IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.211 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 38 OF 2016

Jay Instruments and SystemsPrivate Limited
.... Demerged / Petitioner Company
AND

COMPANY SCHEME PETITION NO.212 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 39 OF 2016

Suchi Managed Services Private Limited
.... Resulting / Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956) and Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and Section 55 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement of Jay Instruments and Systems Private Limited and Suchi Managed Services Private Limited

AND

Their respective shareholders and creditors

Called for hearing

Mrs. Alpana Ghone along with Chandrakant Mhadeshwar, Advocate for the Petitioner Company

Mr. Ashish Mehta i/b Pankaj Kapoor Regional Director for the Petitioner Company

CORAM: A. K. Menon, J.

DATE: 1st September, 2016

PC:

1. Heard Learned Counsel 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 this Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and Section 55 of the Companies Act, 2013 to the Scheme of Arrangement between Jay Instruments and Systems Private Limited ('the Demerged Company') and Suchi Managed Services Private Limited ('the Resulting Company') and their respective shareholders and Creditors.

3. The Learned Counsel for the Petitioner states that the Demerged Company is engaged in the following two businesses:
   i. Manufacturing & trading in machinery and equipment for Weighing, color and textile, check weighing, printer and other industries ("Industrial Automation Business"); and
   ii. Facility Management Services primarily relating to leasing of office / factory space and other related services

4. The Resulting Company has been incorporated to carry on the business of the Facility Management Division post demerger from Jay Instruments and Systems Private Limited.

5. The rational for the Scheme is that the Demerged Company is currently owned and operated by the Kothari family headed by Mr. Sharadchandra Kothari. Pursuant to an Arbitration Award on the 15th

day of May 2014 involving the family members, it has been directed that the Facility Management Division (therein referred to as Real Estate Business Division) be transferred by way of demerger to a company owned by Mr. Nikhil Sharadchandra Kothari. In order to implement the Arbitration Award, this Scheme is proposed for the demerger of the Facility Management Business from the Demerged Company to the Resulting Company.

6. Learned Counsel for the Petitioner 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 Company Scheme Petitions of the respective companies.

7. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Counsel appearing on behalf of the Petitioner Companies has 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.

9. The Regional Director has filed an Affidavit on 31st August, 2016 stating therein that save and except as stated in para 6(a) to 6(c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In para 6(a) to 6(c) of the said Affidavit, the Regional Director has stated as follows:-

"6. That the Deponent further submits that,

(a) Clause 14 and 16 of the scheme the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to goodwill account of Resulting Company.

(b) Regarding clause 15 of the scheme, the company has make necessary application u/s 100 to 103 of the Companies Act, 1956 regarding reduction share capital.

(c) *That Deponent further submits that the Tax issues 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. So far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Resulting Company through its Counsel undertakes that the surplus if any arising out of the Scheme shall be credited to Capital Reserve an deficit if any arising out of the scheme shall be debited to goodwill account of Resulting Company.

11. So far as the observations made in paragraph 6 (b) of the affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioners states that this Court, had vide its order dated 11th day of February, 2016 dispensed with the requirement of following the procedure prescribed under 101 (2) of the Companies Act, 1956. In view of the fact that the utilization of the Capital Redemption Reserve does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and is not prejudicial to the interest of the shareholders and / or creditors. In view thereof, there is no requirement of filing a separate application.

12. So far as the observation made by the Regional Director in paragraph 6 (c) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner is bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. The Learned Counsel for the Regional Director on the instructions of Mr. S. Ramakant, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that he is satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the 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. None of the parties concerned have come forward to oppose the Scheme in the court.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 211 of 2016 is made absolute in terms of the prayer made under clauses (a) to (d) and Company Scheme Petition No. 212 of 2016 is made absolute in terms of the prayer made under clauses (a) to (c).

16. The Petitioner Company to file a copy of this order and 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 receipt of the final Order.

17. 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 concerned E-Form INC 28 pursuant to the Companies Act, 2013in addition to physical copy as per provisions of the Companies Act 1956 / 2013.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. 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 the Scheme and the form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(A. K. Menon, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.