

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 9 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 853 OF 2014.

SWARAAJ FASHIONS PRIVATE LIMITED

....Petitioner/ First Transferor Company

AND

COMPANY SCHEME PETITION NO.10 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 854 OF 2014.

MERIDIAN TRADING 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 SWARAAJ FASHIONS PRIVATE
LIMITED, (the Transferor Company)

WITH

MERIDIAN TRADING PRIVATE LIMITED,
(the Transferee Company)

Called for hearing

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

Mr. P.S. Jetly i/b Dr. H. Chaturvedi for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No.853 of 2014.

CORAM: S. J. Kathawalla, J.
DATE : 20th March, 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 SWARAAJ FASHIONS PRIVATE LIMITED, the Transferor Company with MERIDIAN TRADING 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 First Transferor Company is carrying on business as manufacturers, importers, exporters in all shapes and sizes of goods and leathers products and combination thereof such as footwears, fashions wears, mens wear, ladies wear children wear and such other article or things etc and Transferee Company is caring the business of trading in goods and commodities. The proposed scheme of Amalgamation will have the benefit that the

combined operations offer better business opportunities owing to economies of scale, integrated operations and reductions in costs and that the amalgamation would enable optimum utilization of Funds & Resources and that the amalgamation would also enable the merged entity to grow much faster with consolidated resources and that the amalgamation will integrate all activities of management functions thereby achieving reduction in overhead costs and improving control over costs. It will also lead to administrative convenience and greater internal controls.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement 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 2nd day of March, 2015 in Company Scheme Petition No. 853 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 18th day of March, 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 Deponents further submits that,

(a) Clause 12.5 of the scheme provides for adjustment for 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) 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. 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 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 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 undertakings given by the Petitioners. The above undertakings 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. 853 of 2014 is made absolute in terms of prayers clause (a) and (d) and 584 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. 853 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.)