IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 328 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 193 OF 2015

Virtuous Shopping Centres Limited …Petitioner / Transferor Company No. 1

In the matter of:

The Companies Act, 1956;

AND

In the matter of:
Sections 391 to 394 of the Companies Act, 1956;

In the matter of:
The Scheme of Amalgamation and Arrangement between Virtuous Shopping Centres Limited and Tesco Hindustan Wholesaling Private Limited and Trent Hypermarket Limited.

CALLED FOR HEARING:

Mr. Molla Hasan i/b AZB & Partners, Advocates for Petitioner.

Mr. S. Ramakantha, Official Liquidator present.

Ms. Shalaka Gujar i/b K. L. Kamboj for the Regional Director.

CORAM: S. C. Gupte J.

DATE: 24th July, 2015

P.C.:

1. Heard learned 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 a Scheme of Amalgamation of Scheme of Amalgamation and Arrangement between Virtuous Shopping Centres Limited and Tesco Hindustan Wholesaling Private Limited and Trent Hypermarket Limited.

3. The Learned Counsel for the Petitioner Company states that the Petitioner Company is engaged in the business of developing and managing of properties for retail formats. The Transferor Company No. 2 is engaged in the business of wholesale trading of variety of food and non-food products, including fast moving consumer goods, general merchandise, fruits, vegetables and staples. The Transferee Company is engaged in operating a chain of multi-format retail stores in India and is a 50:50 joint venture company of Trent Limited (retail arm of Tata group) and Tesco Overseas Investments Limited (a wholly owned subsidiary of Tesco PLC, UK).

4. The Learned Counsel for the Petitioner Company states that the merger of the Transferor Company No. 2 with the Transferee Company will enable consolidation of backend infrastructure of the Transferor Company No. 2 with multi-format retail operations of the Transferee Company. The consolidation will enable more efficient utilization of capital, synergy benefits and create a stronger base for future growth. Further, the Petitioner Company and the Transferor Company No. 2 are wholly-owned subsidiaries of the Transferee Company and the consolidation of both the companies into the Transferee Company pursuant to the Scheme would result in streamlining the group structure. The consolidation

will further enable a reduction in the number of corporate entities that require monitoring and administration, thereby realising operational synergies..

5. Learned Counsel for the Petitioner Company further states that the Board of Directors of the Petitioner Company and the Transferee Company have passed respective resolutions for approval of the Scheme of Amalgamation which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The Learned Counsel for the Petitioner Company further states that the Petitioner Company has complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Directions.

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

8. The Official Liquidator has filed his report on 14th July, 2015 in Company Scheme Petition No. 328 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.

9. The Regional Director has filed an affidavit on 3rd July, 2015 stating therein that save and except what is stated in paragraphs 6 (a), (b) & (c) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), (b) & (c) of the said Affidavit, the Regional Director has stated that:-

"*6. That the deponent further submits that*:-

(a) Clause 16.1.6 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) The Deponent further submits that the Tax issue if any arising out of this scheme is 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.

(c) The Registered office of the 2nd Transferor Company is situated in the State of Karnataka. Hence the 2nd Transferor company has to file similar petition before the Hon'ble High Court of Karnataka for approving the said scheme."

10. So far as the observation made by the Regional Director in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that in addition to the compliance of Accounting Standard -14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme and to comply with other applicable Accounting Standard such as AS-5 etc.

11. So far as the observation made by the Regional Director in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner Company is bound to comply with all the 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. So far as the observation made by the Regional Director in paragraph 6(c) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel states that the Second Transferor Company has filed necessary application/ petition before the Hon'ble High Court of Karnataka seeking approval to the Scheme.

13. The Learned Counsel of 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 Learned Counsel appearing for the Petitioner Company. The undertakings given by the Petitioner Company above are accepted.

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. 345 of 2015 filed by the Petitioner Company is made absolute in terms of the prayer made under clauses (a) to (c).

16. The Petitioner Company to file 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 the Order.

17. The Petitioner Company is directed to file a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 or INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/ 2013, which ever is applicable.

18. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai and Rs.10,000/- 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.)