

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 704 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 673 OF 2014

Tirumal Trading and Investment Consultants Private Limited

..... Petitioner/(First Transferor Company)
AND

COMPANY SCHEME PETITION NO 705 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 674 OF 2014

Arlette Infrastructure Private Limited

..... Petitioner/(Second Transferor Company)
AND

COMPANY SCHEME PETITION NO 706 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 675 OF 2014

Fashion Global Retail Limited

..... Petitioner/(Third Transferor Company)
AND

COMPANY SCHEME PETITION NO 707 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 676 OF 2014

Weavette Textstyles Limited

..... Petitioner/(Fourth Transferor Company)
AND

COMPANY SCHEME PETITION NO 708 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 677 OF 2014

Future Ideas Realtors India Limited

..... Petitioner/(Transferee Company)

In the matter of the 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 Tirumal Trading and Investment Consultants Private Limited and Arlette Infrastructure Private Limited and Fashion Global Retail Limited AND Weavette Textstyles Limited with Future Ideas Realtors India Limited and their Respective Shareholders

Called for Hearing

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

Mr. A.R Varma , i/b Mr. H.P. Chaturvedi for Regional Director.

Mr. S. Ramakantha, Official Liquidator.

CORAM: S. J. Kathawalla, J.

DATE: 6th February 2015

1. Heard the learned counsel for the Petitioners. 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 Tirumal Trading and Investment Consultants Private Limited and Arlette

Infrastructure Private Limited and Fashion Global Retail Limited AND Weavette Textstyles Limited with Future Ideas Realtors India Limited and their Respective Shareholders.

3. All the Transferor Companies and Transferee Company are engaged in the business of fabrics.
4. The rationale for the amalgamation is that all the Petitioner Companies are part of same group of companies. Consolidation of the Transferor Companies into the Transferee Company pursuant to this Scheme would result in simplification of group structure, consolidation and synergies of operations, administrative convenience and reduction in administrative costs & overheads.
5. The Transferor Companies and the Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petitions filed by the Petitioner Companies.
6. The learned counsel for the Petitioner states 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 Petitioner has 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 undertake 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 21st 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 4th February 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 it is stated that:-

- (a) *That the deponent further submits that, Clause 10.3 of the Scheme provides for issue of Preference Shares to the Equity shareholders of the Transferor companies upon coming into effect of the Scheme. It is observed from the Shareholding list of 3rd Transferor company, 4th Transferor company and Transferee company that the Shareholders of said Transferor companies are not forming part of Shareholders of Transferee company. Accordingly, there would be a change of ownership of aforesaid two Transferor companies on Amalgamation. Further, it is observed that Transferor companies are loss making companies. In view of the above, 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.

10. In so far as observation made in paragraph 6 of the Affidavit of Regional Director is concerned, the Transferee Company is bound to comply with all applicable provisions of Income Tax Act, 1961 and all tax issues arising out of scheme will be met and answered in accordance with applicable laws.
11. 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 Companies. The said undertaking given by Petitioner Companies is accepted.
12. The learned counsel for the First Transferor Company states that the registered office address of the Transferor Company I was inadvertently mentioned in the Scheme as “509, Shah and Nahar, Dr. E Moses Road, Worli, Mumbai – 400 018” instead of “Knowledge House, Shyam Nagar, Off. Jogeshwari – Vikhroli Link Road, Jogeshwari (East), Mumbai – 400 060”. Further the registered office address of the Second Transferor Company was also inadvertently mentioned in its Scheme as “10-11, Mehar Tiles Compound, Subhash Road, Jogeshwari (East),

Mumbai – 400 060” in place of “ Knowledge House, Shyam Nagar, Off. Jogeshwari – Vikhroli Link Road, Jogeshwari (East), Mumbai – 400 060”.

13. Learned Counsel for the Petitioners further submit that in clause 11(vi) of the scheme relating to Accounting Treatment, the words “*as adjusted*” be added after the word Scheme of Amalgamation which were inadvertently missed out.
14. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director agrees with the amendments sought by the Petitioner Companies.
15. Leave to amend the scheme is allowed. Amendments to be carried out within Six weeks from today.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the respective Petitions.
18. Petitioners are directed to file a copy of this order along with a copy of the amended 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.

19. 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.
20. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition Nos. 704 of 2014 to 707 of 2014 to pay cost of Rs . 10,000/- the Official Liquidator, High Court, Bombay.
21. Costs to be paid within four weeks from today.
22. Filing and issuance of the drawn up order is dispensed with.
23. All concerned regulatory authorities to act on a copy of this order along with the modified Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. J. KATHAWALLA, J.)