IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 670 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 542 OF 2015

**CARNIWAL INVESTMENTS LIMITED**

………… Petitioner / the Demerged Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of the Companies Act, 2013;
AND
In the matter of Sections 391 to 394 and Section 100 to 103 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013;
AND
In the matter of Scheme of Arrangement
between
Carniwal Investments Limited ("CIL" or "the Demerged Company")
AND
Astaka Properties Private Limited ("APPL" or "the Resulting Company")
AND
their Respective Shareholders and Creditors

**Called for Hearing**

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

Mrs. Purnima Awasthi i/b Mr. A. A Ansari for Regional Director.

Ms. Amrita Soni i/b Ajay Law Associates for Notice ( Creditor ).

CORAM: B. P. Colabawalla, J.

DATE: April 16, 2016

1. Heard counsel for the parties. An affidavit objecting to the Scheme was filed by one of the creditors, BNK Capital Markets Limited, but the same

has been withdrawn following an amicable settlement with the Petitioner Company. Apart from the above, no other objector has come before the court to oppose the Scheme and nor any has party contravened any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 and Sections 100 to 103 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013, to the Scheme of Arrangement between Carniwal Investments Limited and Astaka Properties Private Limited and their Respective Shareholders and Creditors.

3. Learned counsel for the Petitioner states that the Petitioner is a Non-banking financial institution and is also engaged in property leasing business. The Resulting Company, Astaka Properties Private Limited has been newly incorporated to carry on the business of Property Leasing. The Scheme of Arrangement would result in the Property Leasing Undertaking of the Petitioner Company being transferred to and vested in the Resulting Company with effect from the Appointed Date and would result in businesswise segregation of companies thereby ensuring focused management, achieving operational and management efficiency and the ability to leverage financial and operational resources of each company.

4. The Petitioner Company and the Resulting Company approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The learned counsel for the Petitioner Company states that the reduction of the Share Capital and utilization of Securities Premium Account of the Petitioner Company shall be effected as an integral part of the Scheme and that the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and that it also does not involve any compromise or arrangement with any creditors of the Petitioner Company and the procedure prescribed

under section 101 (2) of the Companies Act, 1956 was dispensed with as per order dated 10 July, 2015 passed in CSD No. 542 of 2015. The Special Resolution for the said reduction of capital and utilization of the securities premium account is attached as Exhibit I to the Company Scheme Petition No. 670 of 2015 dated August 5, 2015.

6. The learned counsel for the Petitioner further states that, Petitioner companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.

7. The learned counsel appearing on behalf of the Petitioner has stated that the Petitioner has 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 / the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 17 October, 2015 stating therein that save and except as stated in para 6(a), (b) and (c) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In para 6(a), (b) and (c) of the said Affidavit, it is stated as under:

*(a) Clause 6.2.3 of the scheme, the difference between the book value of assets and books values of liabilities transferred to the resulting company shall be adjusted against the Securities Premium Account of Demerged Company and reduction of such Securities Premium Account is affected as an integral part of the scheme under section 52 of the Companies Act, 2013, read with section 100 of the Companies Act, 1956.*

*(b) The Registered Office of the Resulting Company is situated in the State of Haryana. Hence the present scheme of amalgamation between the Transferor and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Punjab and Haryana in respect of Resulting Company.*

*(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 demerged company.*

9. In response to the aforesaid observation in paragraph 6(a) of the Affidavit of Regional Director, the Petitioner Company states that *the difference between the book value of assets and books values of liabilities transferred to the resulting company shall be adjusted against the Securities Premium Account of Demerged Company*.

10. In response to the aforesaid observation in paragraph 6(b) of the Affidavit of Regional Director, the Petitioner Company states that the Petition filed by the Resulting Company was heard and disposed of before the High Court of Punjab and Haryana on January 11, 2016

11. In response to the aforesaid observation in paragraph 6(c) of the Affidavit of Regional Director, the Petitioner Company states that the Petitioner Company is bound 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 Counsel for the Regional Director on instructions of Mr. Chandanamuthu, Joint Director in the office of Regional Director stated that they are satisfied with the undertaking given by the Petitioner

Company in clauses 9, 10 and 11 above. The said undertakings given by the Petitioner Company is accepted.

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, the Company Scheme Petition No. 670 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (f).

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 the Order.

16. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with I.N.C. – 28 in addition to physical copy as per the relevant provisions of the Act.

17. 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.

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.

(B. P. Colabawalla , J)

## CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.