IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 635 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 574 OF 2015.

ALBAN EXPORTS PRIVATE LIMITED

....Petitioner/ the Transferor Company

In the matter of the Companies Act, 1 of 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of ALBAN EXPORTS PRIVATE LIMITED, the Transferor Company with EUROSTAR DIAMONDS INDIA PRIVATE LIMITED, the Transferee Company

<u>Called for hearing</u>

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioner.

Mr. Sanjay Jain i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator.

CORAM: S. C. Gupte, J.
DATE: 16th October, 2015

PC:

1. Heard Learned Counsel for the party. 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 of ALBAN EXPORTS PRIVATE LIMITED, the Transferor Company with EUROSTAR DIAMONDS INDIA PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioner states that the Transferor Company has been carrying on the business of buying, selling, exporters, export house, export agent, import, trading and dealing in diamonds, all types of precious and semi precious stones and the Transferee Company has been carrying on the business of , conduct, manage, and administer the business, in India or elsewhere, of trading, dealing, importing, exporting, buying, selling, manufacturing, wholesale in rough and polished diamonds, gemstones, precious, semi-precious stones, natural stones etc. The proposed scheme of Amalgamation will have the benefit as per the opinion that the amalgamation will result in better synergy in operations

and significant impetus to the growth of the consolidated entity in the form of revenue and profitability, operational rationalization and optimal utilization of various resources. Due to inherent synergies, the amalgamation would result in improved value for the shareholders and that the amalgamation would streamline common business processes and further optimize operating and capital expenditures and that the amalgamation would realise learning curve advantage for the location economies.

4. Learned Counsel for the Petitioner further states that since the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, EUROSTAR DIAMONDS INDIA PRIVATE LIMITED along with its nominees and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by EUROSTAR DIAMONDS INDIA PRIVATE LIMITED, the Transferee Company was dispensed with, by order dated 17th July, 2015 passed in CSD NO. 574 of 2015.

5. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Amalgamation and by passing Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that, Petitioner Company have complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the order passed in Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Company 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 Company undertake 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 8th day of October, 2015 in Company Scheme Petition stating that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 6th day of September, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

> *"6. That the Deponent further 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 High 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.*

10. So far as the observation in paragraph 6 of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the Petitioner Company are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. 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 Petitioner. The above undertakings is accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition are made absolute in terms of prayers clause (a), (b) and (d).

14. The Petitioner Company 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.

15. The Petitioners are directed to file a certified copy of order along with a copy of the 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.

16. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

18. 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.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.