

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO 134 OF 2017

(HIGH COURT COMPANY SCHEME PETITION NO 634 OF 2016)

Goldfield Fragrances Private Limited

.....**Petitioner/Demerged Company**

AND

TRANSFERRED COMPANY SCHEME PETITION NO 135 OF 2017

(HIGH COURT COMPANY SCHEME PETITION NO 635 OF 2016)

Goldfield Fragrances Manufacturing Private Limited

.....**Petitioner/Resulting Company**

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 (corresponding sections 230 to 232 of the Companies Act, 2013)

AND

In the matter of Scheme of Arrangement of Goldfield Fragrances Private Limited And Goldfield Fragrances Manufacturing Private Limited and their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both Petitions.

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date : 8th March 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies act, 2013, to the Scheme of Arrangement of Goldfield Fragrances Private Limited And Goldfield Fragrances Manufacturing Private Limited and their respective Shareholders.

3. The Counsel for the Petitioners submit that Demerged Company is engaged in the business of manufacturer of fragrance compounds. The Resulting Company has not yet commenced any business operations but has been incorporated to house Demerged Undertaking of the Demerged Company .
4. The rationale for the scheme is that the proposed Scheme of Arrangement is aimed at achieving the following business and commercial objectives:
 1. *Fragrance Compound Manufacturing business is a competitive business requiring continuing new fragrance know how, new manufacturing and marketing techniques to be able to supply fragrance compounds to the fast moving consumer goods industry with in India and abroad at a competitive rate.*
 2. *In light of the above, it is proposed that the Goa Manufacturing Business Undertaking of Goldfield Fragrances Private Limited is demerged from and vested into the Resulting Company pursuant to the Scheme of Arrangement between GFL and GMPL and their respective shareholders and creditors under Section 391 to 394 of the Companies Act, 1956 to enable GMPL to focus and enhance its Goa Manufacturing Business by streamlining its operations.*
 3. *The proposed demerger is expected to be beneficial to both GFL and GMPL and their respective shareholders, creditors and all other stakeholders and will enable them to achieve and fulfill their objectives more efficiently and economically.*
 4. *The demerger will also provide scope for independent collaboration and expansion of the business will create enhanced value for shareholders and which would be in the best interest of all the stakeholders*
5. The Demerged Company and the Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.
6. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel 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 undertakings given by the Petitioner Companies are accepted.

7. The Regional Director has filed an Report dated 28th February 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 paragraphs 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-8) etc.*
 - (b) *Regarding clause 9 & 10 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against General Reserve Account of the Transferee Company.*
 - (c) *As per scheme the appointed date Appointed Date means closing hours on 30th day of November 2015 or such other date as may be fixed or approved by the Hon'ble NCLT. In this regard it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 30th November 2015*
 - (d) *As per existing practice, the Petitioner Companies are required to serve notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 6th December 2016 has served a copy of company petition No 633 & 634 of 2016 along with relevant orders etc. to IT Department, while finalizing the report this directorate has received letter from IT Department which is annexed herewith and marked As Annexure- 'D'.*
 - (e) *The tax implication if any arising out of this 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.*
8. In so far as observations made in paragraph IV(a) of the Report of Regional Director is concerned, the Transferee Company through its counsel undertakes that it 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.

9. As far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against General Reserve Account of the Transferee Company.
10. As far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Counsel for the Petitioners clarifies that the Appointed Date shall be 30th November 2015.
11. In so far as observations made in paragraph IV(d) (e) of the Report of Regional Director is concerned, the Petitioners submits that the Petitioners are bound 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. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 134 and 135 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
15. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation/Arrangement - Demerger with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.

16. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated 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.
17. The Petitioner Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai .
18. Costs to be paid within four weeks from today.
19. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)