IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 54 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 397 OF 2014

Ramchandra Enterprises

…….Petitioner/ Transferor Company No. 1

AND

COMPANY SCHEME PETITION NO 55 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 398 OF 2014

Preetam Enterprises

…….Petitioner/Transferor Company No. 2

AND

COMPANY SCHEME PETITION NO 56 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 399 OF 2014

Dunung Industries Private Limited

….Petitioner/Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 or any corresponding provisions of Companies Act, 2013 as may be notified);;

AND

In the matter of Scheme of Amalgamation of Ramchandra Enterprises and Preetam Enterprises with Dunung Industries Private Limited and their Respective Shareholders/partners

<u>Called for Hearing</u>

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

P. Khosla, i/b Mr. A.A. Ansari for Regional Director in all the Petitions.

CORAM: S. C. GUPTE, J.

DATE: 3rd JULY 2015

1. Heard the learned counsel for the Petitioner. No objector has come 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 Amalgamation of Ramchandra Enterprises and Preetam Enterprises with Dunung Industries Private Limited and their Respective Shareholders/partners.

3. The Transferor Company No.1 is engaged in the business of machining/manufacture of different products required by various industries. The Transferor Company No.2 is engaged in the business of machining/manufacture of different products and in generation of power required by various industries or such other business of businesses as the parties may mutually decide. The Transferee Company is primary engaged in the business of machining/manufacture of different products required by various industries.

4. The rational for Scheme is Synergies in procurement, manufacturing, administration and marketing operations, achieving economies of scale, Avoiding duplication of efforts, costs and resources, lesser regulatory / procedural compliance, Integrate, rationalize and streamline the management structure of the merged business, combined capital resources would strengthen the financial position of the merged entity and result in increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes, Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs, Amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings, cost saving in fees/ duties payable on statutory and procedural compliance, facilitate inter transfer of resources and costs and optimum utilization of assets, synchronizing of efforts to achieve uniform corporate policy, ease in decision making and to reflect the consolidated net worth of these companies in one balance sheet.

5. The Transferor Companies and Transferee Company have approved the said Scheme of Amalgamation in their Respective Partners meeting/Board Meeting which are annexed to the Company Scheme Petitions filed by the Petitioner Companies.

6. The learned counsel for the Petitioner state that Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

7. Counsel appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioners undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 12th June, 2015, stating therein, save and except as stated in paragraph 6(a), 6(b), 6(c) and 6(d), it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6(a),6(b),6(c) and 6(d), of the said affidavit it is stated that:-

The Dependent further submits :-

(a) Clause 9.4 of the Scheme states that Excess/Surplus arising out of this Scheme shall be transferred to the "amalgamation Reserve Account" and Clause 9.6 of the Scheme states that the said 'Amalgamation reserve Account' shall be considered as a free reserve available for distribution and shall form part of the net worth of the Transferee Company. In this regard, it is submitted that the Excess/Surplus arising out of Scheme is due to transfer of capital assets from Transferor company to Transferee Company and hence that part of the reserve cannot be construed as free reserve and cannot form part of net worth of the Transferee Company.

(b) The Income Tax Department vide letter dated 05/05.2015 annexed herewith as Exhibit-D has informed its 'No objection' in respect of second Transferor Company /Firm, subject to recovery of outstanding demand amounting Rs. 12.09 Lacs , Rs 13.72 lacs and Rs. 71.82 Lacs for the Assessment Year 2009-10, 2011-12 and 2012-13 respectively.in this regard, it is respectfully submitted that the tax implication, if any arising out the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Incoem tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme . the decision of the Income Tax Authority is binding on the Transferor Companies/Firms and Transferee Company.

(c) The Transferor Companies/firms are Partnership firms. Hence, the Transferee Company may be directed to take appropriate steps to dissolve the said Transferor Companies/Firms upon scheme becoming effective.

(d) Clause 14 of the Scheme provides for Modification and Amendments to Scheme wherein the Partners and Board of Directors of Transferor Companies /Firms and Transferee Company respectively have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court, such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.

9. In so far as observation made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Transferee Company through their counsel clarify that surplus, if any arising out of the Scheme shall be credited to Capital Reserve Account and deficit if any arising, shall be debited to Goodwill Account of the Transferee Company.

10. As far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company is bound to comply with all applicable provisions of Income Tax Act, 1961 and all tax issues arising out of scheme will be met and answered in accordance with law.

11. In so far as observation made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Counsel for the Transferor Companies submits that in terms of Clause 18 of the Scheme, upon the Scheme being sanctioned by an

order made by this Court under Section 394 of the Act, the Transferor Companies shall be succeeded by the Transferee Company and the Transferor Companies shall be dissolved without going through the process of winding up.

12. So far as third observations made by the Regional Director in paragraph 6(d) of his Affidavit, the Petitioner Companies submit that the Partners/Board of Directors of the Transferor Companies and Transferee Company will not make any amendments to the Scheme after the Scheme is approved by the Court without obtaining a prior approval of this Court. It is clarified that the power vested under clause 14 of the scheme will be subject to the approval of High Court.

13. The Learned Counsel appearing 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 undertaking given by the Petitioner Companies. The said undertakings given by Petitioner Companies are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

16. Petitioners are 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 the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. 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 receipt of the Order.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region.

19. Costs to be paid within four weeks from today.

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

21. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. C. GUPTE, J.)