IN THE HIGH COURT OF BOMBAY AT GOA

COMPANY PETITION NO. 27 of 2014
and
COMPANY APLICATION (MAIN) NO. 31/2014

PRIME MINERAL EXPORTS PRIVATE LIMITED, having its registered office at F1, First Floor, Oceanic Apartments, Behind Hanuman Temple, Miramar, Panaji – 403 001. .. Petitioner/ First Transferor Company.

Mr. Parag Rao, Advocate for the Petitioner.

Mr. M. Amonkar, Central Government Standing Counsel for the Department of Company Affairs.

Coram :- U. V. BAKRE, J.

Date :- 28th January, 2015.

ORDER:-

Heard Mr. Rao, learned Counsel for the petitioner and Mr. Amonkar, learned Central Government Standing Counsel for Department of Company Affairs.

2. Upon the petition of PRIME MINERAL EXPORTS PRIVATE LIMITED, the petitioner Company abovenamed, presented to this Court on 25/08/2014 for sanction of the Scheme of Amalgamation between PRIME MINERAL EXPORTS PRIVATE LIMITED ('the First Transferor Company'), and FOMENTO RESOURCES PRIVATE LIMITED (the Transferee Company), their respective shareholders and creditors and for other consequential reliefs as mentioned in the petition and the said petition being this day called on for hearing and final disposal and upon reading the said petition and the affidavit of Mr. Kaustubh Sawkar, Director of the petitioner Company, solemnly affirmed on 25th day of August, 2014, verifying the said petition and upon reading the affidavit of service of Shri Kaustubh Sawkar, Director of petitioner Company, affirmed on 19/09/2014, proving publication of the notice of the date of hearing of the petition in the issue of “The Times of India” in English daily and “Gomantak” in Marathi daily, both dated 11/09/2014 circulated in the State of Goa, and upon reading the order dated 06/08/2014 made by this Court in Company Application (Main) No. 31 of 2014, whereby convening the meeting of the equity shareholders of the petitioner Company to consider and approve the proposed Scheme of Amalgamation was dispensed with in view of the averments made in paras 19, 20, 21, 22 and 23 of the affidavit in support of the Company Application (Main) No.31/2014, affirmed on 03/07/2014 and additional affidavit affirmed on 06/08/2014 and upon reading the judgment and order dated 24th December, 2014 passed by this Court whereby the application for intervention filed by one Mr. Dilip Timblo was rejected and upon reading the report of Mr. V. P. Katkar, the Official Liquidator supported by his affidavit affirmed on 26/11/2014; the affidavit of Mr. K. L. Lamboj, the Regional Director, Western Region, Ministry of

Corporate Affairs, Mumbai affirmed on 11/11/2014; and upon hearing Mr. Parag S. Rao, Advocate for the petitioner Company and Advocate Mahesh Amonkar, Central Government Standing Counsel for Department of Company Affairs, who submitted to the orders of the Court and stated that he has no objection to the proposed Scheme of Amalgamation and no other person or persons appearing this day either in support of the petition or to show cause against the same, this Court doth hereby sanction the said arrangement embodied in the Scheme of Amalgamation (being Annexure “G” to the petition) being Schedule I hereto, and declare the same to be binding on the petitioner Company, the Transferee Company, and also their respective shareholders and creditors and this Court doth order that upon coming into effect of this Scheme and with effect from the appointed date and subject to the provisions of this Scheme, all the Assets of the petitioner Company comprised in the undertaking shall, pursuant to the provisions of Section 391 to 394 and other relevant provisions of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to have been and stand transferred to and vested in the Transferee Company as a going concern so as to become, as and from the appointed date, the undertakings, business, properties and assets of the Transferee Company and in respect of such of the properties and assets of the petitioner Company as are movable in nature and capable of transfer by manual delivery or by endorsement or endorsement and delivery, the same may be so transferred by the petitioner Company to the Transferee Company, to the end and intent that the property in such moveable properties and assets shall, upon such manual delivery or endorsement or endorsement and delivery, as the case may be pass to the Transferee Company and thereupon such moveable properties and assets shall become the properties and assets of the Transferee Company and with respect to book-debts, outstanding loans and advances, receivables, bank balances and deposits, if any, due to the petitioner Company by any person or authority, the Transferee Company and if so required, the petitioner Company shall give notice in such form as they may deem fit to each such debtor or depositee that pursuant to the sanction by this Court of the Scheme under Sections 391 to 394 of the Act, the said debt, loan, advance or deposit be paid, made good or held on account of the Transferee Company as the person entitled thereto in place of the Transferor Company and that appropriate entry should be passed in its books to record the aforesaid change and without prejudice to the generality of the Scheme, all assets, properties, estate, right, title, interest, licenses and authorities, permits, fuel linkages, quotas, approvals, permissions, incentives, Sales tax deferrals, loans or benefits, subsidies, concessions, grants, claims, leases, tenancy rights, liberties and other assets, special status and other benefits or privileges enjoyed or conferred upon or held or availed of by the petitioner Company and/ or all rights and benefits that have been acquired or that have arisen or accrued or which may arise or accrue to the petitioner Company after the appointed date and prior to the effective date in connection or in relation to the operation of the undertaking shall, pursuant to Section 394(2) of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to have been and stand transferred to and vested in the Transferee Company and shall remain valid, effective and enforceable on the same terms and conditions to the extent permissible under the law and this Court doth further order that upon the coming into effect of this Scheme and with effect from the appointed date, all liabilities of the petitioner Company comprised in the undertaking, outstanding or subsisting on the effective date shall, pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Act, without any further act, instrument or deed, be and stand transferred to and vested in or be deemed to have been and stand transferred to and vested in, so as to become, as and from the appointed date, the liabilities of the Transferee Company, and further that it shall not be necessary to obtain the consent of any third party or other person who is a party to any contract or arrangement by virtue of which such liabilities have arisen in order to give effect to the provisions of this clause and this Court doth further order that in so far as the Assets of the petitioner company are concerned, the existing securities, mortgages, charges, encumbrances or liens (hereinafter referred to as the

