THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 731 OF 2014.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 725 OF 2014.

AASU TEXTILES PRIVATE LIMITED

....Petitioner/ Transferor Company

WITH

COMPANY SCHEME PETITION NO.732 OF 2014.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 726 OF 2014.

PNP POLYMERS PRIVATE LIMITED

....Petitioner/ Transferee 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 AASU TEXTILES PRIVATE LIMITED, (the Transferor Company)

WITH

PNP POLYMERS PRIVATE LIMITED, (the Transferee Company)

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners in both the Petitions.

Mr. M.S.Bhardwaj with Mr P.Khosla i/b Dr. H. Chaturvedi for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP Nos. 725 of 2014.

CORAM: S. J. Kathawalla, J.

DATE : 20th February, 2015

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of AASU TEXTILES PRIVATE LIMITED, the Transferor Company with PNP POLYMERS PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on business of manufacturing, weaving, processing, folding, decadizing, calendaring, including running of hand and power process house, buying, selling, importing, exporting, distributing and

dealing in textiles and the Transferee Company is in business of manufacture, process, alter, convert, commercialize, control, compound, design, develop, research, distribute, formulate, derive, discover, manipulate, prepare, produce, promote. The proposed scheme of Amalgamation will have the benefit that all the Companies are under same Management and the shareholding owned and controlled by same promoters and the amalgamation would provide for Reduction of overheads and other expenses facilitate administrative convenience and ensure optimum utilization of available services and resources and economies of scale and A consolidation of the transferor Companies and the transferee Company by way of amalgamation would therefore lead to more efficient utilization of capital.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies 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 Companies 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.

7. The Official Liquidator has filed his report on 28th January, 2015 in Company Scheme Petition No. 731 of 2014 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved

8. The Regional Director has filed an Affidavit on 12th day of 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, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) Clause 13.4 of the scheme provides for adjustment for differences in Accounting Policies between Demerged Company and Resulting Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard -14, the Demerged Company and Resulting 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) That the Deponent further submits that Income Tax Department vide its letter dated 13/11/2014 has submitted that set off and carry forward of accumulated losses, if any and credit of taxes paid, if any, by the transferor Company can be allowed to

Transferee Company on fulfilment of various conditions of Income Tax Act. The impact of the aforesaid scheme under various provisions of Income Tax, 1961 as not know/ ascertainable at this stage. The copy of the said letter is annexed hereto and marked as ***Exhibit 'D'****. In this regard tax implementation 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. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

10. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income 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 undertakings given by the Petitioners. All above undertakings are 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, Company Scheme Petition No. 731 of 2014 is made absolute in terms of prayers clause (a),(b) and (d) and 732 of 2014 is made absolute in terms of prayer clauses (a) and (c).

14. The Petitioner Companies 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. 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 Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition No. 731 of 2014 to pay costs of Rs.10,000/- each

to the Official Liquidator, High Court, Bombay. Costs 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. J. Kathawalla, J.)