IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 167 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 855 OF 2014

Pannalal Bros Private Limited

….Petitioner/First Amalgamating Company

AND

COMPANY SCHEME PETITION NO. 168 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 856 OF 2014

Kama Chemicals Private Limited

…Petitioner /Second Amalgamating Company

AND

COMPANY SCHEME PETITION NO. 169 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 857 OF 2014

Atunil Properties Private Limited

…………Petitioner/Third Amalgamating Company

COMPANY SCHEME PETITION NO. 170 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 858 OF 2014

Kantilal Manilal & Company Private Limited

……Petitioner/Amalgamated 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

AND

In the matter of the Composite Scheme of Amalgamation of Pannalal Bros Private Limited [First Amalgamating Company] and Kama Chemicals Private Limited [Second Amalgamating Company] and Atunil Properties Private Limited [Third Amalgamating Company] with Kantilal Manilal & Company Private Limited [Amalgamated Company]

Called for Hearing

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

Mr. Jyotsna Pandhi, i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

Mr. S. Ramakantha, official Liquidator present in Company Scheme Petition 168 of 2015 to 170 of 2015

CORAM: S.C. Gupte, J.

DATE: 4th September 2015

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Pannalal Bros Private Limited and Kama Chemicals Private Limited and Atunil Properties Private Limited with Kantilal Manilal & Company Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner states that the First Amalgamating Company is engaged in the business of exporters, merchants, general traders, importers, agents, representatives and dealers in all kinds of spices, basic drugs, drug intermediaries. The Second Amalgamating Company is engaged in the business of exporters, merchants, general traders, importers, agents, representatives and dealers in all kinds of spices, basic drugs, drug intermediaries. Th Third Amalgamating Company is enaged in the business of buy, sell, hold, take on lease or exchange or mortgage and give on mortgage, hire or otherwise acquire and hold any immovable property including land, building. The amalgamated Company is engaged in the business of exporters, merchants, general traders, importers, agents, representatives and dealers in all kinds of spices, basic drugs, drug intermediaries.

4. The benefits pursuant to the Scheme is Achieving economies of scale, Avoiding duplication of efforts, costs and resources, Lesser regulatory /

procedural compliance, Combined capital resources would strengthen the financial position of the merged entity and result in increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes, Amalgamation of the Companies would eliminate duplication of work, administrative services, and will result in cost savings, Cost saving in fees/ duties payable on statutory and procedural compliance, Facilitate inter transfer of resources and costs and optimum utilization of assets, Synchronizing of efforts to achieve uniform corporate policy, Ease in decision making, To reflect the consolidated net worth of these companies in one balance sheet.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Official Liquidator has filed his report dated 2nd September 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit dated 5th day of August , 2015 stating therein that save and except as stated in paragraph 6 (a) and 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) and paragraph 6(b) of the said affidavit, it is stated that:

(a) The Issued and subscribed capital of the Transferee Company is wrongly mentioned in clause 2 of the Scheme as Rs 1,00,000 instead of Rs. 10,00,000/- which appears to be typographical error. Similarly, the Petition filed by the Second Transferor Company in company Scheme Petition No. 168 of 2015 the capital reserve structure of the Second Transferor Company has been wrongly provided. The authorised capital of the Second Transferor Company is Rs 5,00,000/- and the Paid up capital is Rs.1,00,000/- as per MCA portal/webite. In this regard, it is submitted that the Petitioner Companies may be directed to correct the aforesaid error in the Scheme and Petition accordingly.

(b) It is respectfully submitted that 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 returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Companies and Transferee Company.

10. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners seek leave to amend Clause 2 of the Scheme by substituting the figure Rs. 1,00,000/- with Rs. 10,00,000/- in the Issued and Subscribed Capital Structure of the Transferee Company i.e. Kantilal Manilal & Company Private Limited and to amend the Authorised and Issued Capital Structure of Kama Chemicals Private Limited in Company Scheme Petition no.168 of 2015 by deleting the Capital Structure table at Paragraph 4 of the Petition and substituting it with the Capital Structure table as follows:

Particulars	Rupees
<u>Authorised</u> 50,000 Equity Shares of Rs. 10/- each	500,000
<u>Issued, subscribed and Paid Up</u> 10,000 Equity Shares of Rs.10/- each	100,000

11. As far as the observations raised by the Regional Director in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies through their Counsel submits that the Petitioners are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.

12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they agree with the amendments sought by the Petitioner Company as mentioned in paragraph 10 hereinabove and in view thereof leave to amend the Scheme including all consequential amendments are granted. Amendments to be carried out within four weeks from the date of the order.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 167 of 2015 to 170 of 2015 filed by the Amalgamating Companies and the Amalgamated Company respectively are made absolute in terms of prayer clauses (a) of the respective Petition.

16. The Petitioner Companies to lodge a copy of this order and the amended Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay 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 issuance of Order.

17. Petitioner Companies are directed to file a copy of this order along with a copy of the amended Scheme with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioners in Company Scheme Petition Nos. 167 of 2015, 168 of 2015 and 169 of 2015 to pay sum of Rs 10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

19. Filing and issuance of the drawn up order is dispensed with.

20. All concerned authorities to act on a copy of this order along with amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.C. Gupte, J.)