

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.44 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.814 OF 2015
MANDHANA INDUSTRIES LIMITED.
.....Petitioner/Demerged Company.

AND
COMPANY SCHEME PETITION NO.45 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 815 OF 2015
MANDHANA RETAIL VENTURES LIMITED.
.....Petitioner/Resulting
Company.

In the matter of Companies Act, 1956
and Companies Act, 2013

AND

In the matter of Sections 391 to 394
read with Sections 100 to 103 of the
Companies Act, 1956

AND

In the matter of the Scheme of
Arrangement
between
Mandhana Industries Limited
(Demerged Company)
and
Mandhana Retail Ventures Limited
(Resulting Company)
And
Their respective Shareholders and
Creditors

Called for Hearing

Mr. Ashish Kamat i/b M/s Chitnis & Co, Advocate for Petitioner
Companies .

Mr. G. Hariharan i/b Shri. A. A. Ansari for Regional Director in both
the Petitions.

CORAM: B. P. COLABAWALLA, J

DATE : 29th March, 2016

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme 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 read with Sections 100 to 104 of the Companies Act, 1956, section 52 and section 55 of the Companies Act, 2013 to a Scheme of Arrangement (“Scheme”) between Mandhana Industries Limited and Mandhana Retail Ventures Limited and their respective shareholders and creditors.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company is currently engaged in business of manufacturing of textiles, garments and retail business. The Resulting Company currently, does not carry on any business.

4. The learned Advocate for the Petitioner Companies further states that the Scheme of Arrangement will have the benefit of Enhancing strategic flexibility to build a vibrant industrial platform, enable a dedicated management focus and to accelerate growth of the Retail Business and Access to varied sources of funds for the rapid growth of both businesses.

5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which is annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner in Company Scheme Petition No. 45 of 2016 states that as per clause 13.2 of the Scheme, the reduction of Share Capital of the Petitioner Company shall be effected as an integral part of the Scheme and the reduction of Share Capital does not involve either diminution of liability in respect of unpaid Share Capital or payment to any shareholder of any paid up share capital. The Petitioner Company had undertaken to pass a special resolution pursuant to the provisions of section 100 of the Companies Act, 1956 before the admission of the Company Scheme Petition. The Equity Shareholders of the Petitioner Company passed a special resolution on October 14, 2015 in accordance with section 100 of the Companies Act, 1956 and section 114 of the Companies Act, 2013 and the same has been annexed as Exhibit "K" to the Company Scheme Petition. In view thereof, the procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with vide Order dated 16th October, 2015 passed in C.S.D. No. 815 of 2015.

7. The Learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of

compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

8. The Regional Director has filed his Affidavit on 23rd March, 2016, *inter alia*, stating therein that save and except as stated in paragraphs 6 (a) to (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) and (b) of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

- a) As per clause 14.1 and 14.2 of the scheme, the surplus value if any, arising out of the scheme will be treated as General Reserve Account of Demerged Company and Resulting Company respectively. In this regard, it is submitted that the surplus reserve is arising only due to transfer of capital assets from demerged company to resulting company. Such reserve is not forming part of free reserve of Petitioner company only and hence that part of the reserve shall be credited to Capital Reserve Account of the Company instead of General Reserve Account of the Petitioner Company.*
- 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 scheme of arrangement The decision of the Income Tax Authority is binding on the Petitioner company.”*

9. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Petitioner Companies through its advocate undertakes that the surplus value if any, arising out of the scheme shall be credited to Capital Reserve Account instead of General Reserve Account of the Company.

10. So far as the objection of the Regional Director as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. 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 Companies through their advocate. In view thereof, the said undertakings are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.44 of 2016 filed by the Demerged

Company is made absolute in terms of prayer clauses (a) and (b) and Company Scheme Petition No.45 of 2016 filed by the Resulting Company is made absolute in terms of prayer clauses (a) to (c).

14. The Petitioner Companies 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 this order.

15. Petitioner is directed to lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

16. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

17. Resulting Company, in Company Scheme Petition No.45 of 2016 to publish a notice of registration of order and form of minutes of reduction of capital annexed as Exhibit 'L' to Company Scheme Petition No.45 of 2016 by Registrar of Companies once each in the two local newspaper, viz, "Free Press Journal" in English language and translation thereof in "Navshakti" in Marathi Language, both

having circulation in Mumbai and also in the Maharashtra Government Gazette within 14 days of registration.

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 and Form of Minutes annexed as Exhibit “L” to the Company Scheme Petition No.45 of 2016 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.