IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 867 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 758 OF 2014.

SAGAR PRODUCTIONS LIMITED

....Petitioner 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 read with Sections 100 to 105 of the Companies Act, 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Scheme of Arrangement Between SAGAR PRODUCTIONS LIMITED and THE EQUITY SHAREHOLDERS OF SAGAR PRODUCTIONS LIMITED.

<u>Called for hearing</u>

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioner.

Ms. S. I. Shah i/b Mr. A. A. Ansari for Regional Director in the Petition.

CORAM: S. J. Kathawalla, J.

DATE : 18th April, 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 Arrangement Between SAGAR PRODUCTIONS LIMITED and THE EQUITY SHAREHOLDERS OF SAGAR PRODUCTIONS LIMITED AND Their Respective Shareholders & Creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioner states that the Petitioner Company at present the Company is carrying on the business of manufacturing of High Pressure and Low pressure vessels tanks. The proposed scheme of Arrangement will have the benefit that the last one decade, in spite lots of steps and efforts to implement the project in hand, the Company could not succeed and on the contrary it has incurred heavy losses amounting cumulatively Rs. 5,45,40,382/- as on 30th September, 2013. Since it is difficult to visualize such extremely favorable circumstances in future as to wipe off these losses completely out of further profits (although the present indications are that the Company is in a position to start on an even keel after these losses are wiped off), the special resolution is proposed to enable the Company to start on a new slate.

4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Arrangement by passing Board Resolution which are annexed to the Company Scheme Petition.

5. The Learned Counsel for the Petitioner further states that, Petitioner Company have complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Direction.

6. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company 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 Company 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 Regional Director has filed an Affidavit on 15th day of April, 2015 stating therein, save and except as stated in paragraph 6(a) and 6(b), 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 Deponents further submits that,

(a) *As per Clause no. 3.1 and 9.1 of the Scheme, at the first instance, the existing authorized capital of the petitioner company will be reclassified form Rs. 6,00,00,000/- divided into 6,00,00,000/- equity shares of Rs.1/- each into 15,00,000 equity shares of Rs.40/- each. After reduction of the paid up capital to write off the debit balance from the Profit and Loss Account of the Petitioner company, the authorized capital will e again reclassified into Rs. 6,00,00,000/- divided into 6,00,00,000 equity shares of Rs.1/- each. In this regard, the Petitioner company may be directed to file necessary intimation or relevant forms to the Registrar of Companies, with reference to such reclassification and further reclassification of authorized capital of the petitioner company.*

(b) *With respect to Clause No. 5 of the Scheme, it is submitted that the reduction of paid up capital of Petitioner Company would not entitle the petitioner company to issue fresh shares within the existing authorized capital. The present authorized capital of the petitioner company is Rs.6,00,00,000/- out of which the petitioner company already exhausted the authorized capital to the extent of Rs. 5,36,85,000/- leaving unutilized portion of authorized capital to the extent of Rs.63,15,000/-. As per Clause no.12 of the Scheme, the company proposed to issue 4,00,00,000 equity shares of Rs.1/- each on conversion of 4,00,00,000 warrant of Rs. 1/-each. For issuing such shares, the authorized capital of the Petitioner company post reduction would not be sufficient and hence, the Petitioner company has to increase its authorized capital suitably at the appropriate time, for issue of new shares by converting the proposed issue of warrant. In this connection, the Petitioner Company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel undertakes to comply with and to file necessary intimation or relevant forms to the Registrar of Companies, with reference to such reclassification and further reclassification of authorized capital of the Petitioner Company.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company undertakes that the Petitioner Company will increase its Authorised Capital for issue of new Shares by converting proposed issue of warrant and comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

10. 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 Petitioner. The undertakings given by the Petitioner Company 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. 867 of 2014 is made absolute in terms of prayers clause (a) and (c).

13. 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.

14. Petitioner is directed to file an authenticated 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.

15. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. 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 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.)