IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.756 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 653 OF 2014

Safari Sales Private Limited **….. Petitioner**

AND

COMPANY SCHEME PETITION NO. 757 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 654 OF 2014

Safari Press Metal Company Private Limited **…. Petitioner**

AND

COMPANY SCHEME PETITION NO. 758 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 655 OF 2014

Ramgopal Textiles Limited **…. Petitioner**

IN THE MATTER of the Companies Act (1 of 1956);

And

IN THE MATTER of Sections 391 to 394 of the Companies Act, 1956; (1 of 1956)

And

IN THE MATTER of Scheme of Amalgamation of Safari Sales Private Limited (Transferor Company No.1), Safari Press Metal

Company Private Limited (Transferor Company No.2) with Ramgopal Textiles Limited (Transferee Company).

Called for hearing:

Ms. Pooja Patil i/b. M/s. Kanga & Company, Advocates for the Petitioners in both the Petitions.

Mr. K.R. Choudhari i/b. Mr. H. P. Chaturvedi for Regional Director in all the Petitions.

Mr. S. Ramakantha Official Liquidator in C.S.P. No. 756 of 2014 and C.S.P. No. 757 of 2014.

CORAM: S.J. Kathawalla J.

DATE: 20th February 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has contraverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Safari Sales Private Limited (Transferor Company No.1), Safari Press Metal Company Private Limited (Transferor Company No.2) with Ramgopal Textiles Limited (Transferee Company), under Section 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Transferor Company No.1 is engaged in the business of import, export, retail and dealing with all types of plastic and manufacturing of luggage from leather and other materials and Transferor Company No.2 is engaged in the business of

manufacture of ferrous and non-ferrous metals, substances and products including articles made from the same goods for consumers, industries goods for household use, commercial use, defense needs and requirements and the Transferee Company is engaged in the business of import, export, dealing in all types of yarn and fabrics such as textiles, synthetic and other allied products. The Learned Counsel for the Petitioners submits that the benefit of the proposed Scheme of Amalgamation on of the Transferor Companies with the Transferee Company is to have the business of all the Companies carried on more economically, efficiently and beneficially. The Amalgamation is in the interest of all the Companies and their shareholders. The Transferor Companies and Transferee Company have approved the Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

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

5. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and 2013 the Rules made thereunder which is applicable. The said undertaking is accepted.

6. The Regional Director has filed an Affidavit on 12th February 2015 stating therein that save and except as stated in para 6.(a) and (b), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) and (b) of the affidavit, it is stated that :-

(6). That the Deponent further submits that :

(a) Clause 14.3 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the 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.

(b) The 1st Transferor Company is loss making company. There is huge un observed depreciation and the company has not earned any income out manufacturing activity, barring small income from sale. Besides, there is change in shareholding pattern. Under these circumstances whether under section 72A read with 79 of the Income Tax Act the benefit can be availed by transferee Company is a matter within the domain of Income Tax Authority. In this regard the tax issue if any arising out of this Scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the Petitioner Company.

7. The Learned Counsel appearing on behalf of the Petitioner Companies states that in respect of paragraph 6(a) of the Affidavit of the Regional Director, is concerned the Petitioner Companies through their Counsel undertake that, in addition to the compliance of Accounting Standard – 14, the Transferee Company will pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard.

8. The Learned Counsel appearing on behalf of the Petitioner companies further states that in respect of paragraph 6(b) of the Affidavit of the

Regional Director is concerned, the Petitioner Companies through their Counsel agree and confirm that the Petitioner/Transferee Company is 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.

9. The Official Liquidator has filed his Report on 5th February 2015 in Company Scheme Petitions Nos. 756 of 2014 and 757 of 2014 stating therein that the affairs of both the Transferor Companies have been conducted in a proper manner and that both the Transferor Companies may be ordered to be dissolved, without the order of winding up.

10. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Learned Counsel for the Petitioner Companies. The undertakings given by the Petitioner Companies are accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 756 of 2014 is made absolute in terms of prayers (a), (e) and (f), Company Scheme Petition No. 757 of 2014 is made absolute in terms of prayers (a), (e) and (f) and Company Scheme Petition No. 758 of 2014 is made absolute in terms of prayers (a) and (e).

13. The Petitioner Companies to lodge a copy of this order and 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.

14. 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 physical copy as per the provisions of the Companies Act, 1956/2013.

15. The Petitioners in all three Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition Nos. 756 of 2014 and 757 of 2014 to pay cost of Rs.10,000/- each to the Official Liquidator. Costs to be paid within four weeks from the date of the order.

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

17. All concerned regulatory authority to act on a copy of this order along with the copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.J. Kathawalla J.)