IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.793 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.691 OF 2014

Swadeshi Vinimay Private Limited ... Transferor Company No.1/ Petitioner Company

AND

COMPANY SCHEME PETITION NO.794 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.690 OF 2014

Shobha Texport Private Limited ... Transferor Company No.2/ Petitioner Company

WITH

COMPANY SCHEME PETITION NO. 795 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 692 OF 2014

Varun Texport Private Limited ... Transferee Company/ Petitioner Company

In the matter of Companies Act 1 of 1956;

AND

In the matter of Section 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Swadeshi Vinimay Private Limited (Transferor Company No.1) and Shobha Texport Private Limited (Transferor Company No.2) with Varun Texport Private Limited (Transferee Company)

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan, Mr. Ameya Lambhate, for the Petitioners.

Mr. G. Hariharan i/b. H. P. Chaturvedi for the Regional Director in all the Company Scheme Petitions.

Mr. S. Ramakantha, Official Liquidator in Company Scheme Petition Nos.793 and 794 of 2014

Coram : S. J. Kathawalla, J.

Date : 20th March, 2015

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Swadeshi Vinimay Private Limited (Transferor Company No.1) and Shobha Texport Private Limited (Transferor Company No.2) with Varun Texport Private Limited (Transferee Company).

3. Learned Advocate for the Petitioner Companies state that the Transferor and Transferee Companies are engaged in the business of textile and yarn trading.

4. The proposed scheme of amalgamation of the Transferor Companies with Transferee company will have the benefit that the other assets including current assets of the Transferor Companies which were under-utilized and shall be properly, gainfully and efficiently utilized which would augment the asset base and thereby resulting in the optimal utilization of the resources and greater revenue inflow and the consolidated entity shall provide strategic and competitive advantage to achieve its desired object and with current global trends to achieve

size, scale, integration and greater financial strength and flexibility and the consolidated entity is likely to achieve higher long term financial returns than could be achieved individually by the Transferor Companies and it will bring administrative and operational rationalization, organizational efficiencies and rationalization in economies of scale and more optimal utilization of various resources and the managerial expertise of Transferor Companies would be combined giving additional thrust to the Transferee Company and the synergies created by the merger may increase operational efficiency and integrate marketing functions and it would contribute towards enhancement of shareholders' value of the Transferee Company and it will enable streamlining the activities of the respective companies and will also reduce managerial overlaps, which are necessarily involved in running multiple entities.

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

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Order passed in Company Summons for Directions.

7. The Learned Advocate appearing on behalf of the Petitioners has states that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Companies through their Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 17th March, 2015 in Company Scheme Petition No. 793 and 794 of 2014 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 25th February, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 reads as under:

6. That the Deponent further submits that:-

(a) With reference to clause no. 10.4 of the Scheme, it is submitted that the capital reserve arising out of the scheme is not a free reserve and shall not forming a part of the net worth of the of the Transferee Company;

(b) 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.

10. As far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the petitioners undertake that the capital reserve arising out of the scheme will not be treated as free reserve and shall not forming a part of the net worth of the Transferee Company;

11. As far as the observations made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act,

and all tax issues arising out of scheme will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 793 and 794 of 2014 is made absolute in terms of prayer clause (a), (b) and (d) and Company Scheme Petition No. 795 of 2014 is made absolute in terms of prayer clause (a) and (c).

15. The Petitioner Companies are directed 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.

16. The Petitioner Companies are further 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 copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No. 793 to 795 of 2014 and to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 793 and 794 of 2014. Costs to be paid within four weeks from the date of the Order.

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

19. 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.)