

ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Home Idea Upholstery Private Limited ('the Transferor Company') and D'Decor Home Fabrics Private Limited ('the Transferee Company') and Their respective shareholders.
3. The Counsel for the Petitioner Companies submits that First Petitioner Company is engaged in the business of manufacturing, importing, dealing and exporting fabrics and fibres, and the Second Petitioner Company is engaged in the business of dyeing, printing and related activities of all kinds of fabrics.
4. The respective Board of Directors are of the view that the proposed Scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies since both the companies are part of the same management of D'Decor Group. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objective:
 - (a) *The amalgamation of Transferor Company with Transferee Company is being proposed for the purpose of consolidation of businesses activities of entities under D'Decor Group;*
 - (b) *The amalgamation would simplify the corporate structure and reduce a legal entity, which would result in reduction of overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of various resources;*
 - (c) *The amalgamation would result in consolidation of enhanced financial strength and flexibility.*
5. The Board of Directors of the Petitioner Companies have approved

the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summon for Directions and that the Company Scheme Petitions have been filed in consonance with the order passed in Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and the necessary Affidavit of compliance has been filed in the Tribunal. Moreover, the Petitioner Company through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking(s) given by the Petitioner Companies are accepted.

8. The Official Liquidator has filed his report on 14th November, 2017 stating that the affairs of the First Petitioner Company/Transferor Company have been conducted in a proper manner and that First Petitioner Company/Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed his report dated 18th October, 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:

a. The tax implication if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

- b. *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the Company vide letter dated 30.06.2017 has served a copy of company scheme application No. 692 & 693 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 20.09.2017 to IT Department.*
- c. *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- d. *It is submitted that, Petitioner Company has not mentioned the treatment of employees of Transferor Company in the Transferee Company after the scheme becoming effective. In this regard, Petitioner Company has to undertake to protect the interest of employees of the Transferor Company once the scheme is implemented.*
- e. *The Transferor Company has not filed its financials statement as of 31.03.2016 and the date of appointment is 01.04.2016. Hence, Transferor Company may be directed to file the said documents before passing of the order by Hon'ble Tribunal.*
- f. *The Transferee Company has proposed to change its object clause vide para no. 11.2 of the scheme. Hence, the transferee company may be directed to comply with provisions of Companies Act, 2013 with respect to change in memorandum.*
- g. *The transferee company has to comply with the provisions of section 232(3)(i) of Companies Act, 2013*

10. In so far as observations made in paragraph IV (a) & (b) of the Report of Regional Director, the Transferee Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that it shall pass such accounting entries which are necessary in connection with

the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.

12. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that all employees of the Transferor Company shall become employees of the Transferee Company without break or interruption in service as result of transfer and all terms and conditions of employment shall not be less favourable than those on which they are presently engaged by the Transferor Company immediately preceding the Effective Date.

13. In so far as observation made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel clarifies that the financial statement of Petitioner Companies as of 31.03.2016 has been filed with the Office of Regional Director on 30th October 2017.

14. In so far as observation made in paragraph IV (f) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that it will comply with the provisions of Companies Act, 2013 with respect to change in the object clause of Memorandum of Association in respect of filing of necessary forms.

15. In so far as observation made in paragraph IV (g) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that it will comply with the provisions of Section 232(3)(i) of Companies Act, 2013.

16. The observation made by the Regional Director have been explained by the Petitioner Companies in paragraph 10 to 15 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No 770 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of CSP No 770 of 2017 of the Petition.

19. Petitioner Company are directed to file a copy of this 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 the physical copy within 30 days from the date of issuance of the order by the Registry.

20. The Petitioner Company to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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.

21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.

22. Costs to be paid within four weeks from the date of receipt of the order.

23. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)