IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 165 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 142 OF 2015

K R CHOKSEY INVESTMENT MANAGERS PRIVATE LIMITED
………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO. 166 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 143 OF 2015

KISAN RATILAL CHOKSEY SHARES AND SECURITIES PRIVATE LIMITED
………… Petitioner / the Transferee Company

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Arrangement between K R Choksey Investment Managers Private Limited and Kisan Ratilal Choksey Shares and Securities Private Limited and their Respective Shareholders and Creditors

Called for Hearing

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

Mrs. S.V. Bharucha, i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S.C. Gupte, J.

DATE: 3rd July, 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 Arrangement between K R Choksey Investment Managers Private Limited and Kisan Ratilal Choksey Shares and Securities Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 165 of 2015 is presently engaged in the business of engaged in the business of investment banking in the areas of syndication, corporate advisory and consultancy business and Petitioner in Company Scheme Petition No. 166 of 2015 was incorporated with an intention to carry on the business of broking in securities, commodities and currency markets catering to retail and institutional investors.

4. The rationale of the Scheme of Arrangement is that the Transferor Company is primarily engaged in the business of investment banking in the areas of syndication, corporate advisory and consultancy business. Transferor Company and Transferee Company are part of the same promoter group and ultimately wholly owned and controlled by the same set of promoters. With a view to expand its business operations, Transferor Company proposes to demerge the Syndication Undertaking to Transferee Company. Transferee Company could successfully ride the network, bandwidth and infrastructure created by Transferor

Company in expanding its syndication business and help save costs of operations while building a larger business platform.

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 Regional Director has filed an Affidavit dated 12th day of June, 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) Clause 11.1 of the scheme, provides for recording the assets and liabilities transferred to resulting company on fair value basis. In this regards, it is submitted that the same be transferred on book value basis only in as much as per Section 2(19AA) of the Income Tax Act, 1961, the assets and liabilities are required to be recorded on book value basis.

b) *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 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.*

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel clarifies that the recording of assets and liabilities transferred to Transferee Company shall be at book value.

10. As far as the observations raised by the Regional Director in paragraph 6(b) of his Affidavit, 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.

11. The Counsel for the Regional Director on 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 submissions given by the Petitioner Companies. The said undertakings given by the Petitioners are accepted.

12. 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. None of the parties concerned has come forward to oppose the Scheme.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 165 of 2015 and 166 of 2015 filed by the Transferor Company and the Transferee Company respectively are made absolute in terms of prayer clauses (a) and (b) of the respective Petition.
14. The Petitioner Companies to lodge a copy of this order and the 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.
15. Petitioner Companies are 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.
16. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
17. Filing and issuance of the drawn up order is dispensed with.
18. All concerned 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.C. Gupte, J.)