IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 196 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 98 OF 2016.

CORAL COSMETICS LIMITED

....Petitioner/ the Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 197 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 99 OF 2016

D. D. SHAH FRAGRANCES PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provisions of the 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

In the matter of Scheme of Amalgamation of CORAL COSMETICS LIMITED, the Transferor Company with D. D. SHAH FRAGRANCES PRIVATE LIMITED, the Transferee Company.

Called for hearing

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

Mr. Shivraj Patil i/b Mr. Pankaj Kapoor for the Regional Director.

Mr. Vinod Sharma, the Official Liquidator.

CORAM: A.K Menon, J.
DATE: 22nd September, 2016

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 CORAL COSMETICS LIMITED, the Petitioner Company with D. D. SHAH FRAGRANCES PRIVATE LIMITED, the Transferee Company,

under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of manufacturers, producers, makers, refiners, processors, etc. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management, that all the Companies are under same management and it would be advantageous to combine the activities and operations in a single Company and the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation 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 August, 2016 in Company Scheme Petition No. 196 of 2016 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

8. The Regional Director has filed an Affidavit on 18th day of August, 2016 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 Deponent further submits that,

(i) That the Petitioner in Clause No.13 of the Scheme inter alia has mentioned that if there is a surplus arising as a result of the difference, if any, of the value of the assets over the value of the liabilities of the Transferor Company, in accordance with this Scheme, the same shall be credited to Capital Reserve Account of the Transferee Company and in event of deficit. if any, the same shall be debited to the Goodwill Account of the Transferee Company. The Petitioner Company not mentioned regarding accounting standard adopted for accounting treatment.

(ii) 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 Authorities and approval of the scheme by this Hon'ble High court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner companies.

(iii) That the Petitioner in Clause No.5 of the Scheme inter alia has mentioned that the Scheme shall not operate to enlarge the security for any loan, deposit or facility created by or available to the Transferor Company and which shall vest in the Transferee Company by virtue of the amalgamation and the Transferee Company shall not be obliged to create any further or additional security after the amalgamation has become effective or otherwise unless specifically provided hereinafter. There are no secured creditors of Transferor Companies as per Scheme and ROC report which the companies may be asked to confirm.

(iv) That the Petitioner in Clause No.11 of the Scheme inter alia has mentioned that if necessary, the Transferee Company shall, before allotment as aforesaid of the equity shares in terms of the scheme, increase its authorized capital by the recreation of at least such number of equity shares of Rs.10/- each as may be necessary to satisfy its obligation under the scheme.

(v) Registrar of Companies in his report has observed non-compliance of provisions of Section 203 read with Rules 8-A of Companies

(Appointment and Remuneration) Rules 2014 by Transferor Company as its paid up capital is Rs. 5 crores. Deponent pray that the Hon'ble court may pass such orders as deem fit.

9. So far as the observation in paragraph 6 (i) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that if there is a surplus arising as a result of the difference, if any, of the value of the assets over the value of the liabilities of the Transferor Company, in accordance with this Scheme, the same shall be credited to Capital Reserve Account of the Transferee Company and in event of deficit if any, the same shall be debited to the Goodwill Account of the Transferee Company. The Petitioner Company through its Counsel further submits that in the Affidavit of the Director filed with Regional Director they have already mentioned that they will comply with AS-14 for accounting treatment.

10. So far as the observation in paragraph 6(ii) 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. So far as the observation in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner

Companies submit that the Scheme will not operate to enlarge the securities for any loan, deposit or facility created by or available to the Transferor Company and which shall vest in the Transferee Company by virtue of the amalgamation and the Transferee Company will not create any further or additional security after the amalgamation has become effective or otherwise unless specifically provided hereinafter. The Petitioner Company through its Counsel further submits that there are no secured creditors of the Transferor Company.

12. So far as the observation in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that if necessary, the Transferee Company shall, before allotment as aforesaid of the equity shares in terms of the scheme, increase its authorized capital by recreation of at least such number of equity shares of Rs.10/- each as may be necessary to satisfy its obligation under the scheme.

13. So far as the observation in paragraph 6 (v) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Registrar of Companies had observed non-compliance of provisions of Section 203 read with Rules 8-A of Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014 by Transferor Company as its paid up capital is Rs. 5 crores. The same is defaulted due to the reason that the Transferor

Company has tried and interviewed several candidates for the post of Whole Time Company Secretary but the Transferor Company could not find a suitable candidate for the same. The Petitioner Company through its counsel further submitted that the Transferor Company is being dissolve with effect to the Scheme. However, The Counsel for the Petitioner further submits that the Transferor Company had filed for the Compounding of an offence with the National Company Law Tribunal.

14. The Learned Counsel for Regional Director on instructions of Deputy Director 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 are accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 196 of 2016 is made absolute in terms of prayers clause (a) to (d) and 197 of 2016 is made absolute in terms of prayer clauses (a) to (c).

17. 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.

18. The 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.

19. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 196 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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 Scheme 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.