IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.379 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.392 OF 2014

Manilal Realties Private Limited .... 1st Petitioner Company

AND

COMPANY SCHEME PETITION NO.380 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.393 OF 2014

Nicole's Creations Private Limited .... 2nd Petitioner Company

AND

COMPANY SCHEME PETITION NO.381 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.394 OF 2014

Akashprithvi Realties Private Limited ....3rd Petitioner Company

AND

COMPANY SCHEME PETITION NO.382 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.395 OF 2014

Prithviakash Realties Private Limited .... 4th Petitioner Company

In the matter of the Companies Act,1956

AND

In the matter of Sections 391 to 394 of

the Companies Act, 1956;

AND

In the matter of Scheme Amalgamation of Manilal Realties Private Limited and Nicole's Creations Private limited and Akashprithvi Realties Private Limited and Prithviakash Realties Private Limited with Shane Exim Private Limited and Their respective shareholders and creditors

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co., Advocate for the Petitioner Companies in all Petitions.

Mr. J.P. Sen, Senior Counsel, instructed by Mr S Ramakantha, Official Liquidator present in CSP No. 379 to 382 of 2014.

Mr. M.S Bharadwaj, i/b Mr. H.P. Chaturvedi for Regional Director in all the Petitions.

CORAM: S.J. Kathwalla, J.

DATE : 13th April, 2015

PC:

1. Heard the learned counsel for the Petitioner Companies, the Regional Director and the Official Liquidator. No objector has come before the court to oppose the Scheme nor has any other party controverted any of the averments made in the petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Manilal Realties Private Limited, Nicole's Creations Private limited, Akashprithvi Realties Private Limited, Prithviakash Realties Private Limited with Shane Exim Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner Companies state that Manilal Realties Private Limited, the 1st Transferor Company is engaged in the business of investing in properties and renting of properties/ premises. Nicole's Creations Private Limited, the 2nd transferor Company is engaged in the business of manufacturing of gold & diamond Jewellery and trading in gold and diamond ornaments. Akashprithvi Realties Private limited, the 3rd Transferor Company is engaged in the business of investing in properties and renting of properties/ premises. Prithviakash Realties Private Limited, the 4th Transferor Company is engaged in the business of investing in properties and renting of properties/ premises. Shane Exim Private Limited, the Transferee Company is engaged in the business of manufacturing gold and diamond ornaments.

4. The learned Advocate for the Petitioners state that Transferee Company is holding Company of all the Transferor Companies and further states that the benefits of the Scheme as mentioned in paragraph 9 of the Petition, would result in greater efficiency and greater financial strength and flexibility for the amalgamated entity, which would in turn result in maximising overall shareholder's value and improving the competitive

position of the combined entity. The amalgamation would also result in greater efficiency in cash management of the amalgamated entity which would have unfettered access to the cash flows generated by the combined business which could be deployed more efficiently in future business opportunities which would in turn maximise shareholder's value.

5. All the Petitioner/ Transferor Companies as well as the Transferee Company 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 Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by this Court in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Counsel appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per the directions of this Court and filed necessary Affidavits of compliance in this behalf. The Petitioner Companies further undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and Companies Act, 2013, as may be applicable, and the Rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 17th October, 2014 stating therein that save and except as stated in para 6(a), 6(b), 6(c) and 6(d), it appears that the Scheme is not prejudicial to the interest of the shareholders and the public. In paras 6(a), 6(b), 6(c) and 6(d) of the said Affidavit, the Regional Director has stated that:-

6(a) Clause 14.3 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Companies and Transferee Company. In this regard, it is submitted that 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.

6(b)Clause 14 of the Scheme provides for Accounting Treatment In this regard, it is submitted that the Reserve, if any arising out of this scheme may be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, out of the same shall be debited to Goodwill Account of the Transferee company.

6(c) The Income Tax Department vide its letter dated 17/09/2014, annexed hereto as Exhibit- D2, have informed that Second Transferor Company is having outstanding dues and their interest be protected. In this regard, the deponent submits that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble

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 Companies and Transferee Company.

6(d) Clause 18 of the Scheme provides for Modification of Scheme wherein the Board of Directors of the Transferor Companies and Transferee Company have been authorized to make any amendments to the Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by the Board of Directors without obtaining further approval from the Hon'ble High Court The Transferor and Transferee Company may be directed to undertake to this effect.

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

10. So far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that in terms of the observations made by the Regional Director, the deficit/surplus arising in terms of the Scheme shall be debited to Goodwill Account or credited to

the Capital Reserve Account as the case may be in the books of the Transferee Company.

11. So far as the observations made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner Companies are bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme as well as outstanding dues will be met and answered in accordance with law.

12. So far as the observations made in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Counsel appearing for the Petitioner Companies states that Clause 18 of the Scheme authorizes the Board of Directors of the Transferor Companies and Transferee Company to modify any part of the Scheme. The learned Counsel for the Petitioners states that such power to amend the Scheme is subject to the prior approval of the High Court. It is therefore clarified that the power vested under Clause 18 of the Scheme will be subject to the approval of the High Court.

13. The Learned Counsel for the Regional Director on the instructions of Mr. M. Chandanamuthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that he is satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

14. The Official Liquidator has filed a report on 19th December 2014 and also filed supplementary Report on 11th February 2015 placing

on record the report of the Chartered Accountants, M/s Patil Ranadive, in which the Chartered Accountant has opined that the affairs of the Nicole's Creations Private limited, the 2nd Transferor Company have been conducted in a manner prejudicial to the interest of the members as well as prejudicial to the public interest. In view of the report of the Chartered Accountant, the Official Liquidator has submitted that the proposed scheme is liable to be rejected. The principal objections urged in the Chartered Accountant's report appears to be two fold (a) that on account of delayed payment by the Holding Company to the 2nd Transferor Company and the foreign exchange fluctuation in the interim, loss has resulted to the 2nd Transferor Company and consequently to the Revenue; (b) that receipts have not been produced by the 2nd Transferor Company for free samples distributed in the value of Rs. 20 lacs.

15. The Petitioner in Company Scheme Petition No. 380 of 2014 has filed a detailed Affidavit on 18th February 2015 clarifying its stand on the issues raised by the Official Liquidator on the basis of the Chartered Accountant's report. I have considered the explanation offered in the said Affidavit . I do not find the objections raised by the Chartered Accountant to be justifiable particularly in light of the fact that the Transferor Companies are wholly owned subsidiaries of the Transferee Company and that the Regional Director save for the limited concern raised in his Affidavit, has found that the Scheme is not prejudicial to the shareholders or the public . The loss to the revenue posited in the Chartered

Accountants report is remote and indeed speculative. The Petitioners contention that it would be difficult to furnish receipts for the distribution of free samples also appears reasonable.

16. From the material on record, the Scheme appears to be fair and reasonable, is not violative of any provisions of law and not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 379, 380, 381 and 382 of 2014 are made absolute in terms of prayer clause (a) of the respective Petitions.

18. The Transferee Company to lodge a copy of this order and the Scheme of Amalgamation 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. The Petitioner Companies are directed to file a copy of the final order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, through INC-28 pursuant to the Companies Act, 2013 in addition to physical copy as per the provisions of the Companies Act, 1956.

20. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Companies in the Company Scheme Petition Nos. 379, 380, 381 and 382 of 2014 to pay cost of Rs 10,000/- to the Official

Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

22. 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.J. Kathawalla, J.)