IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 434 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.280 OF 2016

RASHMI PROCESSORS PRIVATE LIMITED... ...Petitioner /Transferor Company

AND

COMPANY SCHEME PETITION NO. 435 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.281 OF 2016

SHREE AGARWAL FABRICS PRIVATE LIMITED ... ...Petitioner /Transferee Company

IN THE MATTER OF COMPANIES ACT, 1956

AND

IN THE MATTER OF SECTIONS 391 AND 394 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF SCHEME OF AMALGAMATION BETWEEN RASHMI PROCESSORS PRIVATE LIMITED WITH SHREE AGARWAL FABRICS PRIVATE LIMITED AND THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS.

CALLED FOR HEARING

MS.ANITA CASTELLINO, i/b PANDYA & CO ,ADVOCATE FOR PETITIONERS .

MR. MAHENDHAR AITHE ,COMPANY PROSECUTOR FOR OFFICIAL LIQUIDATOR, PRESENT IN CSP NO.434 OF 2016.

MR. S. RAMAKANTHA, JOINT DIRECTOR INSPECTION FOR REGIONAL DIRECTOR IN BOTH PETITIONS

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, nor has any party controverted any averments made in the captioned Petition.

2. The sanction of the Court has been sought under Sections 391 and 394 to the Scheme of Amalgamation between RASHMI PROCESSORS PRIVATE LIMITED (Transferor Company) WITH SHREE AGARWAL FABRICS PRIVATE LIMITED (Transferee Company) and their respective shareholders and creditors .

3. The Learned Advocate for the Petitioners states that both the Petitioners are engaged in the business of manufacture ,

produce, process, dye, print, calender, bleach, import, export and otherwise deal in textiles , cotton, silk, rayon, manmade fabrics, fibre , synthetic ,woolen, yarn, threads, garments, made up hosiery canvas and fabrics quoted and treated with any chemicals or any other preparation. The Learned Counsel for the petitioners states that the benefit of the scheme is that the merger would result in achieving the rationalization of management structure and facilitate a better co-ordination and efficient operational and economic control in the conduct of the business of Transferee Company . The Petitioner Companies have approved the said Scheme by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

4. The Learned Counsel for the Petitioners state that the 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 Company Summons For Direction.

5. The Learned Counsel for the Petitioners state 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 and the Rules made thereunder. The undertaking is accepted.

6. The Regional Director has filed an Affidavit on 7.9.2016 stating therein that save and except as stated in paragraph 6 (a) to (c) of the said Affidavit,it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

6) "That the Deponent further submits that

(a) In addition to compliance of AS-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 the scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee company after giving effect to the *scheme .The decision of the Income Tax Authority is binding on the petitioner company.*

c) The petitioner in clause 9 (e) interalia mentioned that upon the coming into effect of this scheme and with effect from the Appointed date , for the purpose of accounting for and dealing with the value of the assets and liabilities of Transferor Company in the books of Shree Agarwal Fabrics Private Limited, the fair value of the assets and liabilities of Transferor Company shall be determined as of the Appointed Date and accounted appropriately . Goodwill arising on accounts of this shall be amortised over five years by Shree Agarwal Fabrics P. Limited .

The deponent submit that in place of Fair Value of the assets and liabilities of Transferor Company as stated above it should be substituted by Book Value for dealing with the value of the Assets and Liabilities of Transferor Company in the books of Transferee Company i.e. Shree Agarwal Fabrics Pvt. Limited as on appointed date.

7. As regards the observations at paragraph 6(a) of the Regional Director's Affidavit is concerned (a) the Learned Advocate undertakes that in addition to compliance of AS-14, the Transferee Company shall pass such accounting entries

which are necessary in connection with the Scheme to comply with other applicable Accounting standards such as As-5, etc.

8. As regards the observations at paragraph 6(b) of the Regional Director's Affidavit is concerned, the Advocate of the Transferee Company undertakes that the Tax implication, if any, arising out of this Scheme shall be subject to the 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 Transferee company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Transferee company. The said undertaking is accepted.

9. As regards the observations at paragraph 6(c) of the Regional Director's Affidavit is concerned, the Advocate of the Transferee Company undertakes upon the coming into effect of this scheme and with effect from the appointed date for the purpose of accounting for and dealing with the value of the assets and liabilities of the Transferor Company in the books of Shree Agarwal Fabrics Private Limited, in place of Fair Value of the assets and liabilities of Transferor

Company as stated in clause above , the same shall be substituted by Book Value for dealing with the value of the Assets and Liabilities of Transferor Company in the books of Transferee Company i.e. Shree Agarwal Fabrics Pvt. Limited as on appointed date . The said undertaking is accepted.

10. The Learned Counsel for Regional Director, on the instructions of Mr. R. K. Dalmia ,Deputy Director Inspection, in the office of the Regional Director, state that they are satisfied with the undertakings given by the petitioner Companies. The above undertakings are accepted.

11. The Official Liquidator has filed his report on 7.9.2016 in the Company Scheme Petition No. 434 of 2016 stating therein that the affairs of the Petitioner/Transferor Company have been conducted in a proper manner and may be ordered to be dissolved.

12. 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 has come forward to oppose the Scheme ,as proposed.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.434 and 435 of 2016 is made absolute in terms of prayer clauses (a) to (g) of the Petitions.

14. The Petitioner Companies to lodge 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 date of the order.

15. The Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme with the concerned Registrar of Companies, electronically alongwith E-Form 21 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry and as per the provisions of the Act.

16. The Petitioner Companies in both the Company Scheme petition Nos 434/16 and 435/16 to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and

the Petitioner Company in Company Scheme Petition No. 434 of 2016 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of order.

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

18. All authorities concerned to act on a copy of this order alongwith the Scheme of Amalgamation duly authenticated by the Company Registrar, High Court (O.S.) Bombay.

(A.K. MENON J.)

CERTIFICATE

"I certify that the Order updated is a true and correct copy of original signed Order."

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