IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 443 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 353 OF 2016

Balkrishna Synthetics Limited……Petitioner

In the matter of the 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 Balkrishna Synthetics Limited with Siyaram Silk Mills Limited

Called for hearing

Mr. Hemant Sethi i/b Mr. Hemant Sethi & Co. Advocates, for the Petitioner.
Mr. Pavan S Patil, i/by Pankaj Kapoor for Regional Director
Mr. Vinoid Sharma Official Liquidator, High Court, Bombay.

CORAM: S.C.Gupte, J.

DATE: 22nd November, 2016

PC:

1. Heard the learned counsel for the Petitioner and the Regional Director.
2. The sanction of the Court is sought to the Scheme of Amalgamation of Balkrishna Synthetics Limited with Siyaram Silk Mills Limited.
3. Learned Advocate for the Petitioner submits that since the Petitioner Company is wholly owned subsidiary of the Transferee Company and

all the shares of the Petitioner Company are presently held by Siyaram Silk Mills Limited, 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 there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Siyaram Silk Mills Limited, the Transferee Company was dispensed with, in pursuance of order dated 4th May 2016 passed in CSD No. 353 of 2016.

4. The learned Counsel for the Petitioner submits that the Petitioner Company is engaged in the business of buying, selling, exchanging, and processing in textile products.

5. The reason justifying Amalgamation is that both the Companies are contemplating this Scheme of Amalgamation which would *inter alia* have the benefits of consolidation of business and managerial expertise thereby giving additional strength to the operations and management. The amalgamation of Petitioner Company with the Transferee Company would result in significant efficiencies, including reduction of overheads, administrative, managerial and other expenditure and optimal utilization of various resources.

6. The Transferor Company and the Transferee Company have approved the Scheme by passing the Board Resolutions which are annexed to

the Company Scheme Petition filed on behalf of the Petitioner Company.

7. The Counsel for the Petitioner further states that the Petitioner 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 orders passed in Company Summons for Direction.

8. The Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Company through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

9. The Regional Director has filed an Affidavit on 17th November 2016 stating therein that save and except as stated in paragraphs 6(a) and 6(b) of the said Affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(a) and 6(b) of the said Affidavit, the Regional Director has stated that :

   (a) In view of para 5(ix) as the accounting shall be on the basis of the "Purchase Method" of accounting. Accordingly, as per AS-14, the Transferee Company to provide the details of consideration allocated to individual identifiable assets and

the liabilities of the Transferor Company on the basis of their fair value at the date of amalgamation.

(b) That the deponent further submits that the tax issue, if any, arising out of this scheme shall be subject to final decision of the 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(a) of the Affidavit of Regional Director are concerned, 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. Para 36 of AS-14 provides that 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 identifiable assets and liabilities on the basis of their fair values at the date of amalgamation. The Petitioner will have to accordingly incorporate the values of assets and liabilities on either of the bases appearing in AS-14. The Petitioner Company undertakes to comply with the requirements of AS-14, which are statutory requirements under section 211(3C) of the Companies Act, 1956 (corresponding to Section 133 of the Companies Act, 2013). The undertakings given by the Petitioner Company are accepted.

11. As far as observations made in paragraph 6 (b) of Affidavit of the Regional Director is concerned, the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act, 1961 and all issues arising out of the Scheme will be met and answered in accordance with law.

12. The Official Liquidator has filed his report on 3rd October 2016 stating therein that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

15. The Petitioner Company 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 receipt of the order.

16. Petitioner Company 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 provisions of the Companies Act 2013.

17. The Petitioners to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator , High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(S.C.Gupte, J.)

CERTIFICATE

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