IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 724 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 724 OF 2015

Premchand Roychand & Sons Private Limited.
.....Petitioner/the Demerged Company.

AND
COMPANY SCHEME PETITION NO. 725 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 725 OF 2015

Premchand Business Management Private Limited.
.....Petitioner/the Resulting Company.

In the matter of Companies Act, 1956 and Companies Act, 2013
And
In the matter of Sections 391 to 394 of the Companies Act, 1956
And
In the matter of Premchand Roychand & Sons Private Limited
And
In the matter of the Scheme of Arrangement
between
Premchand Roychand & Sons Private Limited (Demerged Company)
and
Premchand Business Management Private Limited (Resulting Company)

Called for Hearing

Mr. Kunal Mehta i/b M/s Crawford Bayley & Co, Advocate for Petitioner Company.

Mr. D. R. Shah i/b A. A. Ansari for Regional Director in both the Petitions.

CORAM: S. C. GUPTE, J

DATE: 29th September, 2015

PC:

1. Heard learned counsel for Petitioners. None appears 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 Arrangement between Premchand Roychand & Sons Private Limited (Demerged Company) and Premchand Business Management Private Limited (Resulting Company).

3. The learned Advocate for the Petitioner Companies further states that the Companies are engaged in business of operating serviced offices and to undertake all associated, incidental and ancillary services including but not limited to licensing, leasing, renting, hiring, administering and managing commercial office space from the owner and manager of the property.

4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The learned Counsel for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

6. The learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court as passed in the respective Company Scheme Petitions and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 read with the applicable provisions of the Companies Act, 2013, to the extent made effective, and the rules made thereunder. The said undertaking is accepted.

7. The Regional Director has filed his Affidavit on 28th September, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

> (a) *It has been observed that, both the Demerged Company and the Resulting Company are newely formed company and there is no general reserve created by those companies as per information gathered from latest financial position of the said companies. Clause 13.1(a) of the scheme provides that Resulting Company will issue shares out of the general reserve of the said company. It is therefore suggested that the words "from the general reserve that transferred from PRSPL to PBMPL" appearing in the said clause be deleted.*
>
> (b) *It has been further observed from the material papers mad available, it has been ascertained that the demerged company was incorporated on 19/08/2014 by converting the erstwhile partnership firm into a company under the provision of the Companies Act, 2013. The assets and liabilities of then partnership firm were vested with the demerged company without any change in the ownership of the partnership firm.*

Now, from the demerged company by way of this demerger again part of the assets and liabilities are proposed to be transferred to the Resulting Company. Both the companies are in existence for less than 2 years. Under the facts and circumstances of the case whether such transferor of assets and liabilities from demerged company to resulting company is in compliance of provision of Income Tax Act oe not is a matter within the domain of Income Tax Authority in this regard the decision of the Income Tax Authority is binding of the petitioner 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.*

8. So far as the objection of the Regional Director, Western Region, Ministry of Corporate Affairs, So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Learned Advocate appearing on behalf of the Petitioners submit that there is typographical errors/mistakes in clause 13.1 (a) of the Scheme, as both the Demerged Company and the Resulting Company does not have general reserve Account. Hence, the Learned Advocate for the Petitioner Companies seeks leave of this Court to delete the words "from the general reserve that transferred from PRSPL to PBMPL" from clause 13.1 (a) of the Scheme. Leave to amend the Scheme is granted. Amendments to be carried out within period of two weeks from the date of the order.

9. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Learned Advocate appearing on behalf of the Petitioners submit that the transfer of assets and liabilities from demerged company to resulting

company is in compliance of provision of Income Tax Act or not is a matter within the domain of Income Tax Authority and all issues arising in this regards will be met and answered in accordance with Income Tax Act.

10. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6 (c) of his Affidavit is concerned, the learned Counsel of the Petitioners submits that the Petitioners are bound to comply with all applicable provisions of the 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 and amendment sought by the Advocate for the Petitioner Company. The said undertaking 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, Company Scheme Petition No. 724 of 2015 and Company Scheme Petition No. 725 of 2015 are made absolute in terms of prayer clauses (a) and (b).

14. 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 this order.

15. Petitioner Companies are directed to file/lodge a copy of this 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 read with the applicable provisions of the Companies Act, 2013..

16. The Petitioners in both the Company Scheme Petitions are directed to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE, J.)