IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.295 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 347 OF 2016

BISHAKHA DIAMONDS PRIVATE LIMITED….Petitioner /Transferor Company

In the matter of Companies Act, 1956 (1 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 Bishakha Diamonds Private Limited ('the Transferor Company')

WITH

Anchor Health and Beauty Care Private Limited ('the Transferee Company')

AND

Their respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. P.S. Gujar i/b Mr. Pankaj Kapoor for Regional Director

Mr. Vinod Sharma, Official Liquidator Present in CSP No. 295 of 2016.

CORAM: A.K.Menon, J.

DATE: 01st September, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 to the Scheme of Amalgamation of Bishakha Diamonds Private Limited with Anchor Health and Beauty Care Private Limited and their respective Shareholders.

3. The Learned Counsel for the Petitioner states that Petitioner Company is engaged in the business of Future and Option (Derivative) in stocks and shares and the Transferee Company is engaged in the business of manufacturing and trading of Soaps, Toothpaste, Tooth Powder, Tooth Brush and Fast Moving Consumer Goods including Oral Care and Health Care products.

4. The Learned Counsel for the Petitioner Company states that the Scheme will result into following benefits namely simplifying the Group structure, minimizing the cost of administration of two legal entities, better and more economic and efficient management, controlling and running of the businesses of the companies concerned and to pool the resources of both the companies for growth.

5. The Learned Counsel for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and after the scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and in view of the judgement of this Court in Mahaamba Investments Limited vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition by Anchor Health and Beauty Care Private Limited, the Transferee Company was

dispensed with, by order dated 29th April, 2016 passed in the Company Summons for Direction No. 347 of 2016.

6. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

7. The Learned Counsel for the Petitioner further states that the Petitioner Company have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Counsel appearing on behalf of the Petitioner Company has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Company are accepted.

9. The Regional Director has filed an Affidavit on 10th August, 2016 stating therein, save and except as stated in paragraphs 6 (i), 6 (ii), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (i), 6 (ii) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

i. *That the petitioner in clause 6 of the Scheme inter alia stated that the difference being excess of the fair value of the net assets of the Transferor Company transferred to Transferee Company, after making adjustments as above and considering the adjustment as above, shall be credited to Capital Reserve account by the Transferee Company. The deficit if any shall be debited by the Transferee Company to the Goodwill Account. The petitioner company not mentioned regarding accounting standard adopted for accounting treatments.*

ii. *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 observations made in paragraph 6(i) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply with Accounting Standard 14: 'Accounting for Amalgamations' issued by Institute of Chartered Accountants of India.

11. As far as observations made in paragraph 6(ii) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and tax implication, if any arising out

of the Scheme of Amalgamation and will be subject to the decision of the Income Tax Authority.

12. The Learned Counsel appearing for the Regional Director on instructions of Ms P Sheela, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the advocate on behalf of the Petitioner Companies. The above undertakings are accepted.

13. The Official Liquidator has filed his report on 18th August, 2016, stating that the affairs of the Petitioner Company have been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved without being wound up.

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, Company Scheme Petitions No. 295 of 2016 are made absolute in terms of the prayer clause (a) to (f) of the Company Scheme Petition.

16. The Petitioner Companies are directed to lodge a copy of this order and 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 receipt of the order.

17. Petitioner is directed to file a copy of this order along with a copy of the Scheme 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 Petitioner Company and Transferee Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(A.K.Menon, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer