

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

COMPANY SCHEME PETITION NO. 5 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 697 OF 2016

**OMKAR SPECIALITY CHEMICALS LIMITED....Transferee / Demerged
Company**

AND

COMPANY SCHEME PETITION NO. 6 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 698 OF 2016

LASA LABORATORY PRIVATE LIMITED.....Transferor Company No.1

AND

COMPANY SCHEME PETITION NO. 7 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 699 OF 2016

URDHWA CHEMICALS COMPANY PRIVATE LIMITED.....Transferor

Company No.2

AND

COMPANY SCHEME PETITION NO. 8 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 700 OF 2016

RISHICHEM RESEARCH LIMITED.....Transferor Company No. 3

AND

COMPANY SCHEME PETITION NO. 9 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 701 OF 2016

DESH CHEMICALS PRIVATE LIMITED.....Transferor Company No. 4

AND

COMPANY SCHEME PETITION NO. 10 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 702 OF 2016

LASA SUPERGENERICS LIMITED.....Resulting Company

In the matter of the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013

AND

In the matter of Sections 391 to 394 read with applicable provisions of the Companies Act, 1956 as amended and other relevant provisions of the Companies Act, 2013;

AND

In the matter of the Composite Scheme of Arrangement between Omkar Speciality Chemicals Limited and Lasa Laboratory Private Limited and Urdhwa Chemicals Company Private Limited and Rishichem Research Limited and Desh Chemicals Private Limited and Lasa Supergenerics Limited and their respective shareholders and creditors

Called for Hearing

Mr. Rahul R. Mahajan a/w Mr. Ajit Singh Tawar a/w Mr. Amit Surve, i/b M/s. Fortitude Law Associates, Advocates for the Petitioner Companies.

Mr. Shadab Peerzade, advocate for MIQ Logistics India Private Limited, the objector.

Mr. Ragunath Pola, Deputy Registrar of Companies present.

Mr. S. Ramakantha, Joint Director from the office of Regional Director.

Coram: M.K. Shrawat, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date : 13th April 2017

1. Heard the learned counsel for the Petitioner Companies and the objector.
2. The Counsel for the objector submits that the objector has already preferred a Winding-up Petition before the Hon'ble High Court, Bombay and the same was transferred to this bench and the Counsel has complied with necessary forms in compliance with the Insolvency and Bankruptcy Code.
3. The objector namely MIQ Logistics India Private Limited is opposing Scheme of Arrangement on the ground that the Transferee / Demerged Company has not paid their alleged dues. The Counsel submits that alleged invoice containing the alleged amount is disputed for want of clarity and was never considered by the Transferee / Demerged Company in its books of accounts therefore for the alleged amount the objector is not the creditor of the Transferee / Demerged Company. The Counsel for the Petitioners further submits that the objector does not meet the mandatory minimum threshold prescribed by law as a sine que non for a creditor to raise objection to a Company Scheme Petition. As per the latest Audited financial statement for the year ending as on March 31, 2016 which reflects that total outstanding dues of the Transferee / Demerged Company to the tune of Rs. 100 Crores approx. therefore 5% of the total outstanding debt of the Transferee / Demerged Company is Rs. 5 Crores approx. He further points out that the alleged amount claimed by the objector from the Transferee / Demerged Company is Rs. 36 lacs approx. i.e. 0.356% which is less than 5% of the total outstanding debt of the Transferee / Demerged Company and therefore has no locus standi to file objection. The Counsel for the Petitioner Companies further submits that the networth of the Transferee Company after the scheme is given effect to would be to the tune of Rs. 90 Crores approx. The Counsel for the Petitioners lastly stated that invoices which were raised by the objector after the alleged invoice have been paid in full and as on date there are no dues pending except for the disputed invoice the payment of which is subject to outcome of the Insolvency Petition as preferred by the objector. In view of the above facts, this Bench, is of the firm view that the objection raised by the objector will not stand in the way of sanctioning the scheme.
4. The sanction of the Tribunal is sought under Sections 230 and 232 of the Companies Act, 2013, to the Composite Scheme of Arrangement between Omkar Speciality Chemicals Limited and Lasa Laboratory Private Limited and Urdhwa Chemicals Company Private Limited and Rishichem Research Limited

and Desh Chemicals Private Limited and Lasa Supergenerics Limited and their respective shareholders and creditors.

