IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.347 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.147 OF 2015

Repute Properties Private Limited.
.....Petitioner/the First Transferor Company.

AND

COMPANY SCHEME PETITION NO.348 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.148 OF 2015

Manhar Properties Private Limited.
.....Petitioner/the Second Transferor Company.

AND

COMPANY SCHEME PETITION NO.349 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.149 OF 2015

Asis Overseas (C&F) Private Limited.
.....Petitioner/the Third Transferor Company.

AND

COMPANY SCHEME PETITION NO.350 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.150 OF 2015

Rachana Finance and Investments Private Limited.
.....Petitioner/the Fourth Transferor Company.

AND

COMPANY SCHEME PETITION NO.351 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.151 OF 2015

Poona Pearls Biotek Limited.
.....Petitioner/the Fifth Transferor Company.

AND

COMPANY SCHEME PETITION NO.352 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.152 OF 2015

Pratibha Finance and Investments Private Limited.

.....Petitioner/the Sixth Transferor Company.

AND

COMPANY SCHEME PETITION NO.353 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.153 OF 2015

Sajal Finance and Investments Private Limited.

.....Petitioner/the Seventh Transferor Company.

AND

COMPANY SCHEME PETITION NO.354 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.146 OF 2015

Labh Capital Services Private Limited.

.....Petitioner/the Transferee Company.

In the matter of Companies Act, 1956 (1 of 1956);

AND

In the matter of Section 391 to 394 read with Section 78, 80, 100 to 104 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation;

Between

Repute Properties Private Limited

AND

Manhar Properties Private Limited

AND

Asis Overseas (C&F) Private Limited

AND

Rachana Finance and Investments Private Limited

AND

Poona Pearls Biotek Limited

AND

Pratibha Finance and Investment Private Limited

AND

Sajal Finance and Investments Private Limited

WITH

Labh Capital Services Private Limited

Called for Hearing

Mr. Ameya Deosthale i/b M/s Hariani & Co, Advocates for the Petitioner in all the Petitions.

Mr. Y. R. Mishra i/b Shri. A. A.Ansari for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 347 to 353 of 2015.

CORAM: S. C. GUPTE, J

DATE : 28TH AUGUST, 2015

PC:

1. Heard learned counsel for parties. None appears 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 between Repute Properties Private Limited, Manhar Properties Private Limited, Asis Overseas (C&F) Private Limited, Rachana Finance and Investments Private Limited, Poona Pearls Biotek Limited, Pratibha Finance and Investment Private Limited, Sajal Finance and Investments Private Limited, the Transferor Company, with Labh Capital Services Private Limited, the Transferee Company.

3. The learned Advocate for the Petitioner Companies states that The First Transferor Company, the Second Tranferor Company, the Third Transferor Company, the Fourth Transferor Company, the Fifth Transferor Company, the Sixth Transferor Company and the Seventh Transferor Company are presently carrying on business of Trading, Services and Investments. The Transferee Company is also engaged in carrying on business of Trading, Services and Investments.

4. The learned Advocate for the Petitioner Companies further states that the Companies are engaged in similar line of business and combining of activities and operations of the Transferor Company and the Transferee Company in a single company would provide synergistic linkage besides economies in costs, contributing

to overall growth and profitability of the Transferee Company. The learned Advocate for the Petitioner Companies also states that the Amalgamation will also ensure better working capital management and better administration of the combined resources of the Transferee Company. The amalgamation would also lead to growth prospects for the personnel and organizations connected with both the Transferor Companies and the Transferee Company and thus, would be in the interest and welfare of, the employees concerned in this Scheme, and also be in the larger interest of the public

5. The Petitioner Companies have 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 Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

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, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 3rd August, 2015 in Company Scheme Petition Nos. 347 to 353 of 2015, inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed his Affidavit on 24th August, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (d) of the said Affidavit, the Regional Director has stated that :

> "6. That the Deponent further submits that:-
>
> (a) *Clause 13.4 of the scheme provides for adjustment for difference 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 entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.*
>
> (b) *It has been observed that there are some typo errors in the scheme which has been shown herein below, the same has to be corrected suitably.*

Clause No.	**Description**	**To be corrected as**
12.1	*The paid up equity value of each shares of Transferee Company has been shown as Rs.10/-*	*Rs.10/- may be substituted by Rs. 100/-*
16.1	*The merged authorized capital of the Transferee Company has been shown as Rs.180,000,000/-*	*Rs. 175,000,000/-*
16.1	*Consequently, the number of shares comprising authorized capital required to be modified from 18,000,000*	*17,50,000*
16.1	*The value of equity share of Transferee Company has been shown as Rs.10/-*	*Rs.10/- be substituted by Rs.100/-*
16.2	*The number of shares representing the authorized share capital of Transferee Company post amalgamation shown as 17,500,000*	*May be substituted by 17,50,000*
16.2	*The value of the equity share of Transferee Company has been shown as Rs.10/-*	*Rs.10/- be substituted by Rs.100/-*
In Para E,	*In the clause titles as well as in para E of the background of the scheme, the name of the 5th Transferor Company has been wrongly given as Poona Pearls Boitek Limited*	*To be rectified as Poona Pearls Biotek Limited*

(c) *Clause 13.5 of the scheme provides for utilization of Capital Redemption Reserve Account and Securities Premium Account. In this regard, it is submitted that the reduction of such reserve may be attracted the provisions of Section 80(1)(d) Section 78 read with 100 of the Companies Act, 1956. Such reduction of reserve has to be an integral part of the scheme, otherwise the petitioner company has to file separate petition for such reduction of reserve. It is therefore suggested that the petitioner company shall incorporate a suitable clause in the scheme itself, so that the approval of the scheme would also an approval for reduction of reserve of Transferee Company.*

(d) *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."*

10. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its advocate undertakes that in addition to accounting treatment given in the scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

11. So far as the observation in paragraph 6 (b) and 6(c) of the Affidavit of Regional Director is concerned, the Learned Advocate appearing on behalf of the Petitioners submit that there are some

typographical errors/mistakes in the Scheme and the same are to be rectified. He further submits that pursuant to Clause 13.5 of the Scheme the consequential effect of the utilization of the Capital Redemption Reserve Account and Securities Premium Account under Sections 80/78 read with Section 100 of the Companies Act, 1956 is required to be incorporated in the Scheme, which is through oversight omitted from the Scheme. Hence, the Learned Advocate for the Petitioner Companies tenders on record draft amendments and seeks leave of this Court to amend the Scheme as per the draft amendments. The draft amendments are taken on record and marked as "X" for identification. Leave to amend the Scheme as per draft amendment is granted. Amendments to be carried out within period of two weeks from the date of the order.

12. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(d) of his Affidavit 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.

13. 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 undertaking given and amendment sought by the Advocate for the Petitioner Company. The said undertaking is 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, Company Scheme Petition Nos.347 of 2015 to 354 of 2015 are made absolute in terms of prayer clauses (a) & (b)

16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Company Registrar, High Court, 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 this order.

17. Petitioner is directed to file/lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

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

Mumbai. The Petitioners in the Company Scheme Petition Nos. 347 of 2015 to 353 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 today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE, J.)