IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 66 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 8 OF 2015.

Mahindra Business & Consulting Services Private Limited
...Petitioner /Transferor Company

In the matter of the Companies Act, 1956 (1 of 1956);
AND
In the matter of Sections 391 to 394;
AND
In the matter of Scheme of Amalgamation
OF
Mahindra Business & Consulting Services Private Limited
WITH
Mahindra & Mahindra Financial Services Limited
AND
Their Shareholders and Creditors

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioner.

Mr. P.S. Jetly i/b Dr. H. Chaturvedi for Regional Director in the Petition.

Mr. S. Ramakantha, Official Liquidator, present

CORAM: S. J. Kathawalla, J.

DATE : 20th March, 2015

PC:

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

2. The sanction of the Court is sought to a Scheme of Amalgamation of Mahindra Business & Consulting Services Private Limited with Mahindra & Mahindra Financial Services Limited and their shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Petitioner Company used to provide staffing services to Mahindra group companies but currently has no business operations and transferee Company is a Non-Banking Financial Company ("NBFC") and it is engaged in providing financial products and services through its nation-wide distribution network. The proposed scheme of Amalgamation will have the benefit that all the Companies are under same Management and the shareholding owned and controlled by same promoters and the amalgamation would provide for simplified corporate structure and Rationalisation of administrative and operative costs and enable cost saving and optimum utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency.

4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Amalgamation by passing Board Resolution which are annexed to the Company Scheme Petition.

5. The Learned Advocate for the Petitioner further states that since the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, Mahindra & Mahindra Financial Services Limited, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and creditors are also not affected in any manner. In view of the judgment of this Court in Mahaamba Investment Limited v/s IDI Limited (2001) Company Cases 105, filing of Company Summons for Direction and Company Scheme Petition by Mahindra & Mahindra Financial Services Limited, the Transferee Company, was dispensed with vide order dated 16th January, 2015 passed in the CSD No. 8 of 2015.

6. The Learned Counsel for the Petitioner further states that, 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 Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per direction of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 17th day of March, 2015 in Company Scheme Petition No. 66 of 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 18th day of March, 2015 stating therein, save and except as stated in paragraph 6, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

That the Deponent further submits that,

(a) Clause 6.6 of the scheme provides for adjustment for differences in Accounting Policies between Transferor

Company and Transferee Company. In this regard, it is submitted that 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 Transferee Company is a Non Deposit taking NBFC Company Registered with the Reserve Bank of India, Transferee Company may be directed to file a copy of the scheme along with the copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of RBI Act.*

(c) *That the Deponent further submits that the 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.*

10. The Learned Counsel appearing on behalf of the Petitioner Company states that in respect of the paragraph 6 (a) of the Affidavit of the Regional Director is concern the Petitioner Company through their

Counsel undertakes that, the Transferee Company will pass such accounting entries to comply with other applicable accounting standards.

11. The Learned Counsel appearing on behalf of the Petitioner Company states that in respect of the paragraph 6 (b) of the Affidavit of the Regional Director is concerned the Petitioner Company through their Counsel undertakes that, the Transferee Company will file a copy of the scheme along with the copy of this order with the RBI within 30 days and shall also comply with the other applicable provisions of RBI Act. Further, it is noted that the Regional Director in said paragraph 6 (b) of his affidavit by way of a typographical error stated that the Transferee Company is a '*Non Deposit taking NBFC Company'.* Accordingly, it is bought to his notice that the Transferee Company is a 'Deposit taking NBFC Company' Registered with the Reserve Bank of India as evidenced from the Certificate of Registration dated 21st March 2007 granted by the Reserve Bank of India to the Transferee Company.

12. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Company is bound to comply with all applicable provisions of Income Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings and submissions given by the Petitioner through their Counsel. All above undertakings are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 66 of 2015 is made absolute in terms of the prayer made under clauses (a), (b) and (d).

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

17. Petitioner is 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

physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay respectively. Costs to be paid within four weeks from the date of the Order.

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

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

(S. J. Kathawalla, J.)