5. Learned Counsel for the Petitioner Companies states that the Transferor Company No. 1 is primarily engaged in the business of anthelmintics /veterinary API, the Transferor Company No. 2 is engaged in the business of anthelmintics /veterinary API, the Transferor Company No. 3 is engaged in the business of manufacturing and producing chemicals and bio-chemicals etc., the Transferor Company No. 4 is engaged in manufacturing and producing chemicals of all kinds, the Transferee / Demerged Company is engaged in the business of manufacture and sale of specialty chemicals and intermediates for chemical and allied industries and the Resulting Company is engaged in the business of manufacturing, producing, processing, preparing, treating, disinfecting, dealing, etc. of various chemicals.
6. The rationale for the scheme is that the Transferor Companies are wholly owned subsidiaries of the Transferee / Demerged Company the merger of transferor companies would result into simplification of corporate structure by reducing the number of legal entities and reorganization of the legal entities in the group structure; significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the transferor companies; elimination of duplication in administrative costs and multiple record-keeping, thus resulting in cost savings; and concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome coordination efforts across multiple entities and the Transferee Company / Demerged Company has two businesses with divergent business profile, growth potential, riskrewards, regulatory and capital requirements and are largely independent of each other therefore demerger of the Veterinary API undertaking of the Transferee / Demerged Company will help in achieving operational efficiencies.
7. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
8. Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal Mumbai bench and has filed

necessary affidavits of compliance with the National Company Law Tribunal Mumbai bench. Moreover, the Petitioner Companies through its 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 undertaking given by the Petitioner Companies is accepted.

9. The Official Liquidator has filed his report dated 25th February, 2017 in the Transferred Company Scheme Petition No. 6 of 2017 to Transferred Company Scheme Petition No. 9 of 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
10. The Regional Director ('RD') has filed a Report dated 12th day of April, 2017 stating therein, that the Tribunal may take this report on record and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV (1) to (8) mentioned in his report.

In paragraphs IV (1) to (8), of the said Report it is stated that:-

1. *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 may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decisions of the Income Tax Authority is binding on the Petitioner Company.*
2. *The Petitioners have produced the proof of serving notice to the Income Tax Authority dated 30.01.2017 and 31.01.2017. This Directorate also issued reminder letter to the Income Tax Authority dated 06.04.2017*
3. *Directorate received letter no. ACIT/15/(2)(1)/Amalgamation/Lasa/2016-17 dated 23.02.2017 from the office of Assistant Commissioner of the Income Tax Circle 15(2)(1), Mumbai inter alia mentioned at paragraph 6 that "the right of the Income Tax Department to ascertain /assess correct income in correct hand as per the provisions of the Income Tax Act, especially with respect to the period involving Appointed Date and Effective Date may be kept reserved. It is therefore requested that the above declaration may be incorporated while filing the report with the Hon'ble NCLT".*
4. *No Objection Certificate of BSE and NSE has been received vide letter no. DSC/AMAI/ND/24(f)/410/16-17 dated, 06.06.2016 and vide letter no. NSE/LIST/75113 dated, 02.06.2016 respectively.*

Wherein it is inter-alia mentioned company to ensure that all the additional information submitted by the company after filing the scheme with the stock exchange will be displayed from the date of receipt of this letter on the website of the listed company and further the company has to comply with various provisions of the circular mentioned in the letters.

In this regard it is submitted that Petitioner Company has to undertake to comply with the directions of SEBI.

