IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 821 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 617 OF 2015

Patotsav Investments and Trading Company Private Limited

….Petitioner/Transferor Company 1

AND

COMPANY SCHEME PETITION NO. 822 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 618 OF 2015

Vajradhar Leasing and Finvest Private Limited

…Petitioner/Transferor Company 2

AND

COMPANY SCHEME PETITION NO. 823 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 619 OF 2015

Brijwasi Securities Private Limited

…….Petitioner/Transferee Company

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

AND

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

AND

In the matter of Scheme of Amalgamation of Patotsav Investments and Trading Company Private Limited ("Transferor Company 1 or PITCPL") and Vajradhar Leasing and Finvest Private Limited ("Transferor Company 2 or VLFPL") With Brijwasi Securities Private Limited ("Transferee Company or BSPL") and their Respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. Udayan Shah i/b Mr. A.A. Ansari for Regional Director in all the Petitions.

Mr. Vinod Sharma, Official Liquidator Present .

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 of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Patotsav Investments and Trading Company Private Limited and Vajradhar Leasing and Finvest Private Limited with Brijwasi Securities Private Limited and their respective shareholders.

3. The learned Counsel for the Petitioners state that Transferor Company 1 is engaged in the business of investment in Stock and Shares. Transferor Company 2 is engaged in the business of financial consultancy and investment and dealing in Shares and Securities. The Transferee Company is engaged in the business of advisory for debt market and buying and selling of shares.

4. The rational for the Scheme is that with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Transferor Companies into Brijwasi Securities Private Limited. The amalgamation of the undertakings of the Transferor Companies into the Applicant/ Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations.

Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. 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.

6. 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.

7. The Learned Counsel appearing on behalf of the Petitioners has 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 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.

8. The Official Liquidator has filed his report on 21st January, 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.

9. The Regional Director has filed an Affidavit on 6th January, 2016 stating therein, save and except as stated in paragraphs 6 thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that

6. That the Deponent further submit that,

a) *Clause no. 8.2 of the scheme states that the excess of the book value of the net assets of the Transferor Companies over the paid up value of the shares to be issued and allotted shall be credited/ debited to the "Amalgamation Reserve Account" and clause no. 8. 7 of the Scheme states that all such* amount standing *to the credit of the "Amalgamation Reserve Account" shall constitute the Transferee Company's free reserves available for distribution and shall form part of the General Reserve and be treated as net worth of the Transferee Company. 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 and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company as the surplus / reserve is arising on transfer of capital assets from Transferor Company to Transferee Company and hence that part of the reserve cannot be construed as free reserve and cannot form part of the net worth of the Transferee company.*

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

c) *Clause 17 of the Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.*

10. As far as observation made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the

Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

11. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioners clarifies that the approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

12. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners clarifies that in the event if the Petitioners intending to modify the Scheme the same will be done only with the approval of this Court.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 821 of 2015 to 823 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petitions.

16. The Petitioner Companies are directed to lodge a copy of this order and Scheme 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.

17. Petitioner is 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 relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioners in Company Scheme Petitions No. 821 of 2015 to 823 of 2015 to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioners in Company Scheme Petition No. 821 of 2015 and 822 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
19. Filing and issuance of the drawn up order is dispensed with.
20. 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.

(K. R. Shriram, J.)

CERTIFICATE

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

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