IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 897 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 764 OF 2015

AMBIKA MULTITRADE PRIVATE LIMITED

…………Transferor Company No.1/ Petitioner Company

AND

COMPANY SCHEME PETITION NO 898 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 765 OF 2015

PRANAY TRADING COMPANY PRIVATE LIMITED

…………Transferor Company No.2/ Petitioner Company

AND

COMPANY SCHEME PETITION NO 899 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 766 OF 2015

ISHA MULTITRADE PRIVATE LIMITED

…………Transferor Company No.3/ Petitioner Company

AND

COMPANY SCHEME PETITION NO 900 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 767 OF 2015

SUMEDHA MULTITRADE PRIVATE LIMITED

…………Transferor Company No.4/ Petitioner Company

AND

COMPANY SCHEME PETITION NO 901 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 768 OF 2015

EVEREST GOODS PRIVATE LIMITED

…………Transferee Company / Petitioner Company

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

AND

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

AND

In the matter of the Scheme of Amalgamation of: AMBIKA MULTITRADE PRIVATE LIMITED

AND

PRANAY TRADING COMPANY PRIVATE LIMITED

AND

ISHA MULTITRADE PRIVATE LIMITED

AND

SUMEDHA MULTITRADE PRIVATE LIMITED

(Transferor Companies)

WITH

EVEREST GOODS PRIVATE LIMITED

(Transferee Company)

Called for Hearing

Ms. Sara Sancheti i/b SANCHETI & SANCHETI, Advocates for the Petitioner. Mr. P.S. Gujar i/b Mr. A.A. Ansari For the Regional Director.

Mr. Vinod Sharma, Official Liquidator present.

CORAM: G.S. PATEL, J.

DATE: 18th March, 2016.

PC:

1. Heard Advocate for the parties. No objections have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of AMBIKA MULTITRADE PRIVATE LIMITED and PRANAY TRADING COMPANY PRIVATE LIMITED and ISHA MULTITRADE PRIVATE LIMITED and SUMEDHA MULTITRADE PRIVATE LIMITED (Transferor Companies) with EVEREST GOODS PRIVATE LIMITED (Transferee Company)

3. Learned Advocates for the Petitioner Companies states that the First Transferor Company is engaged in the Business of providing Loans and advances and investments in associate companies and the Second Transferor Company is engaged in the Business of providing Loans and advances and investments in associate companies and the Third Transferor Company is engaged in the Business of providing Loans and advances and investments in associate companies and the Fourth Transferor Company is engaged in the Business of providing Loans and advances and investments in associate companies and Transferee Company is engaged in the Business of providing Loans and advances and investments in associate companies.

4. The proposed scheme of amalgamation of the Transferor Companies with Transferee company will have the benefit that they engaged in the same line of business and it would consolidate of the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to a more efficient utilization of capital and create a stronger base for future growth of the amalgamated entity and reduce administrative time and costs of managing multiple entities and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and it would benefit of operational synergies to the combined entity and greater leverage in operations, planning and process optimization and it would save the cost from more focused operational efforts, rationalization and standardisation of administrative expenses.

5. The Petitioner Companies has approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petitions.

6. The Learned Advocates for the Petitioner further states that the Petitioner Companies has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions has been filed in consonance with the Order passed in Company Summons for Directions.

7. The Learned Advocate appearing on behalf of the Petitioners 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 through its Advocate undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 read with the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report in Company Scheme Petition No. 897 to 900 of 2015, 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.

9. The Regional Director has filed an Affidavit on 16th March,2016 stating therein, that save and except as stated in paragraph 6, of the Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. The aforesaid paragraph reads as under:

"6. That the Deponent further submits that:-

6(a) With reference to clause 5.5 of the scheme, it is submitted that the surplus if any arising out of the scheme is due to transfer of capital assets from transferor company to transferee company. Such reserve is not a free reserve and not forming part of Net Worth of the Company. It is, therefore, suggested *that the surplus if any, arising be credited to Capital Reserve Account of Transferee Company.*

6(b) Clause 5.6 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 Standard such as AS-5 etc.

6(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 petitioner company.

10. As far as the observation made in Paragraph 6(a) of the Regional Director is concerned, the Petitioners undertake that the surplus if any arising out of the scheme shall not be transferred to General Reserve Account and the same will be transferred to capital reserve account of the Transferee Company. The Petitioners further undertake that the reserve arising on transfer of capital assets from Transferor Company to the Transferee Company will not be construed as a free reserve and will not form part of the net worth of the Company.

11. As far as the observation made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company undertakes to comply with provisions of Accounting Standard AS-14 and further undertakes to comply with provisions of Accounting Standard AS-5 etc, as applicable in respect of accounting of surplus arising out of amalgamation. The undertaking is accepted.

12. As far as the observations made in Paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

13. The Learned Counsel for the the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings 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, Company Scheme Petition Nos. 897of 2015, 898 of 2015, 899 of 2015 and 900 of 2015 are made absolute in terms of prayer clauses (a), (b), and (c) the Company Scheme Petition No.901 of 2015, Filed by the Transferee Company is made absolute in terms of prayer clauses (a), (b), and (c).

16. The Petitioner Company is directed 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.

17. The Petitioner Company is further directed to file a copy of this order alongwith a copy of the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copies as per relevant provisions of the Companies Act,1956/2013 whichever is applicable.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition Nos. 897 of 2015, 898 of 2015, 899 of 2015, 900 of 2015, 901 of 2015 and Rs. 10,000 each to the Official Liquidator, High Court, Bombay in Company Scheme Petition no. 897 of 2015,898 of 2015, 899 of 2015 and 900 of 2015. Costs to be paid within four weeks from the date of the Order.

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 Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(G.S. PATEL, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer.