IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 664 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 635 OF 2014

K.L. Mundhra Investment and Trading Private Limited

………….Petitioner/Transferor Company 1

AND

COMPANY SCHEME PETITION NO. 665 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 636 OF 2014

Mannalal Investment and Trading Private Limited

………Petitioner/Transferor Company 2

AND

COMPANY SCHEME PETITION NO. 666 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 637 OF 2014

D.K. Mundhra Investment and Trading Private Limited

………Petitioner/Transferor Company 3

AND

COMPANY SCHEME PETITION NO. 667 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 638 OF 2014

Sunrise Containers Limited

…………..Petitioner/Transferee Company

In the matter of Companies Act, 1956, (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 K.L. Mundhra Investment and Trading Private Limited and Mannalal Investment and Trading Private Limited and D.K. Mundhra Investment and Trading Private Limited with Sunrise Containers Limited and their respective shareholders

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Mr. C J Joy with H.V. Mehta, i/b Mr. H.P. Chaturvedi for Regional Director.

Mr. S. Ramakantha Official Liquidator.

CORAM: S. J. Kathawalla, J.

DATE: 23rd January, 2015

1. Heard the 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 under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of K.L. Mundhra Investment and Trading Private Limited and Mannalal Investment and Trading Private Limited and D.K. Mundhra Investment and Trading Private Limited with Sunrise Containers Limited and their respective shareholders.

3. The Transferor Companies are engaged in making investment and dealing in securities. the Transferee Company is engaged in the business

of manufacturing, selling, import and export of storage materials made from plastic, polythene, jute, cloth etc.

4. The rational for the Scheme is to avoid duplication of efforts, costs and resources. Lesser regulatory / procedural compliance. Move towards creating a future business plan by taking advantage of the combined resource pool. Cost saving in fees/ duties payable on statutory and procedural compliance.

5. The Transferor Company and Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The learned counsel for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

7. Counsel appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

8. The Official Liquidator has filed his report on 9th January 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 19th January 2015, stating therein, save and except as stated in paragraph 6(a) &(b), it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6(a) and 6(b), of the said affidavit it is stated that:-

> *6(a) Clause 10.4 of the scheme provides for adjustment of differences in Accounting policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to 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.*
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> *6(b)"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 return filed by the Petitioner Company after giving effect to the amalgamation. The decision of Income Tax Authority is binding on the Petitioner Company".*

10. As far as the observations made in paragraph 6(a) of the Affidavit of Regional Director 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. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Company submit that the Petitioner is 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.

12. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by Petitioner Company is 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 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the respective Petitions.

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

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 the Order.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 664 of 2014, Company Scheme Petition No. 665 of 2014 and Company Scheme Petition No. 666 of 2014 to pay sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay.

18. 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, Bombay.

(S. J. KATHAWALLA, J.)