IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 144 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 908 OF 2014

MARICO KAYA ENTERPRISES LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 145 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 909 OF 2014

KAYA LIMITED

………… Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 read with Section 100 - 103 of the Companies Act, 1956 and section 52 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement

between

Marico Kaya Enterprises Limited

and

Kaya Limited

and

their respective shareholders and creditors

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners in both the Company Scheme Petitions.
Mr. S. Ramakantha, Official Liquidator, present in the Company Scheme Petition No. 144 of 2015.
Mr. G. Hariharan i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S. J. Kathawalla, J.

DATE: 18th April, 2015

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100-103 of the Companies Act, 1956 and section 52 of the Companies Act, 2013, or any re-enactment thereof upon effectiveness of Companies Act, 2013, to the Scheme of Arrangement between Marico Kaya Enterprises Limited and Kaya Limited and Their Respective Shareholders and Creditors.

3. Learned advocate for the Petitioners states that Marico Kaya Enterprises Limited is engaged in the business of skincare products and skincare solutions business carried through Kaya skin clinics in India and Middle East. Kaya Limited, a wholly owned subsidiary of Marico Kaya Enterprises Limited, is engaged in the business of providing Health Care, Aesthetics, Beauty and Personal Care services in India and abroad. Learned advocate for the Petitioner Companies further states that the Scheme of Arrangement would benefit by eliminating multi-layered structure, unlock value for the shareholders of Marico Kaya Enterprises Limited and reduce administrative and operational costs.

4. Both the Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. Learned advocate for the Petitioner/Transferee Company further states that the reduction of the Share Capital and utilization of the Securities Premium Account shall be effected as an integral part of the Scheme and pursuant to clause 6 and 8 of the said Scheme and as averment made in paragraph 14 of the Affidavit in Support for Direction, the said reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and that the Scheme does not envisage any compromise or arrangement with any creditors of the Petitioner Company and as per the undertaking ,the Petitioner Company has passed the Special Resolution in respect of the said reduction and the same is annexed as Exhibit 'I' to the Company Scheme Petition. In view of above procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with vide order passed in the Company Summons for Direction No.909 of 2014.

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

7. The learned counsel appearing on behalf of the Petitioners has stated that the Petitioners 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 / 2013 and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 15/04/2015 in the Company Scheme Petition No. 144 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

9. The Regional Director has filed an affidavit on 13/04/2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 of the said affidavit it is stated that:

6. That the deponent further submits that,

(a) The Transferor Company is having foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA / RBI regulations as applicable in this regard.

(b) This is a reverse merger by which the holding company is merging with its subsidiary company. The holding company is a loss making company. In this regard, it is respectfully submits that the Tax issue if any arising out of this scheme shall be subject to the final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company."

10. As far as the observation in paragraph 6(a) of the affidavit of the Regional Director is concerned, the learned counsel appearing on behalf of the Petitioner Company in Company Scheme Petition No. 145 of 2015 undertakes that for the allotment of new shares by Kaya Limited to the shareholders of Marico Kaya Enterprises Limited, Kaya Limited will comply with FEMA / RBI regulations as may be applicable in this regard.

11. As far as the observation in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner /Transferee Company through their counsel submits that the Petitioner /Transferee Company is bound to comply with all applicable provisions of the Income Tax Act, and all issues

arising out of the Scheme will be met and answered in accordance with law.

12. The Learned Counsel for Regional Director on the instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the advocate on behalf of the Petitioner Company. The said undertaking given by the Petitioner Companies are 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, the Company Scheme Petition No. 144 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a), (c) and (d) and the Company Scheme Petition No. 145 of 2015 filed by the Petitioner Company are made absolute in terms of prayer clauses (a), (c) and (e);

15. The Petitioner Companies to lodge a copy of this order and the Scheme along with Form of Minutes , 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 the Order.

16. The Petitioner Companies are directed to file a copy of this order and the Scheme along with Form of Minutes, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with e-form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act 1956/2013.

17. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 144 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

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

(S. J. Kathawalla, J)