IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 295 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 222 OF 2015

Golden Dream Mercantile Private Limited

….Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 296 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 223 OF 2015

Fortress Builders Private Limited

…Petitioner/ Transferee Company

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 Golden Dream Mercantile Private Limited with Fortress Builders Private Limited and their respective shareholders

Called for Hearing

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

Ms. Purnima Awasthi, i/b Mr. A.A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha Official Liquidator in Company Scheme Petition No. 295 of 2015

CORAM: S. C. Gupte, J.

DATE: 10th July 2015

1. Heard the learned counsel for the Petitioner. 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 Golden Dream Mercantile Private Limited with Fortress Builders Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner Companies states that the Transferor Company is in the business of holding and making investments and the Transferee Company has not yet commenced its business.

4. The Scheme is proposed for consolidation of the businesses so as to achieve managerial and operational efficiency.

5. The Transferor Company and the Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

7. The Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 17th June, 2015 stating therein that the Affairs of the Petitioner/ Transferor Company has been conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 2nd July, 2015 stating therein that save and except as stated in paragraph 6(a) and (b) 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, the Regional Director has stated that :

(a) "*It has been observed that both the transferor company and transferee company are having common shareholders represented by Shri. Brijendra Kumar and Shri Sridhar Reddy. The Transferee company is not having any business activities. The Transferor company is having investment in shares and securities of other companies. It is further observed that clause 6 of scheme provides for transferring the assets and liability from Transferor Company to Transferee Company on fair value basis. In view of the above, it is submitted that the excess value, if any, arising out of the revaluation (fair value) of the investment made by the transferor company in the hands of the transferee company may be recorded*

under caption "Investment Revaluation Reserve" and the same may not be treated as free reserve. Besides, how that part of the reserve is created and the financial implication thereto, if any, has to be elaborately disclosed in the first financial statement of transferee company post amalgamation."

(b) It is respectfully submits that the Tax implication, if any, arising out of Scheme is subject to final decision of Income Tax Authorities. The approval of Scheme by this Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company."

10. As far as the observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company undertakes that the excess value, if any, arising out of the revaluation (fair value) of the investment made by the Transferor Company in the hands of the Transferee Company shall be recorded under caption "Investment Revaluation Reserve" and the same shall not be treated as free reserve and it shall pass such accounting entries as may be necessary in connection with the Scheme to comply with accounting standards.

11. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies submit that the Petitioners are 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 instruction from Mr. Chandanamuthu, Joint Director legal, in the office of Ministry of Corporate Affairs states that they are satisfied with the undertakings given by the Petitioner/ Transferee Company.

13. Learned Counsel for the Petitioners further submit that in Schedule-A annexed to the Scheme , the Coupon rate of 1% as mentioned therein be deleted and substituted with 5% per annum and in table relating to call option the words "the end of 6 months from" be deleted.

14. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director agrees with the amendments sought by the Petitioner Companies.

15. Leave to amend the scheme is allowed. Amendments to be carried out within four weeks from today.

16. 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 have come forward to oppose the Scheme.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 295 and 296 of 2015, filed by the Transferor Company and the Transferee Company respectively, are made absolute in terms of prayer clause (a) of the respective Petitions.

18. 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 the order.

19. Petitioner Companies are directed to file a copy of this 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 the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act.

20. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No 295 of 2015 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of the Order.

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

22. All authorities concerned 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.)