

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 14 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 863 OF 2015.

KKB ENTERPRISES PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 15 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 864 OF 2015.

BURNT UMBER FASHION PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1956 and
other relevant provisions of the Companies
Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other relevant
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of
KKB ENTERPRISES PRIVATE LIMITED, the
Transferor Company with BURNT UMBER
FASHION PRIVATE LIMITED, the
Transferee Company and THEIR
RESPECTIVE SHAREHOLDERS and
CREDITORS

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. P. S. Gujar i/b Mr. A.A. Ansari for the Regional Director.

Mr. Vinod Sharma, the Official Liquidator, present.

CORAM: B. P. Colabawalla J.

DATE: 22nd April, 2016

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought to a Scheme of Amalgamation of KKB ENTERPRISES PRIVATE LIMITED, the Transferor Company with BURNT UMBER FASHION PRIVATE LIMITED, the Transferee Company,

under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of marketing, retailing and sale of readymade fabrics and the Transferee Company carrying on the business of manufacturing and trading of readymade garments. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management that the amalgamation will enable the consolidation of the businesses of the Transferor Company and the Transferee Company and the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of both the companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company and the Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as

provided for in the scheme and the Amalgamation of Transferor Company with Transferee Company will result in cost saving, stability of operations and higher profitability levels.

4. The 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.
5. The Learned Counsel for the Petitioners further states that Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.
6. The Learned Counsel appearing on behalf of the Petitioners have 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 undertake 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.
7. The Regional Director has filed an Affidavit on 21st day of April, 2016 stating therein, save and except as stated in paragraph 6, it appears

that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

“6. 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.

8. So far as the observation in paragraph 6 of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted 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 met and answered in accordance with law.
9. The Official Liquidator has filed his report on 18th day of April, 2016 in Company Scheme Petition No. 14 of 2016 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
10. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, 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 Petitioners. The above undertakings are accepted.

11. 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.
12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 14 of 2016 is made absolute in terms of prayers clause (a) to (d) and 15 of 2016 is made absolute in terms of prayer clauses (a) to (c).
13. The Petitioner Companies to file 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.
14. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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.
15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 14 of 2016 to pay costs of Rs.10,000/- to

the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

16. Filing and issuance of the drawn up order is dispensed with.
17. 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.

(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.