IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 560 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 508 OF 2015.

DRAKE TRADING COMPANY PRIVATE LIMITED,
....Petitioner/ First Transferor Company.

AND

COMPANY SCHEME PETITION NO. 561 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 509 OF 2015.

CANTOR TRADING COMPANY PRIVATE LIMITED,
....Petitioner/ Second Transferor Company.

AND

COMPANY SCHEME PETITION NO.562 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 510 OF 2015.

TANDON MOTORS PRIVATE LIMITED,
....Petitioner/ Third Transferor Company.

AND

COMPANY SCHEME PETITION NO.563 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 511 OF 2015.

CRUCIBLE TRADING COMPANY PRIVATE LIMITED,
....Petitioner/ Fourth Transferor Company.

AND

COMPANY SCHEME PETITION NO.564 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 512 OF 2015.

FONDUE TRADING COMPANY PRIVATE LIMITED,
....Petitioner/ Fifth Transferor Company.

AND

COMPANY SCHEME PETITION NO.565 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 513 OF 2015.

SUDEEP EXPORTS PRIVATE LIMITED,
....Petitioner/ Sixth Transferor Company.

AND

COMPANY SCHEME PETITION NO.566 OF 2015.
CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 514 OF 2015.

THRALL TRADING COMPANY PRIVATE LIMITED,
....Petitioner/ Seventh Transferor Company.

AND

COMPANY SCHEME PETITION NO.567 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 515 OF 2015.

GALENA TRADING COMPANY PRIVATE LIMITED,
....Petitioner/ Eighth Transferor Company.

AND

COMPANY SCHEME PETITION NO.568 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 516 OF 2015.

RELIABLE CONSULTANCY SERVICES PRIVATE LIMITED,
....Petitioner/ Transferee Company.

In the matter of the Companies Act 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 DRAKE TRADING COMPANY PRIVATE LIMITED, the First Transferor Company and CANTOR TRADING COMPANY PRIVATE LIMITED, the Second Transferor Company and TANDON MOTORS PRIVATE LIMITED, the Third Transferor Company and CRUCIBLE TRADING COMPANY PRIVATE LIMITED, the Fourth Transferor Company and FONDUE TRADING COMPANY PRIVATE LIMITED, the Fifth Transferor Company and SUDEEP EXPORTS PRIVATE LIMITED, the Sixth Transferor Company and THRALL TRADING COMPANY PRIVATE LIMITED, the Seventh Transferor Company and GALENA TRADING COMPANY PRIVATE LIMITED, the Eighth Transferor Company with RELIABLE CONSULTANCY SERVICES PRIVATE LIMITED, the Transferee Company.

Called for hearing
Mr. Rahul Oak, Advocate for the Petitioners in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 560 of 2015 to 567 of 2015

Mrs. P. Awasthi i/b Mr. A. A. Ansari for Regional Director in all the Petitions.

CORAM: K. R. Shriram, J.

DATE : 20th November, 2015

PC:

1. Heard learned counsel for the parties. 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 to a Scheme of Amalgamation and Arrangement of Drake Trading Company Private Limited and Cantor Trading Company Private Limited and Tandon Motors Private Limited and Crucible Trading Company Private Limited and Fondue Trading Company Private Limited and Sudeep Exports Private Limited and Thrall Trading Company Private Limited and Galena Trading Company Private Limited with Reliable Consultancy Services Private Limited, under Sections 391 to 394 of the Companies Act, 1956.

3. The Transferor Companies 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 Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Companies and Transferee Company 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 rule made there under whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 15th October, 2015 in Company Scheme Petition Nos. 560 of 2015 to 567 of 2015 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 16th November, 2015 stating therein, save and except as stated in paragraph 6(a) to 6(d), it appears that the Scheme is not prejudicial to the interest of shareholders

and public. In paragraph 6(a) to 6(d) of the said Affidavit, it is stated as under.

"6. *(a) Clause 11.4 of the scheme states that the main objects as well as relevant incidental objects of the memorandum of Association of the Transferor companies shall from part of the memorandum of association of the Transferee Company. In this regards, the Transfer Company may be directed to comply with provisions of Section 13(1) & (6) read with section 15 of Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*

(b) Clause 14.2 of the scheme states that the difference, if any, of the net value of assets, liabilities and reserves of the Transferor Companies acquired and recorded by Transferee Company and the face value of the New Equity shares issued on merger shall b adjusted in reserves. In this regards, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee company and the deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

(c) The Income Tax Department vide its letter 28/08/2015 has informed that the Fifth Transferor Company is having outstanding demand of Rs. 19,550/- for A. Y. 2007-08. Copy of the said letter is annexed herewith as Exhibit 'D1'. In this regard, the Transferee Company may be directed to safeguard the interest of the Income Tax Department with respect to aforesaid income tax dues.

(d) 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 returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income tax Authority is binding on the Petitioner Companies."

8. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company through its

counsel undertakes to comply with provisions of Section 13(1) & (6)read with section 15 of Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee company and the deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

10. So far as observation in paragraph 6(c) is concerned, the Transferee Company through its counsel states that the Fifth Transferor Company has written to concerned Income Tax Department on 27th October 2009 and again a reminder letter on 16th July 2015 for rectification of the demand order due to excess of interest charged by the Department. The Transferee Company through its counsel undertakes that it will take necessary steps in this regard upon the receipt of the decision made by the Income Tax Department.

11. So far as the observation in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme 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 undertaking given by the Advocate for the Petitioner Company. 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, Company Scheme Petition Nos. 560 of 2015 to 568 of 2015 are made absolute in terms of prayer clauses (a).

15. The Petitioner Companies to lodge a copy of this order and the amended 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. Petitioners are directed to file a copy of this order along with a copy of the amended 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.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 560 of 2015 to 567 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 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 amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K. R. Shriram, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by : Shankar Gawde, Stenographer.