IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 651 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 495 OF 2016

DIA MAN EXPORTS PRIVATE LIMITED ...Petitioner/ Demerged Company No.1 or the Amalgamating Undertaking No.1

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 652 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 496 OF 2016

RATILAL BECHARLAL DIAMONDS PRIVATE LIMITED

...Petitioner/ Demerged Company No.2 or the Amalgamating Undertaking No.2

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 653 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 497 OF 2016

CORRECTED ORDER AS PER ORDER DATED 06.12.2016

ORNATE GEMS PRIVATE LIMITED ...Petitioner/ Demerged Company No.3 or the Amalgamating Undertaking No.3

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 654 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 498 OF 2016

JASANI JEWELLERY PRIVATE LIMITED ...Petitioner/ Amalgamating Company or the Amalgamating Undertaking No.4

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 655 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 499 OF 2016

UNI GEM INDIA PRIVATE LIMITED ...Petitioner/ Demerged Company No.4 or the Amalgamated Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 656 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 500 OF 2016

JASANI DIAMONDS PRIVATE LIMITED ...Petitioner/ Resulting Company

In the matter of the Companies Act 1 of 1956 and other relevant provisions of Companies Act, 2013

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of Companies Act, 2013

AND

In the matter of Composite scheme of Arrangement and Amalgamation between Diaman Exports Private Limited, Ratilal Becharlal Diamonds Private Limited, Ornate Gems Private Limited, Jasani Jewellery Private Limited, Uni Gem India Private Limited and Jasani Diamonds Private Limited and their respective shareholders and creditors;

Called for Hearing

Mr. Satish Shah a/w Mr. Rahul Bothra and Ms. Urjita Badheka i/b Pallavi Sharma, Advocate for Petitioners

Mr. Ashwini Singh i/b Mr. Pankaj Kapoor, Regional Director in the Company Scheme Petition.

Ms. Yogini Chauhan, Deputy Official Liquidator

CORRECTED ORDER AS PER ORDER DATED 06.12.2016

Coram: S C. Gupte, J.

Date: 30th November, 2016

1. Heard the learned Advocate 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 to a Scheme of Arrangement and Amalgamation amongst DiaMan Exports Private Limited, Ratilal Becharlal Diamonds Private Limited, Ornate Gems Private Limited, Uni Gem India Private Limited and their respective Shareholders for the demerger of the demerged undertakings and vesting of the same with Jasani Diamonds Private Limited and thereafter the merger of the Amalgamating Undertakings of DiaMan Exports Private Limited, Ratilal Becharlal Diamonds Private Limited, Ornate Gems Private Limited and Jasani Jewellery Private Limited and their respective Shareholders and the vesting of the same into Uni Gem India Private Limited under Sections 391 to 394 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 /Companies Act, 2013.

3. Learned Counsel for the Petitioner Companies state that the Petitioner Companies in Company Scheme Petition Nos. 651 of 2016, 652 of 2016, 653 of 2016 and 655 of 2016 are at present engaged in the business of diamond cutting and polishing and jewellery manufacture and carrying out Real Estate Business. Learned Counsel for the Petitioner Company further states that the Petitioner Company in Company Scheme Petition No. 654 of 2016 is presently engaged in the diamond and jewellery business. Learned Counsel for the Petitioner Company further states that the Petitioner Company in Company Scheme Petition No. 656 of 2016 has in its main objects the business of rentals and developments of real estate.

4. The rationale for the arrangement is that it allows for the segregation of real estate business and the diamond and jewellery business carried out in the companies under this Scheme of Arrangement are part of Jasani Group ('the Group'). The Group believes that the restructuring would benefit the

companies and its stake holders on account of businesswise segregation of companies thereby ensuring focused management, Improved Organizational capability, leadership, Achieving operational, management efficiency, ability to leverage financial and operational resources of each company.

5. The Learned Counsel for the Petitioners further states that the board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement and Amalgamation by passing board resolutions which are annexed to the respective Company Scheme Petition.

6. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

7. The Learned Counsel for the Petitioners state that the Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company Summons for Directions.

8. Learned Counsel appearing on behalf of the Petitioners 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 Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 8th November, 2016 in Company Scheme Petition Nos. 651 of 2016, 652 of 2016, 653 of 2016 and 654 of 2016 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit dated 29th November, 2016 stating therein that save and except as stated in paragraph 6(a) to (f) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of

shareholders and public. In paragraph 6(a) to 6(f), of the said affidavit it is stated that:

6(a) In addition to compliance of AS- 14 the Transferee Company shall pass accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS – 5 etc.

As far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned the Petitioner Companies through their Advocate submits that the Petitioner Companies is bound to comply with all the applicable Accounting Standards and all other Accounting and Compliance issues arising out of the Scheme of Arrangement will be complied in accordance with law.

(b)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.

As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

(c)The surplus if any arising out of the scheme shall be credited to the Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company and will not be adjusted against any other reserves of the Transferee Company

As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Companies are bound to follow the Accounting Treatment as prescribed by the Accounting Standards framed by the Institute of Chartered Accountants of India applicable to the Scheme of Arrangement. Further the Petitioner Companies confirm that they shall comply with all the applicable Accounting Standards and all other Accounting and Compliance issues arising out of the Scheme of Arrangement will be complied in accordance with law.