“Encumbrances”) over the Assets or any part thereof transferred to the Transferee Company in terms of this Scheme and relating to any liabilities of the petitioner Company shall, after the effective date, without any further act or deed, continue to relate or attach to such Assets or any part thereof but such encumbrances shall not relate or attach to any of the assets and properties of the Transferee Company or any part thereof, save to the extent warranted by the terms of any existing security arrangements to which both the petitioner Company and the transferee Company are party, and consistent with the joint obligations assumed by them under such arrangements and without prejudice to the Scheme, it is clarified that the transfer and vesting of the assets and properties of the petitioner Company in terms of the Scheme shall be subject to the existing encumbrances thereon and with effect from the effective date, any reference in any security documents or arrangements (to which the petitioner Company is a party) to the petitioner Company and its assets and properties shall be construed as a reference to the Transferee Company and the assets and properties of the Transferee Company, provided always that any such encumbrances shall extend only to and over the assets and properties of the petitioner Company transferred to and vested in the Transferee Company pursuant to this Scheme and not any other assets and properties of the Transferee Company and in so far as the existing securities, mortgages, charges, encumbrances or liens over the assets and properties of the Transferee Company or any part thereof and relating to liabilities of the Transferee Company are concerned, such securities, mortgages, charges, encumbrances or liens shall continue to relate or attach to such assets and properties of the Transferee Company or any part thereof but such securities, mortgages, charges, encumbrances or liens shall not extend to, or relate or attach to, any of the assets and properties of the Transferor Company or any part thereof transferred to the Transferee Company, save to the extent warranted by the terms of any existing security arrangements to which both the petitioner Company and the Transferee Company are party, and consistent with the joint obligations assumed by them under such arrangements and this Court doth further order that with effect from appointed date and up to the effective date, the petitioner Company shall carry on and shall be deemed to have carried on all its business and activities as hitherto and shall hold and stand possessed of and shall be deemed to have held and stood possessed of the Undertaking on account of, and for the benefit of and in trust for, the Transferee Company, also all the profits or incomes accruing or arising to the petitioner Company, and all expenditure or losses arising or incurred (including all taxes, if any, paid or accruing in respect of any profits and income) by the petitioner Company shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes and expenditure or losses and taxes of the Transferee Company, as the case may be and this Court doth further order that upon the coming into effect of this Scheme, all suits, actions and legal proceedings by or against the petitioner Company pending and/or arising on or before the effective date shall be continued and/ or enforced by or against the Transferee Company on and after the effective date, as effectually and in the same manner and to the same extent as if the same had been pending and/ or arising by or against the Transferee Company and the Transferee Company undertakes to have all legal or other proceedings initiated by or against the petitioner Company referred to herein above transferred to its name and to have the same continued, prosecuted and enforced by or against the Transferee Company and this Court doth further order that upon the coming into effect of this Scheme, and subject to the provisions of this Scheme, all contracts, deeds, bonds, agreements, arrangements and other instruments (including all tenancies, lease, licenses and other assurances in favour of the petitioner Company or powers or authorities granted by or to it) of whatsoever nature to which the petitioner Company is a party or to the benefit of which the petitioner Company may be eligible, and which are subsisting or having effect on the effective date, shall, without any further act, instrument or deed, be in full force and effect in favour of or against the Transferee Company and may be enforced as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or obligee thereunder and the Transferee

Company may, at any time after coming into effect of this Scheme in accordance with the provisions hereof, if so required, under any law or otherwise, enter into, or issue or execute deeds, writings, confirmations, innovations, declarations, or other documents with, or in favour of any party to any contract or arrangement to which the petitioner Company is a party or any writings as may be necessary to be executed in order to give formal effect to the above provisions and the Transferee Company shall be deemed to be authorised to execute any such writings on behalf of the petitioner Company to carry out or perform all such formalities or compliances required for the purposes referred to above on the part of the petitioner Company and this Court doth further order that upon coming into effect of this Scheme, all the employees of the petitioner Company in service on the effective date, shall become the employees of the Transferee Company on such date without any break or interruption in service and on terms and conditions as to remuneration not less favorable than those subsisting with reference to the petitioner Company as on the said date and this Court doth further order that the allotment of shares to the share holders of the petitioner Company in the Transferee Company shall be in accordance with clause 9(b)(i) of the Scheme and this Court further order that the petitioner Company shall stand dissolved without winding up with effect from the effective date and this Court doth further order that the petitioner Company do file within 30 days from the date of sealing of the certified copy of the order sanctioning the Scheme of Amalgamation with the Registrar of Companies, Panaji for registration under Section 391 of the Companies Act, 1956 and Registrar of Companies shall consolidate all files, documents and records of the petitioner Company with that of the Transferee Company and this Court doth further order that liberty is reserved to the petitioner Company and to all other persons interested in this petition to apply to this Court as and when occasion may arise for any direction that may be necessary to ensure that the said Scheme of Amalgamation is fully and effectively carried out and this Court doth order that the petition is allowed in terms of prayer clauses (a), (b), (c), (d), (e), (f) and (g) and this Court doth lastly order the petitioner Company do pay a sum of ₹ 25,000/- (Rupees Twenty Five Thousand only) to the Regional Director and a sum of ₹ 25,000/- (Rupees Twenty Five Thousand only) to the Official Liquidator towards the costs of the said petition.

U. V. BAKRE, J.

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