IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 746 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO. 643 OF 2015

Krishkin Impex Private Limited

….. Petitioner Company

AND

COMPANY SCHEME PETITION NO. 747 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 644 OF 2015

Reengus Exim Private Limited

…. Petitioner Company

AND

COMPANY SCHEME PETITION NO. 748 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 645 OF 2015

Shivram Global Private Limited

….Petitioner Company

AND

COMPANY SCHEME PETITION NO. 749 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 646 OF 2015

STP Exim Private Limited

…. Petitioner Company

AND

COMPANY SCHEME PETITION NO. 750 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 647 OF 2015

Brett Plastics Private Limited …. Petitioner Company

In the matter of Companies Act, 1956 (1 of 1956);

And

In the matter of Sections 391 and 394 of the Companies Act, 1956; (1 of 1956)

And

In the matter of Scheme of Amalgamation of Krishkin Impex Private Limited (KRISHKIN), Reengus Exim Private Limited (REENGUS), Shivram Global Private Limited (SHIVRAM), STP Exim Private Limited (STP) with Brett Plastics Private Limited (BRETT) and their respective Shareholders and Creditors.

Called for hearing:

Mr. Gauraj Shah i/b. M/s. Kanga & Company, Advocates for the Petitioners in Company Scheme Petitions 746 to 750 of 2015.

Mr. Vinod Sharma, Official Liquidator, present in CSP No. 746 to 749 of 2015.

Mr. M.S. Chunawala i/b. Mr. A.A. Ansari for Regional Director in all the Petitions.

CORAM: K.R. Shriram J.

DATE: 12th February 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has contraverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Krishkin Impex Private Limited, Reengus Exim Private Limited, Shivram Global Private Limited, STP Exim Private Limited, the Transferor Companies with Brett Plastics Private Limited, the Transferee Company under Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified.

3. The Learned Counsel for the Petitioners state that The Petitioner Companies are all under the common management and have common shareholders and are all at present carry on the business of trading of Merchandise With a view to have the business of the Petitioner Companies carried on more economically, efficiently and beneficially it was proposed to amalgamate the Transferor Companies with the Transferee Company. The Amalgamation would be in the interest of all the Companies and their shareholders. The Amalgamation will result in the combined businesses of the Transferor Companies and the Transferee Company to be carried on more economically, efficiently and beneficially. It would strengthen the management of the Transferee Company effectively because of avoidance and elimination of unnecessary duplication of time, costs and expenses, incurred for administration and operations of all the companies separately. It will enhance financial strength and flexibility and consolidate and integrate the operations. It will synergize business activities, attain economies of scale, for further development and growth of the business of the Transferee Company. It will also result in pooling of resources in the most optimum manner of all the companies and enable the Transferee Company to carry on its business more profitably/effectively. The Petitioner Companies approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to their respective Company Scheme Petitions.

4. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in their respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in their respective Summons for Directions.

5. The Learned Counsel appearing on behalf of the Petitioners state that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary Affidavits 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 and Companies Act, 2013 and the Rules made thereunder as may be applicable. The said undertaking is accepted.

6. The Regional Director has filed an Affidavit on 11th January 2016 stating therein that save and except as stated in para 6(a),(b), (c) and (d) it appears that the Scheme is not prejudicial to the interest of shareholders and public. The said para is reproduced below:

"*6. That the Deponent further submits that :*

a) *The Income Tax Department vide its letter dated 30/09/2015 has informed that M/s. Reengus Exim Private Limited, the Second Transferor Company is having outstanding demand of Rs. 6,67,250/- and Rs. 9,410/- for A.Y. 2006-07 and 2010-11 respectively. Copy of the said letter is annexed herewith as Exhibit 'D-1". In this regard, the Transferee Company may be directed to safeguard the interest of the Income Tax Department with respect to aforesaid income tax dues.*

b) *Clause 15.4 of the scheme states that the difference between the amounts recorded as Share Capital issued and the amount of Share Capital of Krishkin, Reengus, Shivram and STP shall be adjusted in General Reserves. In this regard, it is submitted that the surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company.*

c) *The Shares of Second Transferor Company and Third Transferor company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the Shareholdrs of Transferor Companies, the Transferee Company has to comply with the provisions of FEMA/RBI regulations as applicable in this regard.*

d) *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 Transferee Company after giving* *effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Companies and the Transferee Company..*"

