IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CP No.88 of 2016 (O&M)
Date of Decision: 30.08.2016

IN THE MATTER OF:

SCHEME OF AMALGAMATION (MERGER) BETWEEN:

CHAMUNDA TRADERS PRIVATE LIMITED

. . . . First Transferor Company/Petitioner Company-I

And

INNOVA MERCHANTILES LIMITED

. . . . Second Transferor Company/Petitioner Company-II

And

KRISHANMURARI TRADING LIMITED

. . . . Third Transferor Company/Petitioner Company-III

And

PARSURAM TRADING LIMITED

. . . . Fourth Transferor Company/Petitioner Company-IV

And

VIRAM SALES PRIVATE LIMITED

. . . . Fifth Transferor Company/Petitioner Company-V

And

VASUDEVA COMMERCIALS LIMITED

. . . . Transferee Company/Petitioner Company-VI

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CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN.

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Present: - Mr.Puneet Kansal, Advocate,
for the petitioner-Companies.

Mr. Deepak Aggarwal, Advocate, with
Mr. D.K. Singh, Official Liquidator.

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RAKESH KUMAR JAIN, J.

The petitioners have prayed for sanctioning of Scheme of Amalgamation (Merger) (Annexure P-1) of Chamunda Traders Private

Limited (First transferor company/petitioner company-I), Innova Merchantiles Limited (Second transferor company/petitioner company-II), Krishanmurari Trading Limited (Third transferor company/petitioner company-III), Parsuram Trading Limited (Fourth transferor company/petitioner company-IV), Viram Sales Private Limited (Fifth transferor company/petitioner company-V) and Vasudeva Commercials Limited (Transferee company/petitioner company-VI).

This petition is jointly filed by all the Petitioner-Transferor and Transferee Companies under Sections 391 to 394 of the Companies Act, 1956 [for short 'the Act'] for first and second motion.

Convening of meetings of Equity Shareholders and Unsecured Creditors of all the Petitioner-Transferor and Transferee Companies were dispensed with vide order dated 03.05.2016.

By virtue of order dated 03.05.2016, notice was issued to the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi and the Official Liquidator. Notice was also ordered to be published in 'Indian Express' (English) and 'Ajit' (Punjabi) both Punjab Editions, and in the official Gazette of Government of Punjab. It was also ordered to be uploaded on the website of the Official Liquidator.

Pursuant to the aforesaid order dated 03.05.2016, affidavit of publication dated 04.07.2016 has been filed.

The Official Liquidator has submitted his report dated 03.08.2016 vide which he has stated in para No.6 that in view of the observations of M/s R.K. Deepak & Co., Chartered Accountant, the affairs of the Transferor Companies have not been conducted in a manner prejudicial to the interest of its members, creditors or to public at large. It is further stated that the matter be decided on merits keeping in view the submissions made in para No.4 of his report in which he has referred the losses of ₹1,31,76,267/- and ₹1,27,90,266/- incurred by Transferor Company No.3 and 4, in the year ending 2015, respectively.

Similarly, the Official Liquidator has filed the representation/affidavit of Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi dated 27.7.2016 in which he has observed no objection to the Scheme except the averment made in para 13 of his report: -

> *"13. That the deponent is to say that the applicability of Accounting Standard-14 issued by the Institute of Chartered Accountants of India to the instant scheme has not been clearly mentioned in the scheme."*

Learned counsel for the petitioner, in view of the above averment made in para 13 of the representation/affidavit of the Regional Director has stated at the bar that the Transferee Company shall comply with the Accounting Standard-14 upon the Scheme being sanctioned.

During the course of arguments, learned counsel for the Official Liquidator submitted that by virtue of Amalgamation (merger) of the Transferor Companies No.3 & 4 with the Transferee Company, the losses suffered by the Transferor Companies No.3 & 4 would result in tax evasion as the Transferee Company would reduce the losses from its net profit.

On the other hand, learned counsel for the petitioner, on instructions from Mr.Bhupesh Gupta, Practicing Company Secretary, has stated at the bar, without going into the merits, that the Transferee Company will not set off/adjusted the losses of the Transferor Companies No.3 & 4 from its income as the losses referred to by the counsel for the Official

Liquidator are in fact in respect of long term capital losses from the sale of shares held as long term investments.

The aforesaid statement has satisfied the counsel appearing for the Official Liquidator and Regional Director. There is no other objection raised either by the Official Liquidator or on behalf of the Regional Director.

The Petitioner-Companies have confirmed that no proceedings under Sections 235 to 251, 397 & 398 of the Act and / or Sections 206 to 229 & 241 of the Companies Act, 2013 have ever been instituted against the Petitioner-Transferor and Transferee Companies.

For the reasons aforestated and on consideration of all the relevant facts and the procedural requirements in terms of Section 391-394 of the Act and the relevant Rules and on due consideration of the reports of the Regional Director, Ministry of Corporate Affairs, New Delhi and the Official Liquidator, the Scheme of Amalgamation (Merger) is hereby sanctioned and as a result thereto, the assets and liabilities of the Petitioner-Transferor Companies shall stand vested into the Transferee Company and the Petitioner-Transferor Companies shall be dissolved without being wound up. The Petitioner-Transferee Company shall be required to comply with the procedural requirement with regard to Accounting Standard 14 as has been undertaken.

The Scheme of Amalgamation (Merger) shall be binding on the Petitioner-Transferor and Transferee Companies, their respective Shareholders, Creditors and all concerned.

Let formal order of sanction of the Scheme of Amalgamation (Merger) be drawn in accordance with law and its certified copy be filed with the Registrar of Companies within 30 days from the date of receipt thereof.

A notice of the order be published in 'Indian Express' (English) and 'Ajit' (Punjabi) both Punjab Editions and in the Official Gazette of Government of Punjab.

Any person interested shall be at liberty to apply to the Court for any direction(s) as per law.

Learned counsel for the Petitioner-Transferee Company stated that the Petitioner-Transferee Company would voluntarily deposit a sum of ₹1,00,000/- in the Common Pool Fund Account of the Official Liquidator within four weeks. The statement is accepted.

Disposed of accordingly.

(RAKESH KUMAR JAIN)
JUDGE

30.08.2016
Vivek