IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 640 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 603 OF 2015.

D C SILK MILLS PVT LTD

....Petitioner/ the Demerged Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 641 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 604 OF 2015

D C LANDMARKS PVT LTD

....Petitioner/ the Resulting Company

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

AND

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

AND

In the matter of Scheme of Arrangement between D C SILK MILLS PVT LTD (the Demerged Company) and D C LANDMARKS PVT LTD (the Resulting Company)

<u>Called for hearing</u>

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

Mr. G. Hariharan i/b Mr. A.A. Ansari for Regional Director.

CORAM: K. R. Shriram, J.
DATE: 8th January, 2016

PC:

1. Heard Learned Counsel 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 Petitions.

2. The sanction of the Court is sought to a Scheme of Arrangement between D C SILK MILLS PVT LTD, the Demerged Company and D C LANDMARKS PVT LTD, the Resulting Company, under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor/ Demerged Company has been *inter alia* carrying business of processors, spinners, doublers, weavers, knitters, fabricators and

manufactures of Silk, Art Silk, Nylon, Polyester, Rayon, Cotton, Wool, Flax, hemp, linen, Jute and the Transferee/ Resulting Company and has been engaged in business of builders, contractors, erectors, constructor of buildings, houses, apartments, structures or residential, office, industrial, institutional or commercial or developers of co-operative housing societies. The proposed scheme of Arrangement will have the benefit which will reduced set-up and operating costs resulting in cost efficiency coupled with a greater financial flexibility and that the Reduced set-up and operating costs resulting in cost efficiency coupled with a greater financial flexibility and that the Demerged Company is mainly engaged in the Development business and that the proposed Scheme would result in segregation of and the transfer of the Demerged undertaking of Demerged Company into Resulting Company to consolidate the business for better financial management.

4. 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 by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective

Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies 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 an Affidavit on 17th day of December, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) *Clause 5.4 of the scheme states that DCL shall, to the extent, if required, increase its Authorised Share Capital in order to issue Equity Shares under this Scheme. In this regard, the Resulting Company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms* *with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.*

(b) It is respectfully submitted that 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 returns filed by the Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit 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.

10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal 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 Petitioners. The above undertakings are accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 640 and 641 of 2015 are made absolute in terms of prayers clause (a) to (c).

13. The Petitioner Companies 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 days from the date of the Order.

14. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of 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.

15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the Order.

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

17. 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.

(K. R. Shriram, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.