5. *Petitioner in clause 23 of the Scheme has inter alia mentioned that the position, rank and designation, terms and conditions of the employees would be decided by the Board of Directors or any committee / sub-committee or person(s) so authorised by the Board of OSCL.*

In this regard the Petitioner has to protect the interest of the employees of the transferor companies and the demerged company.

6. *Petitioner in clause 28 of the scheme inter alia has mentioned that upon the scheme becoming effective, without any further act, the resulting company shall be renamed as Lasa Laboratories Limited.*

In this regard the Petitioner Company has to comply with the provisions of the Companies Act with regard to change of name.

7. *Petitioner in clause 19 & 20 on Accounting Treatment it is inter-alia mentioned that, the excess of book value of the assets transferred over the book value of the liabilities of the Veterinary API Undertaking, shall be debited proportionately to all reserves and surpluses (including the securities premium account) of the demerged company. Further it is mentioned that the Board of Directors of the Resulting Company is authorised to account for any of this balances in any manner whatsoever, as may be deemed fit, in accordance with the prescribed accounting standards notified by the National Advisory Committee on Accounting Standards and applicable generally accepted accounting principles.*

In this regard the Petitioner Company has to undertake to comply with the accounting standards.

8. *Income Tax Department vide its letter dated 06.02.2017, 28.02.2017 and 23.02.2017 in respect of Urdhwa Chemicals Company Private Limited, Lasa Supergenerics Limited, Omkar Speciality Chemicals Limited and Lasa Laboratory Private limited inter alia mentioned that the right of the Income Tax department shall assess correct income in correct hands as per the provisions of Income Tax Act with respect to the period involving Appointed date and Effective date may be kept reserved and requested the office to incorporate this declaration in the Report.*

11. As far as the observations made in paragraph IV (1) & (2) of the RD Report is concerned, Petitioner Companies through its Counsel undertake 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. As far as the observations made in paragraph IV (3) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that the sanction of the scheme by the Tribunal will not hinder the right of the Income Tax Department to ascertain / assess correct income in correct hands as per provisions of the Income Tax Act, especially with respect to the period involving appointed date and effective date.

13. As far as the observations made in paragraph IV (4) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertakes to comply with the conditions as mentioned under the respective NOC of NSE and BSE as well as SEBI Act and relevant rules, regulations, circulars as applicable.
14. As far as the observations made in paragraph IV (5) of the RD Report is concerned, the Learned Counsel submits that the Transferee Company and Resulting Company undertakes that the services of the employees transferred to Transferee Company after merger and to Resulting Company after demerger shall be treated as continuous without any interruption or break in their services including any benefits currently available to such employees.
15. As far as the observations made in paragraph IV (6) of the RD Report is concerned, the Resulting Company through its Counsel submit that the Resulting Company undertakes to comply with the applicable provisions of the Companies Act, 2013 and the rules made thereunder for the change of name.
16. As far as the observations made in paragraph IV (7) of the RD Report is concerned, the Learned Counsel for the Resulting Company submits that the Resulting Company undertakes to comply with the relevant Accounting Standard as prescribed under Section 133 of the Companies Act, 2013.
17. As far as the observations made in paragraph IV (8) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that the sanction of the scheme by the Tribunal will not hinder the right of the Income Tax Department to ascertain / assess correct income in correct hands as per provisions of the Income Tax Act, especially with respect to the period involving appointed date and effective date.
18. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 11 to 17 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
19. 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.
20. Since all the requisite statutory compliances including obtaining certificate from statutory auditors in terms of section 133 of the Companies Act 2013 have been

fulfilled, the Company Scheme Petitions No. 5 to 10 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) & (b) of the respective Petitions.

21. Petitioner Companies are directed to file a copy of this 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
22. The Transferee Company to lodge certified 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.
23. The Petitioner Companies to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai.
24. Costs to be paid within four weeks from the date of receipt of order.
25. 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.
26. 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 (Technical)

Sd/-
M. K. SHRAWAT
Member (Technical)

13/11/17