IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 436 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 147 OF 2016

Organic Gardens Private Limited ...Petitioner/Transferor Company

WITH

COMPANY SCHEME PETITION NO.437 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO.148 OF 2016

Katmandu Apparel Private Limited ...Petitioner/Transferee Company

<u>In the matter of:</u>

The Companies Act 1956 (1 of 1956);

AND

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

<u>In the matter of:</u>

The Scheme of Amalgamation between Organic Gardens Private Limited and Katmandu Apparel Private Limited with their respective shareholders.

CALLED FOR HEARING

Mr. Mukul Taly i/b S. Mahomedbhai & Co, Advocates for Petitioners.
Ms. Nisha Valani Advocate for Regional Director
Ms. Yogini D. Chauhan, Deputy Official Liquidator present

CORAM : A. K. Menon J.

DATE: 13th October, 2016

P.C.:

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 Petition.
2. The sanction of the Court is sought under Section 391 to 394 of the Companies Act, 1956 to a scheme of amalgamation between Organic Gardens Private Limited and Kathmandu Apparels Private Limited and their Shareholders.
3. The learned counsel for the Petitioner Company states that the Transferor Company is carrying on in India the business of Production, Sales, Marketing, Processing and import/export of Agricultural farm products and setting up of research & development centers for the said activities in India and abroad.
4. The Transferee company is carrying on the business of import, export, sale, purchase as dealers/agents of all kinds of readymade garments, fabrics, textiles, hosiery and silk or merchandise of every kind and description and other allied activities.

5. The learned Counsel for the Petitioner Company states that the Transferor Company and the Transferee Company are under the same management. The shareholders and management of the Transferor Company and the Transferee Company belong to a single family. The Transferee Company post amalgamation will have better financial and business prospects. The scheme will be beneficial and is in the best interest of the shareholders, creditors, employees of the Transferor Company and the Transferee Company and all concerned.

6. The learned Counsel for the Petitioner Company further states that the Board of Directors of the Transferor Company and the Transferee Company have both passed respective resolutions for approval of the scheme of amalgamation as far back as September 25, 2014 which are already annexed to the Company Summons for Direction No. 148 of 2016 filed by the Transferee Company.

7. The learned Counsel for the Petitioner Company states that the Transferor Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order in the Company Summons for Directions.

8. The learned Counsel appearing on behalf of the Transferee Company has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Transferee Company undertakes to comply with all statutory requirements if any, as

required under the Companies Act, 1956 and rules made there under whichever is applicable. The undertaking is accepted.

9. The Regional Director has filed an affidavit dated October 7, 2016 stating therein in paragraph 6 of his affidavit that, save and except what is stated in para 6(a) to 6(c) of the Affidavit, according to the Regional Director, the Scheme is not prejudicial to the interest of the shareholders and public. The said paras 6(a) to 6(c) reads as follows :

That the Deponent further submits that:

(a) 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 this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

(b) In addition to the compliance of As-14, the transferee company shall pass such accounting enteries which are necessary in connection with the scheme to comply with other applicable accounting standard such as As-5 etc.

(c) ROC Mumbai vide report/letter No. ROC/JTA (AK)/243427/ 391-394/498 dated 31.08.2016, has mentioned that Statutory Auditor of the Transferor Company has qualified his remark in thaeir Auditors Report of Financial year 2014-2015 regarding loss on account of perished goods that they are not accounted by the management, resulting in non-compliance of Accounting Standard - 2

which is violation of Section 129(1) of the Companies Act 2013. Further, the Auditor has pointed out that the Company has not maintained proper records of its inventories in violation of Section 128(1) of the Companies Act, 2013.

10. The learned Counsel for the Transferee Company undertakes on behalf of the Transferee Company that in terms of paragraph 6(a) of the said Affidavit of the Regional Director, the decisions of the Income Tax Authority after scrutinizing the tax returns of the Transferee Company after giving effect to the scheme will be binding on the Transferee Company.

11. The learned Counsel for the Transferee Company undertakes on behalf of the Transferee Company that in terms of paragraph 6(b) of the said Affidavit of the Regional Director, the Transferee Company will pass accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 etc.

12. The learned Counsel for the Transferee Company states that in answer to the two qualifications in the Auditors Reports referred to paragraph 6(c) of the said Affidavit of the Regional Director, the clarifications/ answers to the said two qualifications were likewise sought by the Chartered Accountant appointed by the Official Liquidator to scrutinise the Books of Accounts and other relevant records and papers of the Transferor Company and which Chartered Accountants have submitted their Report to the Official Liquidator. The Chartered Accountant appointed by the Official Liquidator has

opined with respect to the said two qualifications in the Auditors' Report and stated that (i) with respect to the explanation obtained from the management of the Transferor Company for the year 2014-15, the same explains and meets the points raised by the Auditor (ii) with respect to the response from the management of the Transferor Company for the year 2012-13 explains the points raised by the Auditor (iii) the Chartered Accountant appointed by the Official Liquidator has further recorded the analysis of the audited financial statements in his Report to the Official Liquidator (iv) The Chartered Accountant appointed by the Official Liquidator has accordingly opined that :

(i) there are no noticed instances of misapplication, misappropriation or breach of trust on the part of the management of the Company

(ii) the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interests of its members or to the interests of the public

(iii) the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interests of the members of the Transferor Company or to the interests of the public and

(iv) that the Transferor Company may kindly be ordered to be dissolved.

13. The Transferee Company undertakes to apply for compounding of the alleged violations under Section 128(1) and/or Section 129(1) of

the Companies Act, 2013 by the Transferor Company and to bear and pay the fine levied in accordance thereof.

14. The Learned Counsel of Regional Director on instructions of Mr. P. Shelar, Joint 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 learned Counsel appearing for the Transferee Company. The undertakings given by the Transferee Company above are accepted.

15. The Official Liquidator has filed his report dated October 1, 2016 on October 3, 2016 in Company Scheme Petition No. 436 of 2016, inter alia stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.436 of 2016 filed by the Petitioner Company is made absolute in terms of the prayer made under clauses (a) and (b) and Company Scheme Petition No.437 of 2016 is made absolute in terms of prayer clauses (a) and (b).

18. In terms of Clause 2 of the Scheme of Amalgamation, the Scheme shall be effective from the Appointed Date viz. 1st day of April, 2015.

19. 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 the date of the Order.

20. The Petitioner Company is directed to file/lodge a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 or INC 28 in addition to physical copy within 30 days from the date of issuance of the order by the Registry as per the relevant provisions of the Companies Act, 1956.

21. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioner Company in Company Scheme Petition No.436 of 2016 to pay cost of Rs.10,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the Order.

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

23. 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.)

C E R T I F I C A T E

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

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