the Scheme “appointed date” means the opening business hours of 1<sup>st</sup> April 2016. In this regard it is submitted in terms of provisions of Section 232 (6) of the Companies Act, 2013 it should be opening business hours of 1<sup>st</sup> April 2016.*
- (f) In view of the objection raised by ROC Mumbai mentioned at para 11, the above Hon’ble NCLT may pass appropriate orders as deemed fit.”*

11. The observations of ROC as recorded in Para 11 of the Report dated 28<sup>th</sup> April 2017, records as follows:

“ ...

- 1. The CIN No. of the Transferee company is wrongly given in the last para on page 3 of the scheme and hence requires correction / amendment of the scheme.*
- 2. Transferee Company may obtain in principle prior approval (if applicable) from RBI/other Authorities before the sanction of the scheme, as the shares are required to be issued to Singapore entities.*
- 3. As the main objects are not similar, Scheme may provide for amendment of MOA of Transferee company. This requires amendment of the Scheme.*
- 4. The word “Fair Value” para 10 (f) of the scheme, is contrary to paragraph 35 of AS-14 and hence require amendment and to be mentioned as nominal value (amount recorded) as the issue is to be made on part vide Clause 7.1 of the scheme.*
- 5. Proposed new name vide para 12.1 of the scheme is subject to availability and compliance with the Companies Act. This require amendment accordingly.”*

12. As far as the observations in paragraph IV(a) of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies state that the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with all accounting standards such as AS-5 (IND AS-8) etc., to the extent applicable. The above undertaking is accepted.

13. As far as the observations in paragraph IV(b) of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies state that the Transferor Company undertakes that the surplus if any, arising out of the Scheme shall be credited to the capital reserve and deficit if any arising out of

the same shall be debited to its Goodwill Account and will not be adjusted against the reserves of the Transferee Company. The above undertaking is accepted.

14. As far as the observations in paragraph IV(c) of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies state states that as rightly recorded in the paragraph under reply, the Petitioner Companies had issued notices and reminders to the Income Tax Department. The Income Tax Department has not raised any objections to the Scheme.
15. As far as the observation in paragraphs IV(d) of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and that all tax issues arising out of the Scheme will be met and answered in accordance with law.
16. As far as the observation in paragraphs IV(e) of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Scheme duly records that "*Appointed Date*" would mean the opening business hours of 1<sup>st</sup> April 2016.
17. As far as the observation in paragraph IV(f) and paragraph 11.1 of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Scheme inadvertently recorded an incorrect CIN No of the Transferee Company. Therefore, the Scheme has been amended to reflect the correct CIN No of the Transferee Company being U28920MH1986PTC039768 and placed on record of this Hon'ble Tribunal as Annexure "I" to the Affidavit dated 2<sup>nd</sup> June 2017.
18. As far as the observations in paragraph IV(f) and paragraph 11.2 of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Transferee Company undertakes to comply with the applicable provisions of FEMA/RBI Guidelines, read with the relevant Rules/Regulations to the extent applicable. The above undertaking is accepted.
19. As far as the observations in paragraph IV(f) and paragraph 11.3 of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Transferee Company has duly amended its Memorandum of Association to bring in line the main objects of the Transferee Company with the main objects of the Transferor Company.



20. As far as the observations in paragraph IV(f) and paragraph 11.4 of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Scheme has been duly amended to replace the word "*Fair*" to "*Nominal*" and placed on record of this Hon'ble Tribunal as Annexure "I" by an Affidavit dated 2<sup>nd</sup> June 2017.
21. The observations in paragraph IV(f) and paragraph 11.5 of the Report dated 28<sup>th</sup> April 2017 is concerned, the Learned Counsel for the Petitioner Companies states that the Scheme has been duly amended to reflect revised clause 12.1. The Scheme has been placed on record of this Hon'ble Tribunal as Annexure "I" by an Affidavit dated 2<sup>nd</sup> June 2017.
22. The Official Liquidator has filed his report on 24 April 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner.
23. 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.
24. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (c) and (e) of each of the Company Scheme Petitions. The Scheme being Annexure I to the Affidavits dated 2<sup>nd</sup> June 2017 has been approved and sanctioned in terms of prayer clause (a) to the Company Scheme Petitions.
25. The Petitioner Companies to lodge a copy of this order and the Scheme, with the concerned Superintendent of Stamps, for purposes of adjudication of stamp duty payable, if any, on the same within 60 days from the date of the Order.
26. The Petitioner Companies are 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 INC28, in addition to physical copy, as per relevant provisions of the Companies Act, 1956 and the Companies Act, 2013 and Rules made thereunder, whichever are applicable.
27. The Petitioner Companies are directed to pay a cost of Rs 25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company is directed to pay a cost of Rs 25,000/- to the Official Liquidator in Company Scheme Petition No 17 of 2017. Costs to be paid within four weeks from the date of the order.
28. All concerned regulatory authorities to act on a copy of this order along with Scheme attached thereto, duly authenticated by the Deputy Director, National

Company Law Tribunal, Mumbai Bench, Mumbai.

Sd/-

**B.S.V. Prakash Kumar, Member (Judicial)**

Sd/

**V. Nallasenapathy, Member (Technical)**