

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.340 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.195 OF 2015.

UBIQUITOUS TRADING PRIVATE LIMITED

....Petitioner/ First Transferor Company

AND

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.341 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.196 OF 2015.

GELID COMMERCIAL PRIVATE LIMITED

....Petitioner/ Second Transferor Company

AND

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.342 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.197 OF 2015.

WINTERPARK INVESTMENTS AND FINANCE PRIVATE LIMITED

....Petitioner/ Third Transferor Company

AND

ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.343 OF 2015.

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.198 OF 2015.
SUMA COMMERCIAL PRIVATE LIMITED

....Petitioner/ Transferee Company

In the matter of the Companies Act, 1 of 1956
and other relevant provisions of the Companies
Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
UBIQUITOUS TRADING PRIVATE LIMITED,
(the First Transferor Company) and GELID
COMMERCIAL PRIVATE LIMITED, (the Second
Transferor Company) and WINTERPARK
INVESTMENTS AND FINANCE PRIVATE
LIMITED, (the Third Transferor Company) with
SUMA COMMERCIAL PRIVATE LIMITED, (the

Transferee Company) AND THEIR RESPECTIVE
SHAREHOLDERS AND CREDITORS

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners in all Petitions.

Mrs. Madhubala Kajle i/b Mr. A.A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No. 340 to 342 of 2015.

CORAM: S. C. Gupte, J.

DATE: 14th August, 2015

PC:

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 Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of UBIQUITOUS TRADING PRIVATE LIMITED, the First Transferor Company and GELID COMMERCIAL PRIVATE LIMITED, the Second Transferor Company and WINTERPARK INVESTMENTS AND FINANCE PRIVATE LIMITED, the Third Transferor Company with SUMA COMMERCIAL PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the First Transferor Company is engaged in the activities of Trading in commodities and Investments &

Trading in Shares & Securities and the Second Transferor Company is engaged in Trading and Investment Activities and Third Transferor Company is engaged in Investment Activities and Transferee Company is engaged in the activities of Trading in commodities and Investments & Trading in Shares & Securities. The proposed scheme of Amalgamation will have the benefit that the management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits that all the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that the amalgamation will result in economy of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources and that the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by

passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies 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 Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 10th day of August, 2015 in Company Scheme Petition Nos. 340 to 342 of 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved

8. The Regional Director has filed an Affidavit on 3rd day of July, 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, the Regional Director has stated that:-

“6. That the Deponent further submits that,

(a) “Clause 14.3 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 the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting Standard such as AS-5 etc.

(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. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted 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 to comply with other applicable Accounting Standard such as AS-5 etc.

10. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies

submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, 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 Petitioners. The above undertakings is 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 340 to 342 of 2015 is made absolute in terms of prayers clause (a), (b) and (d) and 343 of 2015 is made absolute in terms of prayer clauses (a) and (c).

14. The Petitioner Companies 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.

15. Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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 whichever is applicable.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 340 to 342 of 2015 to pay costs 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.

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

18. 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.)