IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 2 OF 2016
CONNECTED WITH
COMPANY SUMMON FOR DIRECTION NO 831 OF 2015

Gitanjali Exports Corporation Limited ....Petitioner 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 Gitanjali Exports Corporation Limited ("Transferor Company") and with Gitanjali Gems Limited ("Transferee Company") and their respective shareholders and creditors.

Called for hearing

Mr. Hemant Sethi along with Mr. Ajit Singh Tawar, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. Pranil Sonawane i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator Present

CORAM: B.P. Colabawalla, J.

DATE: 17th June, 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 Gitanjali Exports Corporation Limited with Gitanjali Gems Limited and their respective shareholders.

3. The Learned Counsel for the Petitioner states that the Petitioner Company in Company Scheme is presently engaged in the business of sourcing rough diamonds and manufacturing and trading of diamond and Jewellery and the Transferee Company is engaged in the business of diamond and Jewellery manufacturing including cutting and polishing of diamonds.

4. Learned Counsel for the Petitioner states 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 Company 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.

5. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that the Petitioner Company have complied with all the directions passed in Company Summon for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summon for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company 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 9th June, 2016 stating therein that the affairs of the Transferor Company have been

conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 15th June, 2016 stating therein, save and except as stated in paragraphs 6 (a) & (b) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) & (b) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits 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 Standard such as AS-5 etc.

(b) 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 observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Transferee Company will comply and follow the accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme.

11. As far as observations made in paragraph 6 (b) of Affidavit of the Regional Director, the Petitioner 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 Company after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

12. 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 undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of the prayer clause (a) of the Company Scheme Petition.

15. The Petitioner Company 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.

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

17. The Petitioner to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

19. 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.

(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