IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 813 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 639 OF 2015

GITANJALI JEWELLERY RETAIL LIMITED

..…. First Petitioner Company

AND

COMPANY SCHEME PETITION NO. 814 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 640 OF 2015

GITANJALI LIFESTYLE LIMITED

….. Second Petitioner Company

AND

COMPANY SCHEME PETITION NO. 815 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 641 OF 2015

GILI INDIA LIMITED

…..Third Petitioner Company

In the matter of the Companies Act, 1956;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Gitanjalii Jewellery Retail Limited and Gitanjali Lifestyle Limited with Gili India Limited and their respective Shareholders

Called for hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Petitioners in all Petitions.

Mr. M. S. Chunawala, i/b Mr. Niraj Kumar for Regional Director in all Petitions.

Mr. Vinod Sharma, Official Liquidator Present

Mr. Dhruv Joshi i/b. Wadia Ghandy & Co. for Saryu Properties & Hotels Private Limited and Mr. Halwasia i/b Halwasia & Co. for M/s. Subarbia Arts and Ms. Revati Dhakite, Manager-legal, M/s. Grauer & Weil (India) Limited and Ms. Dhanashree Gaikaiwari i/b Bilawala & Co. for M/s. Fountainhead Events Private Limited and Ms. Krinjal Ahuja, i/b Mr. Satayan S. Israni for M/s. Diadem Ranka Desire Lifestyle Private Limited, the Objecting Creditors.

CORAM: B.P. Colabawalla, J.

DATE: 8th July, 2016

PC:

1. Heard the learned counsel for the Petitioner Companies and Counsel for the objecting creditors.

2. M/s Saryu Properties & Hotels Private Limited and M/s. Subarbia Arts and M/s. Grauer & Weil (India) Limited and M/s Fountainhead Events Private Limited and M/s. Diadem Ranka Desire Lifestyle Private Limited and M/s Empire Mall Private Limited and M/s. R Mall Developers Pvt. Ltd all of them claim to be an Unsecured Creditors of the Transferor Companies under the Scheme and have objected to the Scheme of Amalgamation on the ground that their dues have not been paid and they would be prejudicially affected if the Scheme is sanctioned.

3. The learned Counsel for the Petitioners states that in so far as objections filed by the Objecting creditors are concerned, their rights of the objecting Creditors are not affected as there is no compromise or

arrangement with any of the creditors as the Scheme is an Arrangement between the Petitioner Companies and its respective shareholders as contemplated under Section 391(1)(b) and not in accordance with the provisions of Section 391(1)(a) of the Companies Act, 1956. The Counsel for the Petitioners state that in terms of clause 4.4 of the Scheme all liabilities of the Transferor Companies will be taken over by the Transferee Company.

4. The learned counsel appearing on behalf of the transferee company on instructions state that the transferee company shall recognize all these objecting Creditors as its creditors and it will be open to the said unsecured creditors to pursue legal remedy as may be advised for recovery of their claim amount in accordance with law.

5. The sanction of the Court is sought to Scheme of Amalgamation between Gitanjali Jewellery Retail Limited ("the Transferor Company 1") and Gitanjali Lifestyle Limited ("the Transferor Company 2") with Gili India Limited (“ the Transferee Company") and their respective shareholders ("the Scheme" or "this Scheme").

6. The learned Counsel for the Petitioners states that the First Petitioner Company is currently engaged in the business of trading in a diverse range of jewellery, gold, silver, platinum and stainless steel, studded with diamonds and other gems. The Second Petitioner Company is currently engaged in the business of trading in luxury & lifestyle products including diamond studded watches, Gold & Diamond studded jewellery, silverware, etc. and provide services in health & beauty segments. The Third Petitioner Company is currently engaged in the business of diamond studded gold earrings, gold jewellery, and diamond studded gold rings.

7. That the rationale for the Scheme is consolidation of the business and elimination of multiple entities. The amalgamation would result in reduction in overheads, administrative, managerial and other expenditure,

operational rationalization, organizational efficiency, and optimal utilization of various resources and the management of the Petitioner Companies believe that amalgamation would result in consolidation of managerial expertise of the companies involved thereby giving additional strength to the operations and management of the amalgamated Company.

8. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

10. The Learned Counsel appearing on behalf of the Petitioners states 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 undertakes 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.

11. The Official Liquidator has filed his report on 16th April, 2016 stating therein 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 by this Court.

12. The Regional Director has filed an Affidavit on 4th May, 2016 stating therein that save and except as stated in paragraph 6 (a) to (e) 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(e), of the said affidavit it is stated that:

(a) Clause 6.5 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.

(b) The Deponent further states that clause 6.4 of the scheme provides for utilizing the capital reserve if any arising out of the scheme for the purpose of capitalization at the discretion of the Board of Director of the Transferee Company. In this regard it is submitted that the capital reserve so arrived by way of the scheme is not available for distribution of dividend or issue of bonus shares in as much as, the said Capital Reserve is not a free reserve. When the matter was taken up with the petitioner company, Transferee Company vide its letter dated 03/03/2016 has undertaken that the said capital reserve will not be utilized for distribution of dividend or issue of bonus shares. However it has been stated that the said capital reserve will be utilized for adjustment of capital losses arising in future, if any, The copy of the letter is annexed hereto and marked as Exhibit 'D'. In view of the above petitioner company may be directed to suitably amend the clause 6.4 of the scheme.

(c) The deponent further respectfully submits that, this directorate has received e-mail from Shri. Dinesh Kumar, Advocate on behalf of his client, viz Scope Advertisements and Publicity Pvt. Ltd. objecting the scheme of amalgamation on the ground that first Transferor Company has failed to pay their dues. Similarly, the Registrar of Companies, Mumbai has also received a complaint from M/s. Karnataka Diagnostic and Research Services Private Limited for non-payment of refundable securities deposit by first transferor company. The complainant has also brought to the notice of Registrar of Companies, Mumbai in respect of 18 other parties, who have filed various legal proceedings before the competent court of law.

i. The Registrar of Companies, Mumbai has issued notice under section 206 of the Companies Act, 2013 as instructed by Ministry of Corporate Affairs vide their letter no 3/40/2014 – CL.II dated 03/06/2014 to the company/directors on various counts and the said proceedings is in progress.

ii. *As per the information provided by the petitioner company, vide their letter dated 05/04/2016 that they are having huge outstanding amount in respect of various scheme floated by them (copy of the same is annexed hereto and marked as Exhibit 'E'.) It has been stated therein as under:*

"The Company mainly operates through its franchisees/retail stores. In case of money collected through franchisee, the particular franchisee is treated as party in the books of accounts of the company, whereas in case money is collected from Company's store that particular store is treated as party in the books of the Company."

iii. *It has been observed that the reply submitted by the 1st transferor company, they are not admitting the liability of individual subscribers to the scheme floated by them. However, the 1st transferor company admits the amount received from the Franchise/Retail outlet. As the 1st Transferor Company is avoiding acknowledgement of liability to various subscribers to the scheme in the interest of public at large, the 1st transferor company shall be directed to clarify the actual dues payable by the company to various creditors/subscribers to various scheme.*

iv. *On post amalgamation, the transferee company shall not take the plea that, the transferor company has not acknowledged the liability to individual subscribers and acknowledgement of liability is only towards the amount received from its Franchise/Retail outlet. Thus, the amount received by the 1st Transferor Company on various scheme floated by the transferee company from individual subscribers, shall not be rejected by the transferee company.*

v. *In so far as proceedings, initiated by the Registrar of Companies under section 206 of the Companies Act, 2013 the deponent respectfully submits that the Central Government/Regional Director/Registrar of Companies reserve their rights to take appropriate action, if any, violation is established in the course of proceeding initiated under section 206 of the Companies Act, 2013.*

(d) The deponent further respectfully submits that, under the winding up petition filed against the transferor companies, their present status are given below as provided by the petitioner company.

