IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.347 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.282 OF 2016

SPS Share Brokers Private Limited......Petitioner/the Demerged Company.

In the matter of the Companies Act I of 1956.

AND

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

AND

In the matter of the Scheme of Arrangement between:

SPS Share Brokers Private Limited.

AND

Khandwala Enterprise Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co, Advocate for the Petitioner Company.

Mr.Shivraj Patil i/b Shri. Pankaj Kapoor for Regional Director in the Petition.

CORAM: A.K.MENON, J

DATE: 8TH SEPTEMBER,2016

PC:

1. Heard learned counsel for parties. None appears 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 of the Companies Act, 1956, to a Scheme of Arrangement between SPS Share Brokers Private Limited and Khandwala Enterprise Private Limited and their respective shareholders for demerger of Investment Business.

3. The Learned Counsel for the Petitioner Company states that the Demerged Company is presently carrying on business of Broking and Investment in Shares & Securities registered with BSE and NSE. The Learned Counsel for the Petitioner Company further states that SPS Share Brokers Private Limited is SEBI registered Share brokers having membership of various exchanges including BSE, NSE, MSEI and depositary Participant in CDSL and in various segments.

4. The Learned Counsel for the Petitioner states that the Board of Director of the Petitioner Company has approved the said Scheme of Arrangement by passing the Board Resolution which is annexed to the Company Scheme Petition.

5. The Learned Counsel for the Petitioner states that, the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Direction.

6. The Learned Counsel appearing on behalf of the Petitioner have stated that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company 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.

7. The Regional Director has filed his Affidavit on 18th August, 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 :

> "6. That the Deponent further submits that:-
>
> a) *As per Registrar of Companies, Mumbai report dated 25th July 2016 has stated in para 29 as under:*
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> i. *As per the main object of the Demerged Company it cannot carry out "Business of Investment" (Demerged Business) and carry out only the business of Stock Broking and allied advisory services.*

ii. *However, the undertaking/business of the " Investment Business" of Demerged Company business is sought to be Demerged into Resulting Company, and it is not known whether such Resulting Company is registered NBFC.*

iii. *While the Stock Broking activities are under the Regulatory Domain of SEBI (Demerged Company Registration No INB010979938), the Investment Business (sought to be demerged) is under the Regulatory Domain of RBI under Chapter IIIB of RBI Act, (Demerged Company Unregistered with RBI).*

b) *Petitioner in Clause No. 8.4 of the Scheme inter alia has mentioned that, The Resulting Company shall to the extent required, increase its Authorized Share Capital to facilitate issue and allotment of Shares under this Scheme.*

Petitioner in Clause No. 8.5 of the Scheme inter alia has mentioned that, The issue and allotment of Shares to the shareholders of the Demerged Company, as provided in this Scheme, *shall be deemed to be made in compliance with the procedure laid down under the provisions of the Act. Deponent prays that the Hon'ble High Court may direct the company to make compliance of the Act read with rules etc.*

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 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.*

8. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a)(i) of his Affidavit is concerned, The learned counsel submits that the Petitioner Company vide their affidavit dated 19th August, 2016 has stated that the main business of the Demerged Company is that of Stock Broking and it is registered with Securities Exchange Board of India (SEBI) and member of Bombay Stock Exchange Limited (BSE) and National Stock Exchange of India Limited (NSE). Registration

Certificate issued as per Securities and Exchange Board of India (Stock-Brokers and Sub-Brokers) Regulations,1992 mention that a registered stock Broker can carry on business of buying, selling or dealing in securities and such other activities as may be permitted by stock exchange subject to conditions prescribed in rules and in accordance with the regulations of stock Exchange. The Memorandum of Association and Articles of Association are also approved by SE and SEBI before giving certificate and further the Demerged Company is also entitled to carry on investment activites as per clause 36 of Memorandum of Assocation.

9. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a)(ii) of his Affidavit is concerned The learned counsel submits that the Petitioner Company vide their affidavit dated 19th August, 2016 has stated that the Resulting Company is in business of trading in bullion,import and export of commodities and artibtrage in shares and securities.The Resulting Company also has a unit in S.E.Z (Special Economic Zone) as stated in paragraph 12 of present Company Scheme Petition. Post demerger if required by law registration as an NBFC shall be obtained by the Resulting Company.

10. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a)(iii) of his Affidavit is concerned, The learned counsel submits that the Petitioner Company vide their affidavit dated 19th August, 2016 has stated that S.E.B.I Registered Broking Company is exempted from obtaining registration as NBFC as per RBI's Notification No 164/CGM (CSM)-2003 dated 8th January,2003

11. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(b) is concerned the Petitioner Company through its learned counsel undertakes that the Resulting Company shall comply with provisions of Sections 61/64 of the Companies Act,2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary fees and Stamp Duty as applicable on the said forms for increase of its Authorised share capital if required.

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

13. The Learned Counsel for Regional Director on instructions of Deputy Director, in the Office of the Regional Director, Ministry

of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions and undertakings given by the Petitioner. The above undertakings are accepted.

14. The Learned Counsel for the Petitioner states that the registered office of Khandwala Enterprise Private Limited, the Resulting Company is situated at Ahmedabad and Gujarat High Court has already sanctioned the Scheme of Arrangement on 16th June, 2016.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.347 of 2016 filed by the Demerged Company is made absolute in terms of prayer clause (a) & (b).

17. The Petitioner Company to lodge a copy of this order and the 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 this order.

18. The Petitioner are directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

19. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.

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

21. 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)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.