IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 152 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 137 OF 2015

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 Scheme of Amalgamation
OF
Rizhome Industries Private Limited (formerly known as Pinnacle Fey Private Limited)
WITH
Pinnacle Industries Limited
and
their respectiveshareholders.

RIZHOME INDUSTRIES PRIVATE LIMITED (formerly known as Pinnacle Fey *Private Limited*), a company incorporated under the provisions of Companies Act, 1956 having its Registered Office at Office No. B203 2nd Floor, Wing 'B', ICC Trade Tower S.B Road, Shivaji Nagar, Pune - 411005. ....Petitioner Company

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners inthe Petition.

Mr. S. Ramakantha, Official Liquidator present in Company Scheme Petition No. 152 of 2015.

Mrs. P. Awasthi i/b Mr. A. A. Ansari for Regional Director.

CORAM: S. C. Gupte, J.

DATE: 12th June, 2015

1. Heard counsel for the parties. 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, to the Scheme of Amalgamation of Rizhome Industries Private Limited (formerly known as Pinnacle Fey Private Limited) with Pinnacle Industries Limited and their respective shareholders.

3. Learned Counsel for the Petitioner states that the Petitioner Company is presently engaged in manufacturing furniture items and auto components including seat parts, cushions, frames, covers, canopies, spares and accessories as required in commercial vehicle industry. Learned Counsel for the Petitioner further states that the Scheme would consolidate the operations and will have the benefits of simplified group structure and rationalisation of administrative, operative and marketing costs.

4. Learned Counsel for the Petitioner further states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and as per Clause 5 of the Scheme all the shares are held by the Transferee Company in Transferor Company and after the scheme being sanctioned no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company. The Scheme does not affect the rights and interests of the members and the creditors of the Petitioner Company and does not involve any reorganisation of the share capital of the Transferee Company as mentioned in paragraph (18) to (20) of the affidavit in support of the Summons for Direction and in view thereof and as per observation made by this court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105,

filing of a separate Company Summons for Direction and Company Scheme Petition for sanctioning of this Scheme by the Transferee Company, Pinnacle Industries Limited was dispensed with vide order passed in Company Summons for Direction No.137 of 2015 dated March 27, 2015.

5. The Petitioner Company and the Transferee Company approved the said Scheme by passing Board Resolution which are annexed to the Company Scheme Petition.

6. The learned Counsel for the Petitioner further states that, Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The learned counsel appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever applicable. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 5th May,2015 stating therein that save and except as stated in paragraph 6 (a), (b) and (c) of the said affidavit, 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:

(a) Clause 7.1 of the Scheme provides for transferring the assets and liabilities of the Transferor Company at their fair value. In this regard, it is submitted that since the transfer of assets and liabilities is from wholly owned subsidiary company to its holding company the same may be transferred on book value basis.

(b) *With reference to Clause 7.4 of the Scheme, it is submitted that the surplus if any arising out of the scheme be credited to Capital Reserve Account of Transferee Company instead of General Reserve in as much as by transferring capital assets from Transferor Company to Transferee Company, the transferee company is not generating any Revenue and therefore the same shall not form part of General Reserve/Free Reserve of Transferee Company.*

(c) *That the deponent further submits that the Tax issue if any arising out of this Scheme shall be subject to final decision of Income Tax Authority and approval of the Scheme by the 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 Income Tax Authority is binding on the Petitioner Company.*

9. As far as observation made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its counsel undertakes to transfer the assets and liabilities at a book value basis instead of fair value.

10. As far as observation made in paragraph 6(b) of the Affidavit of the Regional Director, the Petitioner Company through its counsel undertakes that the surplus if any, arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company instead of General Reserve.

11. In so far as observations made in paragraph 6(c) of the Affidavit of the Regional Director, the Petitioner Company submit that the Petitioner is 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 learned Counsel for the 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 undertakings given by the Advocate for the Petitioner Company. The undertakings given by the Advocate for the Petitioner Company is accepted.

13. The Official Liquidator has filed his report on 21st May,2015 in the Company Scheme Petition No 152 of 2015 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Court.

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, the Company Scheme Petition No. 152 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (c).

16. The Petitioner Company/Transferee Company 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.

17. Petitioner is 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 INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956 / 2013.

18. The Petitioner Company in the Company Scheme Petition to pay costs of Rs.10,000/-each to the Regional Director, Western Region,

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

(S. C. Gupte, J)