IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 262 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 238 OF 2016

TITAN TRADING AND AGENCIES LIMITED .... Petitioner

AND

COMPANY SCHEME PETITION NO. 263 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 239 OF 2016

DHUMRAKETU INVESTMENTS AND TRADING COMPANY PRIVATE LIMITED .... Petitioner

AND

COMPANY SCHEME PETITION NO. 264 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 240 OF 2016

TRIVIKRAM INVESTMENTS AND TRADING COMPANY LIMITED

.... Petitioner

AND

COMPANY SCHEME PETITION NO. 265 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 241 OF 2016

SALDHAR INVESTMENTS AND TRADING COMPANY PRIVATE LIMITED .... Petitioner

In the matter of the Companies Act 1956, (1 of 1956) and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation and Arrangement between Titan Trading and Agencies Limited ("Titan") and Dhumraketu Investments and Trading Company Private Limited ("Dhumraketu") and Trivikram Investments and Trading Company Limited ("Trivikram") and Saldhar Investments and Trading Company Private Limited ("Saldhar") and their respective Shareholders

Called for Hearing

Ms Alpana Ghone and Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners.

Mr. Dushyant Kumar i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma Official Liquidator, present in Company Scheme Petition No. 262 to 264 of 2016.

CORAM: B.P. Colabawalla, J.

DATE: 12th August, 2016

1. Heard the learned counsel for the Petitioner Companies. 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 read with Sections 100 to 103 of the Companies Act, 1956, to the Scheme of Amalgamation and Arrangement between Titan Trading and Agencies Limited ("Titan") and Dhumraketu Investments and Trading Company Private Limited ("Dhumraketu") and Trivikram Investments and Trading Company Limited ("Trivikram") and

Saldhar Investments and Trading Company Private Limited ("Saldhar") and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 262 of 2016 is presently engaged in the business of trading, Petitioner in Company Scheme Petition No. 263 of 2016 is presently engaged in the business of investment in shares and securities, Petitioner in Company Scheme Petition No. 264 of 2016 is presently engaged in the business of investment in shares and securities and the Petitioner in Company Scheme Petition No. 265 of 2016 is presently engaged in the business of investment in shares and securities.

4. The rationale for the merger is simplification in structure, minimization of the cost of administration of multiple entities and better and more economic and efficient management.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Counsel for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. The Counsel for the Petitioners further states 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, Petitioner Companies undertake 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.

8. The Regional Director has filed an Affidavit dated 27th June, 2016 stating therein that save and except as stated in paragraph 6 (a),

6(b) and 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

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

a) *Clause 10.6 and 21.7 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 any other applicable Accounting Standard such as AS- 5, etc.*

b) *The 2nd and 3rd Transferor Companies and Transferee Company are a Non Deposit taking NBFC Company Registered with the Reserve Bank of India, Transferee Company may be directed to file a copy of the Scheme along with the copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of the RBI Act.*

c) *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 this Hon'ble 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.*

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee 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.

10. As far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner/ Transferee Company undertakes to file a copy of the Scheme along with the

copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of the RBI Act.

11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner / Transferee 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 Counsel for the Regional Director on instructions of Mrs. P Sheela Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submissions given by the Petitioner Companies. The said undertaking given by the Petitioner Companies are accepted.

13. The Official Liquidator has filed his report on 27th July, 2016 in the Company Scheme Petition No. 262 to 264 of 2016, that the affairs of Titan, Dhumraketu and Trivikram have been conducted in a proper manner and that Titan, Dhumraketu and Trivikram may be ordered to be dissolved by this Court, however subject to his observation in respect to Trivikram with respect to transaction of lease of bungalow at Khandala and write off of capital expenditure thereof. In respect of the observation expressed by the Official Liquidator, it is made clear that in case if any prosecution and/or penal proceedings are initiated against Trivikram in relation to the aforesaid transaction same maybe taken against Saldhar, however, Saldhar is precluded from taking a defense that the transaction was entered into by Trivikram and not by Saldhar. However, Saldhar would be at liberty to defend such prosecution and/or penal proceeding on merits.

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, all the Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (d)

16. The Petitioner Companies to lodge a copy of this order,Scheme, and Form of Minutes 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. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme and Form of Minutes with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. All the Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in Company Scheme Petition No. 262 to 264 of 2016 to pay costs of Rs.10,000/- 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 and Form of Minutes 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.

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