Winding up cases filed against Gitanjali Jewellery Retail Limited (1st Transferor Company)

Sr.	*Name of Party and*	*Case no & Count*	*Type of*	*Status/Re*

	Location		*Cases*	*marks*
1	*Outdoor Media Integrade Div of M/s, Laqshya Media Pvt. Ltd*	*Company Petition 937 of 2015 Bombay High Court*	*Winding Up Petition*	*Pre-admission*
2	*Kalash Gold Jewellery, Mysore*	*Company Petition 807 of 2015 Bombay High Court*	*Winding Up Petition*	*Pre-admission*

Winding up cases filed against Gitanjali Lifestyle Limited (2nd Transferor Company)

Sr. No.	*Name of Party and Location*	*Case no & Count*	*Type of Cases*	*Status/Remarks*
1	*Anchal Collection, Kolkata*	*Winding up Petition 762 of 2014 Bombay High Court*	*Winding Up Petition*	*For admission*
2	*Radiant Exterprises*	*Company Petition (L) 253 of 2015 Bombay High Court*	*Winding Up Petition*	*Pre-admission*

The Honorable High Court may consider the above facts before approving the scheme.

(e) In this regard, it is respectfully submitted that the tax issue, if any, arising out of this 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 petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

13. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Petitioner Companies shall pass necessary accounting entries in connection with the Scheme to comply with the applicable Accounting Standards.

14. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel states that the Transferee Company has undertaken vide its letter dated 3rd March, 2016 addressed to Regional Director, that the capital reserve will not be utilized for distribution of dividend or issue of bonus shares. Further, it has been stated that the said capital reserve will be utilized for adjustment of capital losses arising in future, if any.

15. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that in so far as creditors of the Transferor Company No. 1 are concerned, their rights are not affected as there is no compromise or arrangement with any of the creditors. Further, the creditors of the Transferor Company No. 1 will become creditors of the Transferee Company pursuant to the Scheme of Amalgamation and any proceedings or action initiated against the transferor companies shall not be prejudiced in any manner merely because this Court has sanctioned the scheme of Amalgamation.

16. In so In so far as observations made in paragraph 6(c)(i) & 6(c)(v) of the Affidavit of Regional Director are concerned, the Petitioner Companies through their Counsel clarifies that the proceedings initiated by Registrar of Companies against Transferor Company No. 1 has not attained the stage of finality and sanctioning of the scheme as such will not dilute the proposed penal action to be taken by the Central Government / Regional Director / Registrar of Companies against the transferee company if any

violation is established in the course of proceeding initiated under section 206 of the Companies Act, 2013.

17. In so In so far as observations made in paragraph 6(c)(ii), 6(c)(iii) & 6(c)(iv) of the Affidavit of Regional Director are concerned, the Transferor Company No. 1through its Counsel clarifies that it is not avoiding any acknowledgement of liability of the Individual subscribers to various schemes floated by it and the letter addressed to Regional Director annexed as Exhibit F to the Affidavit of the Regional Director clearly establishes that the Company year after year is redeeming the amount collected under various schemes and further the Transferee Company undertakes that any subscriber to any of the schemes floated by the Transferor Company No. 1 upon its furnishing a proof of subscription and whose amount is due and payable under any of the Schemes floated by the Transferor Company No. 1 and the amount of said subscriber shall be redeemed and paid by the Transferee Company as if subscriber was a subscriber to the schemes floated by the Transferee Company itself.

18. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that the said Winding up proceedings initiated against the transferor companies shall not be prejudiced in any way or manner merely because this Court has sanctioned the scheme of Amalgamation and shall continue against the Transferee Company after sanction of the Scheme.

19. In so far as observations made in paragraph 6(e) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that the tax implications, if any, arising out of this scheme is subject matter of assessment of the income tax return by the Income Tax Department and the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and all tax

issues arising out of Scheme will be met and answered in accordance with law.

20. The Learned Counsel for Regional Director on instructions of Joint Director in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the Submissions and undertakings given by the Petitioner Companies. The said submissions and undertakings given by the Petitioner Companies are accepted.

21. 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.

22. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 813 of 2015 to 815 of 2015 are made absolute in terms of prayer clause (a) of the respective Company Scheme Petition.

23. The Petitioner Companies to lodge a copy of this order and the amended Scheme, along with the form of minutes duly authenticated by the Company Registrar, High Court, 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.

24. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court, Bombay with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.

25. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner

Companies in Company Scheme Petition No. 813 of 2015 and Company Scheme Petition No. 814 of 2015 to pay cost of Rs. 10,000/- each to Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

27. All concerned regulatory authorities to act on a copy of this order and the scheme annexed to respective Company Scheme Petition 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 the original signed order.

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