IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 469 OF 2016

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 381 OF 2016

Ojasvi Trading Private Limited …Petitioner Company
(First Transferor Company)

**AND**

COMPANY SCHEME PETITION NO. 470 OF 2016

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 382 OF 2016

Shinano Retail Private Limited … Petitioner Company
(Second Transferor Company)

**AND**

COMPANY SCHEME PETITION NO. 471 OF 2016

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 383 OF 2016

Teesta Retail Private Limited … Petitioner Company
(Transferee Company)

In the matter of the Companies Act, 1956 and the Companies Act, 2013, as applicable;

-And-

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

-And-

In the matter of the Scheme of Amalgamation of Ojasvi Trading Private Limited ("OTPL")

and

Shinano Retail Private Limited ("SRPL")

with

Teesta Retail Private Limited ("TRPL")

**CALLED FOR HEARING**

Ms. Alpana Ghone a/w Ms. Nirali Chopra i/b M/s. Junnarkar & Associates, Advocates for the Petitioner Companies in all the Petitions.

Mr. Vinod Sharma, Official Liquidator, for Official Liquidator, in CSP Nos. 469 and 470 of 2016.

Mr. Dushyant Kumar i/b Mr. A. K. Chaturvedi for Regional Director in all the Petitions.

CORAM : S. C. Gupte, J.
DATE : 2nd December 2016

P.C:-

1. Heard learned Counsel for parties. No objector has come before the Court to oppose the Scheme and nor has any party controverted any averments made in the Petitions.

2. The sanction of this Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Ojasvi Trading Private Limited and Shinano Retail private Limited (collectively, the "Transferor Companies") with Teesta Retail Private Limited (the "Transferee Company").

3. Learned Counsel for the Petitioner Companies states that the First Transferor Company is presently engaged in the business of trading and has also made investments, the Second Transferor Company is presently engaged in the business of trading and also carries on investment activities and the Transferee Company is presently holding investments.

4. The benefits of the proposed Scheme of Amalgamation are that the Transferee Company holds 50% of the capital of the Transferor Companies and the remaining 50% is held by the Transferor Companies inter-se. The present activities and businesses of both the Transferor Companies is similar and the Transferee Company's main object empowers the Transferee Company to carry on the business of the Transferor Companies. The business of the Transferor Companies can be conveniently combined with the business of the Transferee Company. The amalgamation will achieve economy, better administration and efficiency of operation. The amalgamation will achieve reduced administrative costs, avoid duplication of costs and result in internal economies and optimize profitability. The amalgamation will reduce multiple companies by consolidating the companies into a single larger entity.

5. Both the Transferor Companies and the Transferee Company have approved the Scheme of Amalgamation by passing Board Resolutions, which are annexed to the respective Company Scheme Petitions.

6. Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the Orders passed in the said Company Summons for Direction.

7. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all the requirements as per directions of this Court and have filed necessary Affidavits of compliance in Court. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or the Companies Act, 2013 and the Rules made thereunder, whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his Report on 4th October 2016 in Company Scheme Petition Nos. 469 and 470 of 2016 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 23rd November 2016 stating therein that save and except as stated in para 6(a) to (e) [erroneously numbered 7(a) to 7(e)], it appears that the Scheme is not prejudicial to the interest of shareholders and public. Para 6 of the said Affidavit, reads as under:

*"7. 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 Standards such as AS-5 etc.,*

*(b) Regarding Part-I Definitions Clause 1.2 of the Scheme. It is submitted that the record date should be the Appointed Date 1st March 2016 or such other date as may be fixed or approved by the Hon,ble High Court of Judicature at Bombay.*

*(c) Regarding Part-IV Clause 12.2 of the Scheme it is submitted that as the accounting is on the basis of the "Purchase Method" (Fair Values), as per AS-14, the Transferee Company to provide the fair value of the individual identifiable assets and the liabitlites of the Transferor Compnies at the Appointed Date.*

*(d) 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."*

*(e) As the Tax Authorities tendered strong objections to the merger, this Hon'ble Court may kindly consider this aspect and pass appropriate order or orders as deem fit and proper.*

10. With respect to Para 6(a) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner/Transferee Company undertakes that it 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.

11. With respect to Para 6(b) of the Affidavit of the Regional Director, the Appointed Date is 1st March 2016 as per the Scheme approved by the Board of Directors and Shareholders of the Petitioner Companies.

12. With respect to Para 6(c) of the Affidavit of the Regional Director, Para 36 of AS-14 read as follows:
*"In preparing the Transferee Company financial statement, the assets and liabilities of the Transferor Company should be incorporated at their existing carrying value or, alternatively, the consideration should be allocated to individual indentifiable assets and liabilities on the basis of their fair values at the date of amalgamation…"*

As per para 36 of AS-14, after the Scheme becoming effective and at the time of preparing the financial statement of the Transferee Company, the assets and liabilities are required to be recorded at their respective fair value. There is no statutory requirement of obtaining and producing the fair valuation for each of the assets and liabilities at this juncture i.e. at the time of obtaining sanction to Scheme of Amalgamation from this Court. The Petitioner Company through its Counsel undertakes to carry out the necessary valuation exercise after the Scheme becoming effective and record the assets and liabilities at their respective fair values. Further, the Petitioner Company also undertake to comply with the requisite compliances of AS-14, which is a statutory requirement under section 211(3C) of the Companies Act, 1956 (corresponding to Section 133 of the Companies Act, 2013).

13. With respect to Para 6(d) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of the Scheme will be met and answered in accordance with law. The Learned Counsel for the Petitioner Companies further undertakes that the Transferee Company shall meet all pending assessments against the Transferor Companies in accordance with law.

14. With respect to Para 6(e) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Transferee Company shall be subject to pending tax proceedings and shall meet any outstanding demand in accordance with law.

15. The Learned Counsel on instructions of Mr. S. Ramakantha, 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 Advocate for the Petitioner Companies. The undertakings given on behalf of the Petitioner Companies are accepted.

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, Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (d) of Company Scheme Petition Nos. 469 and 470 of 2016 and prayer clauses (a) to (f) of Company Scheme Petition No. 471 of 2016.

18. The Transferee Company to file 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 (sixty) days from the date of the Order.

19. The Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form 21/ INC 28 in addition to the physical copy, as per relevant provision of the Companies Act, 1956 or Companies Act, 2013, whichever is applicable.

20. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Companies in Company Scheme Petition Nos. 469 and 470 of 2016 to pay costs of Rs. 10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

22. All concerned regulatory authorities to act on a copy of this Order alongwith Scheme, duly authenticated by the Company Registrar, High Court (O.S.).

**(S. C. Gupte, J.)**

**CERTIFICATE**

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

Uploaded by: Shankar Gawde,
Stenographer