IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 384 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 33 OF 2016

Shyam Fabrics Pvt. Ltd. ... Petitioner/the Transferee Company

AND

COMPANY SCHEME PETITION NO. 385 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 34 OF 2016

Real Cotton (India) Pvt. Ltd. ... Petitioner/the Transferor Company 2

AND

COMPANY SCHEME PETITION NO. 386 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 35 OF 2016

Anilkumar Cotton Textiles Mills Pvt. Ltd. ...Petitioner/the Transferor Company 1

In the matter of Companies Act I of 1956.

And

In the matter of Sections 391 to 394 of the Companies Act, 1956.

And

In the matter of Scheme of Amalgamation of:

Shyam Fabrics Pvt. Ltd.

WITH

Real Cotton (India) Pvt. Ltd. & Anilkumar Cotton Textile Mills Pvt. Ltd

AND

their respective shareholders and creditors.

**Called for Hearing**

Mr. Shailesh P. Dalal, i/b Dalal & Co. Advocates for the all three Petitioner Companies.

Ms. Shalaka Gujar i/b Shri Pankaj Kapoor for Regional Director in both the Petition.

Ms. Yogini Chauhan, Dy. Official Liquidator present in Company Scheme Petition Nos. 385 & 386 of 2016.

**Coram : S. C. Gupte, J.**

**Date : 16th December, 2016**

**PC**:

1. Heard learned counsel for parties. None appears to oppose the Scheme nor has 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 a Scheme of Amalgamation of Shyam Fabrics Pvt. Ltd. with Real Cotton (India) Pvt. Ltd. & Anilkumar Cotton Textile Mills Pvt. Ltd. and their respective shareholders and creditors.

3. The Learned Counsel for the Petitioners states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. 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.

5. 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 Affidavits 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.

6. The Regional Director has filed his Affidavit dated 17.11.2016 stating therein save and except as stated in paragraphs 6(a) to (c) it appears according to Regional Director 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:-

(a) In addition to the 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) The tax implication 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.

(c) ROC Mumbai vide Report/Letter No. ROC/STA (DG)/40873/391-394/518 dated 14.09.2016. Has mentioned that no complaints are received and the matter may be decided on merits. However, at point 29 of the said letter has made few observations the details are as under:-

(i) Statutory auditor vide para no. 8 of the Audit Report dated 10.07.2015 on the financials of the Transferor Company 1 (M/s Anilkumar Cotton Textile Mills Private Limited) has qualified the audit report regarding non-compliance with Schedule II of the Companies Act, 2013 in the matter of depreciation on fixed assets. This amount to violation of the provisions of CA.2013. Further, the reasons for non-compliance and deviation were not mentioned in the Notes of Accounts. This amounts to violation of provisions of Schedule II read with provisions of Section 129 of the Companies Act, 2013. Accordingly, the Company may directed to compound the offence under Section 441 of the Companies Act, 2013.

(ii) Statutory auditor vide para no. 8 of the Audit Report dated 10.07.2015 on the financials of the Transferor Company 2 (M/s Real Cotton (India) Private Limited) has qualified the audit report regarding non-compliance with Schedule II to the Companies Act, 2013 in the matter of depreciation on fixed assets. This is violation of the provisions of CA. 2013. Further the reasons for non-compliance and deviation were not mentioned in the Notes of Accounts. This amounts to violation of provisions of Schedule II read with provisions of Section 129 of the Companies Act, 2013. Accordingly the Company may directed to compound the offence under section 441 of the Companies Act, 2013.

(iii) Statutory auditor vide para no. 8 of the Audit Report dated 10.07.2015 on the financials of the Transferee Company (M/s Shyam Fabrics Private Limited) has qualified the audit report regarding non-compliance with Schedule II to the Companies Act, 2013 in the matter of depreciation on fixed assets. This amounts to violation of provisions of Schedule II read with provisions of Section 129 of the Companies Act,

2013. Accordingly, the company may directed to compound the offence under Section 441 of the Companies Act, 2013.

(iv) As per the Share Capital Note of the Balance Sheet as at 31.03.2015 in respect of M/s Shyam Fabrics Private Limited the Transferee Company, 14,155 shares (equivalent to 15.76%) of the Transferee Company were held by the Transferor Company 1 (M/s Anilkumar Cotton Textile Mills Private Limited). Accordingly, this require reduction of share capital of the Transferee Company and however the same was not provided in the Scheme. With reference to the para no. 11 of the Scheme, it is noticed that the same/ scheme is silent about the shares of the Transferee Company held by the Transferor Companies and such para no. 11 of the Scheme it do not provide reduction of Share Capital of the Transferee Company as its shares were held by M/s Anilkumar Cotton Textile Mills Private Limited the first Transferor Company and also by M/s Real Cotton (India) Private Limited 2nd Transferor Company as mentioned vide para no. 3(c) of the Scheme. However, such scheme do not cover the issue of reduction of share capital of the Transferor Company under the provisions of Section 66 of Companies Act, 2013. Hence, Company be directed to comply with the provisions of section 66 of the Companies Act, 2013.

