IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO. 22 OF 2014

INFINITI MODULES PRIVATE LIMITED
THR. ITS DIRECTOR MR. SANJEEV
TRIVEDI ... Petitioner
Versus
- ... Respondent

Mr. Sudesh Manohar Usgaonkar, Advocate for the petitioner.
Mr. M. Amonkar, Central Government Standing Counsel for Department of Company affairs.

Coram:- F. M. REIS, J.

Date:- 13th March, 2015

P.C.

Affidavit filed on behalf of the petitioner is taken on record.

2. Heard Mr. Sudesh Usgaonkar, learned counsel appearing for the petitioner Company and Mr. M. Amonkar, learned Central Government Standing Counsel appearing for the Department of Company Affairs.

3. Upon the petition of Infiniti Modules Private Limited, the petitioner Company abovenamed, presented to this Court for sanction of Scheme of Arrangement in the nature of amalgamation of Infiniti Modules Private Limited (Transferee Company) with OMP Components (India) Private Limited, (Transferor Company) their respective shareholders and creditors and for other consequential

reliefs as mentioned in the petition. The petition is called on for hearing and final disposal.

4. The petitioner company herein is the Transferee company which is a private limited company incorporated under the Companies Act, 1956 with its registered office at 77, Pilerne Industrial Estate, Pilerne, Goa 403 511.

5. The Transferor Company is a private limited Company incorporated under the Companies Act, 1956 with its registered office at 77, Pilerne Industrial Estate, Pilerne, Goa 403 511.

6. The objects of the Transferor company are set out in its Memorandum of Association. It is inter-alia engaged in carrying on the business of manufacturing metal, particle board and plastic furniture for home, office and schools.

7. The authorized, issued and subscribed share capital of the Transferor Company as on 31.12.2012 is Rs.15,00,000.00 comprising of 1,50,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital of the Company as per the Balance Sheet as on 31.12.2012 is Rs.2,00,200.00 comprising of 20,020 Equity Shares of Rs.10/- each fully paid up.

8. The Board of Directors of the petitioner Company herein,

have approved the proposed Scheme in the meeting held on March 26, 2013 wherein resolution to that effect has been taken.

9. It has been pointed out that this Court by its order dated 22.11.2013 was pleased to allow Company Application No. 59/2013 by virtue of which holding of meetings of Equity Shareholders and Creditors was dispensed with.

10. After undergoing the aforesaid legal and procedural requirements by the petitioner Company, the present petition was filed and the Scheme of Amalgamation (Exhibit F) was placed for consideration before this Court with a prayer to sanction the same.

11. The present petition came to be admitted by this court by order dated 25.04.2014. Notice under Section 394-A of the Companies Act, 1956 was served upon the Regional Director, the Registrar of Companies, and the Official Liquidator. Notice of the date of hearing of petition was published in the Newspaper viz. "Navhind Times" in English and "Gomantak" in Marathi both circulating in Goa on 04.07.2014.

12. Shri K. L. Kamboj, the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, Maharashtra, filed affidavit dated 04.12.2014. The Regional Director in his affidavit stated that there are no complaints against the petitioner Company including any

complaint/representation in respect of the proposed Scheme. It is opined by the Regional Director that the Scheme is not prejudicial to the shareholders or the public at large in any way.

13. The Regional Director has offered certain suggestions and comments on the proposed Scheme which is at para 6 of the said affidavit, the first being with respect to the clause 11 of the Scheme which provides for accounting treatment wherein the surplus if any arising out of the Scheme shall be credited to Capital Reserve Account of Transferee Company and if deficit is arising the same shall be debited to Goodwill Account of the Transferee Company. The second suggestion is with respect to tax issue, if any, arising out of this Scheme shall be subject to the final decision of the Income Tax Authority and approval of the Scheme by this Court may not deter the Income Tax Authority to examine the tax returns filed by the petitioner Company independently and decision of the Income Tax Authority is binding on the petitioner Company.

14. By affidavit dated 11.03.2015, the petitioner Company has submitted that with respect to the first suggestion made by the Regional Director, it will credit the surplus, if any, arising out of the Scheme to Capital Reserve Account of Transferee Company and if deficit arises, the same shall be debited to the Goodwill Account of the Transferee Company.

15. With respect to the second observation, the Regional Director stated in para 3(b) of his affidavit that it addressed letter dated 27.06.2014 and again a reminder was sent on 08.07.2014 inviting specific comments from the Income Tax Department and the objections, if any, in relation to the proposed Scheme, but no reply is received from the Income Tax Department.

16. In this connection, the petitioner Company has stated on affidavit that it undertakes to comply with the Income Tax Act and the Rules and the requirements of Income Tax Department in that regard, if any issue, relating to tax arises out of the present Scheme.

17. As such, the suggestions of the Regional Director with regard to the Scheme under consideration and other requirements in law have been satisfied. The petitioner Company is hereby directed to abide by the undertakings and commitments given as above.

18. In view of the above, this Court is satisfied that the prayer for sanctioning the proposed Scheme in the nature of amalgamation deserves to be granted.

19. Accordingly, the prayer clause (a) and (b) in the petition is granted and the Scheme of amalgamation of Infiniti Modules Private Limited, Transferee Company with OMP Components (India) Private Limited, Transferor Company, is hereby accorded sanction. In view

of the above, the petition is made absolute in terms of the prayer of the petition.

20. This Court hereby orders the petitioner Company to pay a sum of Rs.15,000/- to the Regional Director and a sum of Rs.15,000/- to the Official Liquidator towards the costs of the petition.

F. M. REIS, J.

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