

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.215 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.157 OF 2016

Western India Garments Private LimitedPetitioner/the First
Transferor Company.

AND

COMPANY SCHEME PETITION NO.216 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.158 OF 2016

Pinkhem Investments Co Private LimitedPetitioner/the Second
Transferor Company.

AND

COMPANY SCHEME PETITION NO.217 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.159 OF 2016

Mode Export Private LimitedPetitioner/the Third
Transferor Company.

AND

COMPANY SCHEME PETITION NO.218 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.160 OF 2016

Veer Mercantile Private LimitedPetitioner/the Transferee
Company.

In the matter of the Companies Act I of
1956.

AND

In the matter of Sections 391 to 394
read with Sections 100 to 103 of the
Companies Act, 1956.

AND

In the matter of the Scheme of
Arrangement between:

Western India Garments Private
Limited.

AND
Pinkhem Investments Co Private
Limited.

AND
Mode Export Private Limited.

WITH
Veer Mercantile Private Limited

AND
their Respective Shareholders.

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co, Advocate for the Petitioner in all the Petition.

Mr.Arunkumar Roy with Mr.Aswini Singh i/b Shri. Pankaj Kapoor for Regional Director in all the Petition.

Mr. Vinod Sharma, Official Liquidator present in Company Scheme Petition No. 215 to 217 of 2016.

Mr.Hasmukh Ravaria i/b Juris Link for M/s.Enarr Infrastructure Private Limited, the Unsecured Creditors of Pinkhem Investments Co Private Limited, the Second Transferor Company in C.S.P No.216 of 2016.

CORAM: B.P.COLABAWALLA, J

DATE: 22ND JULY, 2016

PC:

1. Heard counsel for the Petitioner Companies and the counsel of Enarr Infrastructure Private Limited, the objecting Unsecured Creditors of Pinkhem Investments Co Private Limited, the Second Transferor Company.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act,1956 to a Scheme of Arrangement between Western India Garments Private

Limited and Pinkhem Investments Co Private Limited and Mode Export Private Limited with Veer Mercantile Private Limited and their respective shareholders for Amalgamation of Western India Garments Private Limited and Pinkhem Investments Co Private Limited and Mode Export Private Limited with Veer Mercantile Private Limited and reduction of share capital of Veer Mercantile Private Limited.

3. The Learned Advocate for the Petitioner Companies states that the First Transferor Company is presently carrying on business of investments in shares and securities. The Second Transferor Company is presently carrying on business of trading and investments in shares & Securities, Mutual Funds and is also carrying on business of lending intercorporate deposits. The Third Tradnsferoro Company is presently carrying on business of lending intercorporate deposits and business of trading in commodity and investments in shares & Securities, Mutual Funds and is also deriving rental incomes and the Transferee Company carries on the business of investments in shares & Securities and of lending intercorporate deposits.

4. The Learned Advocate for the Petitioner Companies further states that the Scheme of Arrangement shall result into Integration of operations efficient management control and system and the

Arrangement would result in optimum utilization of resources which would reduce the administrative costs and other overheads which are presently being multiplied because of separate entities and enhance values of all stake holders in the long run

5. The Learned Advocate for the Petitioners states that the Board of Director of the Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner in Company Scheme Petition No 218 of 2016, states that Scheme includes reduction and consequent cancellation of Share Capital of the Transferee Company and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholders and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 4th March,2016 passed in C.S.D No 160 of 2016.

7. The Learned Advocate for the Petitioners 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.

8. The Learned Advocate 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.

9. The Regional Director has filed his Affidavit on 15th June, 2016 stating therein, save and except as stated in paragraphs 6 it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

a) *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.*

10. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6 of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is bound to comply with all 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.

11. The Learned Counsel for Regional Director on instructions of Mrs. P. Sheela, Joint Director, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions made by the Petitioner Companies through their advocate.

12. The Official Liquidator has filed his report on 7th July, 2016 in Company Scheme Petition No 215 to 217 of 2016 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

13. The learned Advocate for the Petitioners states that in so far as objections filed by Enarr Infrastructure Private Limited the Objecting Unsecured Creditor of Pinkhem Investments Co Private Limited, the Second Transferor Company in C.S.P No.216 of 2016 is concerned, the rights of the objecting Unsecured Creditor are not affected as there is no compromise or arrangement with any of the

creditors as the Scheme is an Arrangement between the Petitioner Companies and its respective shareholders as contemplated under Section 391(1)(b) and not in accordance with the provisions of Section 391(1)(a) of the Companies Act, 1956 as there is no compromise and /or arrangement with the creditors and no sacrifice is required from the creditors. Since the claim of the objecting Unsecured Creditor is disputed, it will be open for Unsecured Creditor to pursue appropriate legal remedy for recovery of the dues in accordance with law. The Transferee Company shall abide by the final outcome of the said legal remedies, if any, in favour of the Unsecured Creditor.

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 No.215 of 2016 filed by the First Transferor Company are made absolute in terms of prayer clause (a) to (c) and Company Scheme Petition No.216 of 2016 filed by the Second Transferor Company are made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.217 of 2016 filed by the Third Transferor Company are made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.218 of

2016 filed by the Transferee Company are made absolute in terms of prayer clause (a) to (e).

16. 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 this order.

17. The Petitioners are directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

18. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition Nos. 215 to 217 of 2016 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

19. Petitioner in Company Scheme Petition No. 218 of 2016 to publish a notice of registration of order and form of minutes of reduction of capital annexed as Exhibit 'M' to Company Scheme

Petition No.218 of 2016 by Registrar of Companies once each in the two local newspaper, viz, viz, “The Free Press Journal” in English language and translation thereof in “Navshakti” in Marathi Language, both having circulation in Mumbai and also in the Maharashtra Government Gazette within 14 days of registration.

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 and Form of Minutes annexed as Exhibit “M” to the Company Scheme Petition No.218 of 2016 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