IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 48 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 836 OF 2015

In the matter of Companies Act, 1956 (1 of 1956);
And
In the matter of Sections 391 and 394 of the Companies Act, 1956;
And
In the matter of Scheme of Amalgamation of Jaykal Trading Private Limited
with
Jaykal Exports Private Limited

Jaykal Trading Private Limited .. Petitioner Company

Called for hearing:

Mr. Mayank Bagla i/b. M/s. Kanga & Company, Advocates for the Petitioner.

Mr. Vinod Sharma, Official Liquidator, present.

Mr. Anurag Gokhale i/b. Mr. Pankaj Kapoor for Regional Director in the Petition.

CORAM: A.K. Menon J.

DATE: 29th September 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has contraverted any averments made in the Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Jaykal Trading Private Limited, the Transferor Company with Jaykal Exports Private Limited, the

Transferee Company under Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified.

3. The Learned Counsel for the Petitioner states that the Petitioner Company is the wholly owned subsidiary of the Transferee company and is carrying on the business of investments and the Transferee Company at present carries on the business of exports of engineering goods, hand tools. The Rational for the Scheme is have better utilization of resources and assets and synergies of operations with integration of management and other expertise and strong capital structure and to also have greater efficiency in cash management and cost savings from focused operational efforts, rationalization, standardization and simplification of business processes, and to eliminate duplication, and to rationalize administrative expenses.

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

5. The Learned Counsel for the Petitioner further states that, the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in the Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioner states that the Petitioner has complied with all requirements as per directions of this Court and that the Petitioner has filed necessary Affidavits 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 and Companies Act, 2013 and the Rules made thereunder as may be applicable. The said undertaking is accepted.

7. The Regional Director has filed an Affidavit on 7th September 2016 stating therein that save and except as stated in para 6(a),(b) and (c) it appears according to the Regional

Director that the Scheme is not prejudicial to the interest of shareholders and public. The said para is reproduced below:

"*6. That the Deponent further submits that :*

a) 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) The surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to goodwill account of Transferee Company.

c) *That the Deponent further submits that 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. The Learned Counsel appearing on behalf of the Petitioner Company states that in respect of paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes to ensure that 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.

9. The Learned Counsel appearing on behalf of the Petitioner company further states that in respect of paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the surplus, if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to goodwill account of Transferee Company.

10. The Learned Counsel appearing on behalf of the Petitioner company further states that in respect of paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel agrees and confirms that the Petition Company is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of the Scheme will be answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakantha, Joint Director 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 Learned Counsel for the Petitioner Company. The undertakings given by the Petitioner Company are accepted.

12. The Official Liquidator has filed his report on 28th June 2016 in Company Scheme Petition stating that the affairs of the Petitioner Company has been conducted in a proper manner and the Petitioner Company may be ordered to be dissolved.

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, Company Scheme Petition is made absolute in terms of prayers (a) to (f).

15. The Petitioner Company to lodge a copy of this order and 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.

16. 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 provisions of the Companies Act, 1956/2013.

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 the date of the order.

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

19. All concerned regulatory authority to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(A.K. Menon J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer