IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 115 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 5 OF 2016

ELEANOR LIFESPACES PRIVATE LIMITED

.... Petitioner / the Transferor Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act 2013;

AND

Eleanor Lifespaces Private Limited ("the Transferor Company ") WITH Sunteck Fashions and Lifestyles Private Limited ("the Transferee Company") AND their respective Shareholders

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for Petitioner the Company Scheme Petition.
Mr. Pranil Sonawane i/b Mr. Pankaj Kapoor for Regional Director in the Company Scheme Petition.
Mr. Vinod Sharma for the Official Liquidator.

Coram: B. P. Colabawalla, J.

Date: 17th June , 2016

1. Heard the learned advocate for the Petitioner Company. 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 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 to the Scheme of Amalgamation of Eleanor Lifespaces Private Limited with Sunteck Fashions and Lifestyles Private Limited and their respective shareholders.

3. Learned Advocate for the Petitioner states that the Petitioner is presently engaged in the business of Real estate development and the transferee Company is engaged in the business of the manufacturer, buyer, seller, dealer, wholesalers, distributors, retailers, shopkeepers in all types of life styles and luxury products, clothes, fashion products, apparels, general merchandise and fabrics.

4. The rationale for the merger is that the amalgamation of the Petitioner Company with the Transferee Company will benefit the company and its stake holders on account of simplification of group structure, rationalisation of administrative overheads and greater administration efficiency.

5. Learned Advocate for the Petitioner Company states that the Petitioner Company is wholly owned subsidiary of Denise Realties Private Limited which in turn is a wholly owned subsidiary of the Transferee Company and there is no re-organization of share capital of the Transferee Company and no new shares are required to be issued by the Transferee Company and rights of creditors of Transferee Company are

not affected as mentioned in paragraphs 18 to 21 of the Affidavit in support of Company Summons for Direction and observations made by this court in Mahaamba Investment Ltd v/s IDI Limited (2001) 105 Co cases page 18 to 21. In view of the above the filing of separate Company Summons for Direction and Company Scheme Petition under Section 391 and 394 of the Companies Act, 1956 by Sunteck Fashions and Lifestyles Private Limited ('SFLPL), the Transferee Company was dispensed with by order dated 8th January, 2016 passed in CSD No. 5 of 2016.

6. Both the Petitioner Company and the Transferor Company have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

7. The Counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the order passed in respective Company Summons for Direction.

8. The Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under. The said undertaking is accepted.

9. The Regional Director has filed its Affidavit on 13th June, 2016 stating therein that save and except as stated in paragraph 6 (a) and 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) and 6(b), of the said affidavit it is stated that:

a) *Clause 6.4 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 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) *It is respectfully submitted that the tax implication, if any, arising out of 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 Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.*

10. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Petitioner Company undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

11. As far as observations made in paragraph 6 (b) of Affidavit of the Regional Director is concerned, the Petitioner Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation 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 Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submission given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

13. The Official Liquidator has filed his report on 25th April, 2016 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor may be ordered to be dissolved by this Court.

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, the Company Scheme Petition filed by the Petitioner /Transferor Company are made absolute in terms of prayer clauses (a) and (c).

16. The Petitioner Company to lodge 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 issuance of Order.

17. The Petitioner Company is 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 copy as per the relevant provisions of the Companies Act 1956 / 2013.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

20. 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.

(B. P. Colabawalla, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by: - Shankar Gawde, Stenographer