IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 705 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 653 OF 2015

Opulence Creations Private Limited
………… Transferor / Petitioner Company

In the matter of the Companies Act, 1956 (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation between Opulence Creations Private Limited and Jewelex India Private Limited and their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b M/s Hemant Sethi & Co., Advocates for the Petitioner.
Mr. A.R Varma, i/b Mr. A. A. Ansari for Regional Director.
Mr. S. Ramakantha, Official Liquidator, present

CORAM: K.R. Shriram, J.
DATE: 4th December , 2015

1. Heard the learned counsel for the Petitioner Company. 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 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation between Opulence Creations Private Limited and Jewelex India Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner states that Petitioner Company is a wholly owned subsidiary of Transferee Company. Transferee Company is engaged in the business of cutting, polishing, wholesale trading and exports of diamonds and manufacturing, exports and wholesale trading of jewellery. Petitioner Company is engaged in the business of wholesale trading in jewellery, ornaments, metals, bullions, gold & gold ornaments, silver & silver articles, diamonds & diamond jewellery, precious & semi precious stones, gift articles, platinum and all other articles related to the same.

4. The management proposes to merge the Petitioner Company with Transferee Company in view of the following benefits:
    a) Reduction in administrative and managerial overheads;
    b) Create operational rationalization, organizational efficiency, and optimal utilization of various resources;
    c) Consolidation of managerial expertise of the companies involved thereby giving additional strength to the operations and management of Transferee Company;
    d) Greater leverage in operations planning and enhance operations flexibility;

e) The objects of the respective companies can be conveniently, advantageously and economically carried on by a single entity;

f) In the current market scenario, all well-established entities in diamond and Jewellery market, domestic as well as international, are adopting such strategy of merger in order to emerge as single entity engaged in diamond trading as well as manufacturing of Jewellery. In order to sustain such competition from its peers, the proposed amalgamation will help in keeping pace with the market trend;

g) Greater integration resulting in better financial strength and operational flexibility, leading to better client services and maximizing overall shareholder value. The competitive position of the combined entity would enhance sustainability;

h) Greater efficiency in cash management of the amalgamated entity, and provide unfettered access to cash flow generated by the combined business which can be deployed more efficiently for the business purposes, to maximize shareholders value; and

i) Consequent to the implementation of the Scheme, the Transferor Company will have a strong financial and operational structure and will be capable of resource mobilization and financial consolidation necessary to withstand the new competitive environment.

5. The Petitioner Company approved the said Scheme by passing Board Resolution which are annexed to the Company Scheme Petition.

6. The learned Advocate for the Petitioner states that Petitioner Company has complied with all directions passed in Company Summons for Directions and that the Petition has been filed in consonance with the order passed in the Company Summons for Directions.

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

8. The Regional Director has filed an Affidavit dated 27th day of October, 2015 stating therein that save and except as stated in paragraph 6(a), 6(b) and 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6(a) to 6(c) of the said affidavit, it is stated that:

   a) Clause 6.4 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 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) *With respect to Clause 6 of the Scheme, it is submitted that the surplus if any arising out of the Scheme shall be credited to the Capital Reserve account of the Transferee Company and deficit, if any shall be debited to Goodwill account of the Transferee Company.*

c) *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 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.*

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its Counsel submits that the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 or any other applicable Accounting Standard such as Accounting Standard – 5.

10. As far as the observations raised by the Regional Director in paragraph 6(b) of his Affidavit is concerned, the Petitioner Company through its Counsel submits that the on the Scheme becoming effective, surplus, if any arising out of the Scheme shall be credited to the Capital Reserve account of the Transferee Company and deficit, if any shall be debited to Goodwill account of the Transferee Company.

11. As far as the observations raised by the Regional Director in paragraph 6(c) of his Affidavit, the Petitioner Company through its

Counsel submits that the Petitioner is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.

12. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions given by the Petitioner Company. The said undertakings given by the Petitioner is accepted.

13. The Official Liquidator has filed his report dated 16th November, 2015 in Company Scheme Petition No. 705 of 2015 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

14. 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. None of the parties concerned has come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 705 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b) of the Petition.

16. The Petitioner Company to lodge 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 issuance of Order.

17. Petitioner Company is 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. The Petitioner Company in the Company Scheme Petition to pay cost of Rs.10,000/- to the Regional Director, Western Region, Mumbai and the Petitioner Company in the Company Scheme Petition Nos. 705 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

20. All concerned authorities to act on a copy of this order along with Scheme and Form of Minutes 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.

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