(v) The share capital of M/s Real Cotton (India) Private Limited 2nd Transferor Company as mentioned at para no. 3 (b) of the scheme, at Note: indicates that 10,210 equity shares are held by the Transferee Company (M/s Shyam Fabrics Private Limited). As per Note : 9 to the financial statements as at and for the year ended 31st March 2015 of M/s Shyam Fabrics Private Limited indicates that company has got investments in equity shares of M/s Real Cotton (India) Private Limited per as 10,201. As there is an inconsistency, the Company may please be directed to clarify the same.

(vi) Further, note to para 3(c) of the Scheme at Note: indicates that 10 equity shares are held by Second Transferor Company instead of Second Transferor Company. As there seems to be a typographical error, the Company may please be directed to carry out necessary correction.

7. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his Affidavit is concerned, the Transferee Company through its Learned Counsel undertakes that in addition to compliance of AS-14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards such as AS-5 etc.

8. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all other acts.

9. (i) As far as objections of the Regional Director, Western Region, Mumbai in paragraph 6(c)(i) and 6(c)(ii) are concerned, the Fixed Assets of First Transferor Company are of the total value of Rs.8,18,797.00 only, including a flat at Bhiwandi which is valued at Rs.1,96,763.00 and a motor car valued at Rs.6,12,026.00. The balance fixed assets are Rs. 10,008.00, of negligible value. Hence, the non-compliance with Schedule II to the Companies Act, 2013, in the matter of depreciation of fixed assets and the violation of provision of Schedule II read with the provisions of Section 129 of Companies Act, 2013, is merely technical and cannot come in the way of sanction to the scheme. The Petitioner Company in any event undertakes to compound the offences under Section 441 of the Companies Act, 2013. The undertaking is accepted.

(ii) As far as objection of the Regional Director, Western Region, Mumbai in paragraph 6(c)(iii) is concerned, the Fixed Assets of Transferee Company are of the total value of Rs.2,52,902.00 only, including a flat at Bhiwandi which is valued at Rs.2,31,001.00. The balance fixed assets are Rs. 21,901.00, of negligible value. Hence, the non-compliance with Schedule II to the Companies Act, 2013, in the matter of depreciation of fixed assets and the violation of provision of Schedule II read with the provisions of Section 129 of Companies Act, 2013, is merely technical and cannot come in the way of sanction to the scheme. The Petitioner Company in any event undertakes to compound the offence under Section 441 of the Companies Act, 2013. The undertaking is accepted.

(iii) As far as objection of the Regional Director, Western Region, Mumbai in paragraph 6(c)(iv) is concerned, in a scheme of amalgamation, the extinguishment of the shares held by the Transferor Companies in the Transferee Company does not have to comply with the provisions of reduction of Share Capital, as the measure is a part of the scheme to be sanctioned by the Court and hence this objection does not survive.

(iv) As far as objections of the Regional Director, Western Region, Mumbai in paragraph 6(c)(v) and 6(c)(vi) are concerned, the anomalies pointed out are merely typographical errors which do not affect the financial results of the Second Transferor Company and hence the objections are waived.

10. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakantha, Joint Director Inspection, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they have no further objections to the scheme.

11. The Official Liquidator has filed his Report on 06.12.2016 in Company Scheme Petition Nos. 385 & 386 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.

12. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 385 & 386 of 2016 filed by the Transferor Companies are made absolute in terms of prayer clause (a); (b) and (c) and Company Scheme Petition No. 384 of 2016 filed by the Transferee Company are made absolute in terms of prayer clauses (a) & (c).

14. The Petitioner Companies to lodge an authenticated copy of this Order and the Scheme with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same latest by 31st March, 2017.

15. The Petitioners are directed to file/lodge a copy of this 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.

16. 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. 385 & 386 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid latest by 28th February, 2017.

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

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

(**S. C. Gupte, J**.)

**CERTIFICATE**

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

Uploaded by : Shankar Gawde, Stenographer.