IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 520 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 421 OF 2015

In the matter of the Companies Act, 1956

And

In the matter of Section 391 and 394 of the Companies Act, 1956

And

In the matter of Scheme of Amalgamation of Easthill Designs Private Limited with And Designs India Limited.

EASTHILL DESIGNS PRIVATE)
LIMITED,CINNo.U18109MH201)
PTC220919 A company registered)
under Companies Act, 1956,)
having its registered office at Gala)
No. 29, 2nd Floor, Raj Industrial)
Complex,Co-operative Society)
Limited,) Military Road, Andheri)
(East), Mumbai, Maharashtra)
400059.)

(The Transferor Company)

….Petitioner

Called for hearing

Mr. Satyan S. Israni, Advocate for the Petitioner /Transferor Company.

D.P.Singh i/b A.A.Ansari for Regional Director in the above mentioned Petition.

Mr. S. Ramakaatha Official Liquidator, present in CSP No. 520 of 2015.

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CORAM: S. C. Gupte, J.

DATE: 11th September, 2015

PC:

1. Heard 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 in the matter of Scheme of Amalgamation of M/S. EASTHILL DESIGNS INDIA

PRIVATE LIMITED with M/S. AND DESIGNS INDIA LIMITED and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. Learned Counsel for the Petitioner Company states that Transferor Company is in manufacturing and selling of all types of clothes & apparels and other related activities. The proposed Scheme of Amalgamation will have the benefit of business synergy and consolidation of these companies with a stronger asset base. The shareholders of the Transferee Company would enjoy a much larger asset base and other resultant benefits of the combined entity. The proposed amalgamation would enable pooling of physical, financial and human resources of these Companies for the most beneficial utilization of these factors in the combined entity. The proposed Scheme of Amalgamation will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better

and more productive utilization of human and other resources and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operating strength, to build a wider capital and financial base and to promote and secure overall growth of their businesses. The said Scheme of Amalgamation will contribute in fulfilling and furthering the objects of these Companies. It will strengthen, consolidate and stabilize the business of these Companies and will facilitate further expansion and growth of their business. The resulting amalgamated company will be able to participate more vigorously and profitably in the competitive market scenario. The proposed amalgamation would enhance the shareholders' value of the Transferor and the Transferee Companies. The said Scheme of Amalgamation will have beneficial impact on all the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned. The Transferor Company and Transferee Company have approved the said Scheme of

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

4. The learned Advocate for the Petitioner/Transferor Company further states that, Petitioner Company have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed with the order passed in respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

5. The learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner/Transferor Company have complied with all requirements as per directions of this Court and have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Company undertake 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.

6. The Official Liquidator has filed his report on 9th September, 2015 in Company Scheme Petition No.520 of 2015 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed an affidavit on 9th September, 2015 stating therein that the Scheme does not appear to be prejudicial to the interest of the shareholders and the public. In paragraphs 6(a) to 6(d) of the Affidavit, the Regional Director has stated that:-

a) *It has been observed that before filing of this Company Scheme Petition by the Petitioner Companies in this Hon'ble High Court, the paid up share capital of the*

Transferee company has undergone for a major change by converting the existing Compulsorily Convertible Preference Shares and Compulsorily Convertible Debentures into Equity Shares. By this process, the paid up share capital of the Transferee Company has increased from Rs. 3,85,94,800/- to Rs. 4,41,31,580/ - the capital structure provided in Clause No. 2 of the scheme appears to be not in order and hence, the Petitioner Companies may be directed to amend the Scheme suitably

b) *Clause 3.9(f) of the scheme states that any Surplus arising out of Amalgamation shall be credited to the Capital Reserve / General Reserve in the books of the Transferee Company and such reserve shall not form part of Free Reserves. In this regard, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company.*

c) *It has been observed that the Transferee Company has been incurring losses for the last few years. The Income Tax Department also vide its letter dated 04/08/2015 has raised its concern. In this regard, it is respectfully submitted 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 return 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.*

d) *Clause 3.12 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company 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 be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Company may be directed to undertake to this effect.*

8. So far as the observation in the Paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner Companies seeks leave to amend scheme to be carried out within two weeks from the date of passing of the order. Leave to amend is granted Amendment to be carried out within two weeks from today.

9. So far as the observation in the paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner Company undertakes that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any

arising, shall be debited to Goodwill Account of the Transferee Company.

10. So far as the observation in the paragraph 6(c) of the Affidavit of Regional Director is concerned, the Counsel on behalf of the Petitioner Company undertakes that the tax implication, if any, arising out of Scheme is subject to final decision of Income Tax Authorities.

11. In so far as observation made in paragraph 6(d) of the Affidavit of Regional Director is concerned, The Learned counsel for the Petitioner Company states that clause 3.8 of the Scheme gives Power to the Board of Directors of the Petitioner Company and Transferee Company to amend any part of the Scheme. The Learned Counsel for the Petitioner Company states that such power to amend the Scheme is subject to prior approval of the High Court. It is therefore

clarified that the power vested under clause 3.8 of the Scheme will be subject to the approval of the High Court.:

12. Learned Counsel for Regional Director on instruction of Mr. Chandanamuthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with undertakings given by the Petitioner Company as stated hereinabove. The said undertakings given by the Petitioner Company 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. None of the parties concerned has come forward to oppose the Scheme in the Court.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos.520 of 2015 is made absolute filed by Transferor Company in terms of prayers (a) to (o).

15. The Petitioner Company 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.

16. Petitioner is directed to file a copy of this order alongwith a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form INC-28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry as per the provisions of the Companies Act, 1956.

17. The Petitioner to pay costs of Rs.10,000/-to the Regional Director, Western Region, Mumbai and Petitioner in Company Scheme Petition No.520 of 2015 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.

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

19. All concerned authorities to act on a copy of this order alongwith the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.C. GUPTE, J)