IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.333 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 234 OF 2015

Shantaram Machineries Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.334 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 235 OF 2015

Mohan Shirgaokar Investments Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.335 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 236 OF 2015

S.B. Reshellers Private Limited....Petitioner Company

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

AND

In the matter of Sections 391 to 394 of the Companies act, 1956 and read with Section 100 to 104 and other applicable provisions of the Companies Act, 1956 (to the extent applicable provisions of the Companies Act, 2013);

AND

In the matter of Scheme of Amalgamation of Shantaram Machineries Private Limited and Mohan Shirgaokar Investments Private Limited with S.B. Reshellers Private Limited

<u>Called for hearing</u>

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. S. Ramakantha, Official Liquidator Present

Mr. Anil D. Yadav i/b Mr. A.A. Ansari for Regional Director.

CORAM: S. C. Gupte, J.

DATE: 17th July, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 and read with Section 100 to 104 and other applicable provisions of the Companies Act, 1956 (to the extent applicable provisions of the Companies Act, 2013) to the Scheme of

Amalgamation of Shantaram Machineries Private Limited and Mohan Shirgaokar Investments Private Limited with S.B. Reshellers Private Limited.

3. The Learned Counsel for the Petitioners states that Petitioner Company in Company Scheme Petition No. 333 and 335 of 2015 is engaged in the business of reshellering and the Petitioner Company in Company Scheme Petition No. 334 of 2015 is engaged in the business of investment.

4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely that the First Transferor Company and the Transferee Company are engaged in the business of similar and complementary nature, the Amalgamated Company will benefit from this synergy in the common business, the Second Transferor Company is a group investment company and mainly holding shares in the Transferee Company, the Amalgamated Company will benefit from the management expertise especially in technical areas, which are essential for critical decisions, by the proposed Scheme of Amalgamation, the financial resources of all the Companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads, which are presently being multiplicated because of separate entities, amalgamation will result in

the larger pool of various resources as well as manpower and will create a synergy, which will enable the Amalgamated Company to grow and prosper at a faster pace, the Amalgamation will pave the way for better and more efficient utilization of larger resources and funds, the combined managerial and financial resources will enhance the capability of the Amalgamated Company to invest in larger and sophisticated projects to ensure rapid growth and will consolidate the strategic strength of the Amalgamated Company and will maximize the returns to the shareholders of the Amalgamated Entity.

5. 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.

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

7. The Learned Counsel appearing on behalf of the Petitioners has 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

undertakes 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.

8. The Official Liquidator has filed his report on 2nd July, 2015 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 2nd July, 2015 stating therein, save and except as stated in paragraphs 6 (a) and 6(b) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (a) and 6(b) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

a) *Clause 10.3(v) of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Companies and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard-14, 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 is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax*

Authorities. The approval of the scheme by 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 and Transferee company

10. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

11. As far as the observations in paragraph 6 (b) of the affidavit of the Regional Director is concerned, the petitioner through their counsel submits that the petitioners is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be met and answered in accordance with law.

12. 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 Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 333 of 2015 to 335 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

15. The Petitioner Companies are directed 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.

16. 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 concerned E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013 whichever is applicable.

17. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 333 of 2015 and 334 of 2015 to pay cost 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.

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

19. 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.)