(d) The status of employees of Demerged Companies in the proposed scheme under the head Definitions Clause 1.9 (iii) is vague. There is no specific averments regarding terms and conditions of transfer of employees, considering the continuity and length of services of employees, Terminal Benefits, Gratuity, Provident Fund etc.,
In this regard the Petitioner may be directed to specify/ clarify the same to this Hon'ble Court to ensure the safeguarding the interest of employees of Demerged Companies

As far as observations made in paragraph 6(d) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Companies upon the coming into effect of the Scheme:

(i) All the present employees on the payroll of each of the Transferor Companies in service as on the Effective Date shall deemed to have become the present employees on the payroll of the Transferee Company without any break or interruption in their service and on the terms and conditions not less favourable than those subsisting with reference to the Transferor Companies as on the said date. For the purpose of payment of any compensation, gratuity and other terminal benefits, the past services of such present Employees on the payroll with each of the Transferor Companies and such benefits to which the present Employees on the payroll are entitled in each of the Transferor Companies shall also be taken into account, and paid (as and when payable) by the Transferee Company.

(ii) With regard to provident fund, gratuity fund, superannuation scheme, pension scheme or any other special funds or schemes created or existing for the benefit of such employees (hereinafter referred to as the **"Said Funds")** of the Transferor Companies, upon the Scheme becoming effective, the Transferee Company shall stand substituted for the Transferor Companies for all purposes whatsoever relating to the administration or operation of such schemes or funds including in relation to the obligations to make contributions to the said Funds in accordance with the provisions of such schemes or funds in the respective trust deeds or other documents. It is the aim and intent of the Scheme that all the rights, duties, powers and obligations of the Transferor Companies in relation to such Funds shall become those of the Transferee Company and the Transferee Company will take actions as may be deemed appropriate in relation to the Funds to ensure continuance of benefits to the employees of the Transferor Companies in accordance with the applicable legislations.

iii) Upon the Scheme becoming effective, the Transferor Companies will transfer/handover to the Transferee Company, copies of employment information of all present employees on the payroll of Transferor Companies, including but not limited to, personnel files (including hiring documents, existing employment contracts, and documents reflecting changes in an employee's position, compensation, or benefits), payroll records, medical documents (including documents relating to past or ongoing leaves of absence, on the job injuries or illness, or fitness for work examinations), disciplinary records, supervisory files relating to its and all forms, notifications, orders and contribution/identity cards issued by the concerned authorities relating to benefits transferred pursuant to this sub-clause.

(iv) The contributions made by each of the Transferor Companies in respect of its employees under applicable law, to the provident fund, gratuity fund, superannuation scheme, pension scheme, leave encashment and any other special scheme or benefits created, for the period after the Appointed Date shall be deemed to be contributions made by the Transferee Company.

(v) Transferee Company shall continue to abide by any agreement(s) /settlement(s) entered into by the Transferor Companies with its present employees on the payroll prior to Appointed Date and from Appointed Date till the Effective Date.

(*e) That in view of the IT department letter dated 5.10.2016 and 18.11.2016 referred to in Para 5 (xiii) above, This Hon'ble Court may kindly pass appropriate order/ orders as deem fit proper in the light of facts and circumstances of the case.*

As far as observations made in paragraph 6(e) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Companies have submitted the working/ basis for the proposed allotment of shares of the Transferee Company to the members of the Transferor Company in the respective Company Scheme Petition.

With respect to paragraph 4 of the letter dated 18.11.2016 of the Deputy Commissioner Income Tax – 12(2)(1) the Petitioner Companies agree that set off and carry forward of accumulated losses if any and credit of taxes paid if any by the Transferor Companies shall be allowed in the hands of the Amalgamated Company and Resulting Company here Unigem India Private Limited and Jasani Diamonds Private Limited as per the relevant provisions of the Income Tax Act, 1961 which require both the Companies i.e., Transferor and Transferee Companies to fulfil various conditions mentioned in the Income Tax Act, 1961. The Petitioner Companies also accept that nothing in the Scheme shall come in the way of assessment of the Companies by the Income Tax Department in accordance with the provisions of the Income Tax Act, 1961.

(f) The deponent submits that as per definitions Part – I Definitions clause 1.24 of the scheme the ***Effective Date*** *means the last of the dates on which all the orders sanctions, approvals, consents, conditions, matters or filings referred to in clause 14.7 thereof have been obtained or filed. This appears to be vague.*

In this regard it is submitted that the effective date means the later of the date on which the certified or authenticated copies of the orders sanctioning the scheme of amalgamation/ arrangement passed by the High Court of Judicature at Bombay as may be applicable is filed with Registrar of Companies, Maharashtra, Mumbai.

As far as observations made in paragraph 6(f) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Companies is agreeable to the Effective Date being the later of the date on which the certified or authenticated copies of the orders sanctioning the scheme of amalgamation/ arrangement passed by the High Court of Judicature at Bombay as may be applicable is filed with Registrar of Companies, Maharashtra, Mumbai. There is no violation of any provisions of the Companies Act, 1956 or Companies Act, 2013.

11. The Learned Counsel for the Regional Director on instructions of Mr. S Ramakantha, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 651 of 2016, 652 of 2016, 653 of 2016, 654 of 2016, 655 of 2016 and656 of 2016 filed by the Demerged Companies, the Amalgamating Company and the Resulting Company respectively are made absolute in terms of prayer clauses (a) to (d) of the respective Petitions.

14. The Petitioner Companies to lodge a copy of this order and the Scheme of Arrangement and Amalgamation, 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 issuance of Order.

15. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement and Amalgamation 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.

16. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition nos. 651 of 2016, 652 of 2016, 653 of 2016 and 654 of 2016 to pay cost of Rs 10000/- each to the official

liquidator, High Court Bombay. Costs to be paid within four weeks from the date of the order.

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

18. 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.

(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