7. The Learned Counsel appearing on behalf of the Petitioner Companies state that in respect of paragraph 6(a) of the Affidavit of the Regional Director, with regard to the Second Transferor Company's outstanding Income Tax demand of Rs. 6,67,250/- and Rs. 9,410/- for A.Y. 2006-07 and 2010-11 respectively the Transferee Company undertakes to safeguard the interest of the Income Tax Department with respect to the aforesaid income tax dues.

8. The Learned Counsel appearing on behalf of the Petitioner companies further states that in respect of paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake that the surplus, if any arising out of the difference between the amounts recorded as Share Capital issued and the amount of Share Capital of Krishkin, Reengus, Shivram and STP will be credited to Capital Reserve Account of the Transferee Company.

9. The Learned Counsel appearing on behalf of the Petitioner companies further state that in respect of paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake that the Transferee Company will comply with the provisions of FEMA/RBI regulations as applicable, while issuing new shares to the shareholders of the Second and Third Transferor Companies.

10. The Learned Counsel appearing on behalf of the Petitioner companies further state that in respect of paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel agree and confirm 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 answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, 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 Learned Counsel for the Petitioner Companies. The undertakings given by the Petitioner Companies are accepted.

12. The Official Liquidator has filed his report on 9th February 2016 in Company Scheme Petition Nos. 746 to 749 of 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and the Transferor Companies may be ordered to be dissolved.

13. The Counsel for the Petitioner Companies further states that due to oversight and inadvertence there are a few figures missing in Clause 16 of the Scheme of Amalgamation, i.e. change in the Memorandum and Articles of Association of the Transferee Company. The figures missing are with regard to the Preference Shares of Shivram Global Private Limited. Clause 16 of the Scheme of Amalgamation as it stands reads as "In the Authorised Share Capital of Shivram, existing 22,00,000 Equity Shares of Rs. 10/- each be consolidated into 2,20,000 Equity Shares of Rs. 100/- each and the same be merged in the Authorised Share Capital of Brett without any further act or deed and it shall be deemed that the members of Shivram have also resolved and accorded all relevant consents under the provisions of the Act".

14. The Counsel for the Petitioner Companies further states that Clause 16 of the Scheme of Amalgamation after including the Preference Shares of Shivram Global Private Limited should read as " In the Authorised Share Capital of Shivram, existing 22,00,000 Equity Shares of Rs. 10/- each and 10,000 Preference shares of Rs. 10/- each be consolidated into 2,20,000 Equity Shares of Rs. 100/- each and 10,000 preference Shares of Rs. 10/- each and the same be merged in the Authorised Share Capital of Brett without any further act or deed and it shall be deemed that the members of Shivram have also resolved and accorded all relevant consents under the provisions of the Act.". The Counsel for the Petitioner Companies further states that in view of the figures missing from the Scheme of Amalgamation the Petitioner Companies be permitted to amend clause 16 of the Scheme to include the preference shares of Shivram Global Private Limited.

15. Leave to amend the Scheme of Amalgamation as mentioned in para 14 hereinabove is granted. Amendments to be carried out within two weeks from the date of the Order.

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 Petition Nos. 746 to 749 of 2015 are made absolute in terms of prayers (a) to (f) and Company Scheme Petition No. 750 of 2015 is made absolute in terms of prayers (a) to (e).

18. The Petitioner Companies to lodge a copy of this order and 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.

19. Petitioners 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 E-Form – INC 28 in addition to physical copy as per the provisions of the Companies Act, 1956/2013.

20. The Petitioners in all the Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order and the Petitioners in Company Scheme Petition No. 746 to 749 of 2015 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 authority to act on a copy of this order along with the 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.

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