IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 93 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 29 OF 2015

IMPETUS HEALTHSERVE PRIVATE LIMITED...Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO 94 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 30 OF 2015

MONARCHY HEALTHSERVE PRIVATE LIMITED...Petitioner/Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation Of Impetus Healthserve Private Limited With Monarchy Healthserve Private Limited And Their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. H.V. Mehta, i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

Mr. S Ramakantha Official Liquidator, present in Company Scheme Petition No. 93 of 2015.

CORAM: S.J. Kathawalla, J.

DATE: 30th April, 2015

P.C.

1. Heard the learned counsel for the Petitioner Companies. 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 under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Impetus Healthserve Private Limited with Monarchy Healthserve Private Limited and their respective shareholders.

3. Learned advocate for the Petitioners states that the Transferor Company is presently engaged in the health care business and Investment, financing to related activities and Transferee Company is presently engaged in the health care business and Investment, financing to related activities.

4. Learned Counsel for the Petitioner states that the rationale for the merger is that the restructuring would benefit the companies and its stakeholders on account of increase in operational and financial efficiency, consolidate and simplify the group structures, rationalization of administrative, operative and financial costs and efficient management control and system.

5. The Petitioner Companies has approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company summons for Directions.

7. Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under. The said undertakings are accepted.

8. The Official Liquidator has filed his report on 24th April, 2015 in the Company Scheme Petition No. 93 of 2015 stating therein 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 by this Court.

9. The Regional Director has filed an Affidavit on 23rd April, 2015 stating therein that save and except as stated in paragraph 6 (a) to 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 (a) to 6(c), of the said affidavit it is stated that:

6. 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 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 standards such as AS- 5, etc.

b) With reference to Clause 5.1 of the Scheme so far as it relates to issue of preference shares, it is submitted that the entire preference share capital of Transferor company is held by Transferee company only and as such on *amalgamation, the preference shares held by Transferee company in Transferor company shall get cancelled and no issue of new shares by Transferee company is required and hence this part of the clause be deleted. Consequently, the words "and preference shares" appearing in sub-clauses of Clause 5 of the scheme be deleted.*

c) *It is respectfully submitted that 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 returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

10. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

11. As far as the observations in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies seeks leave to amend Scheme by :-

(i) By deleting the following Paragraph as appearing in clause 5.1 of the Scheme, which reads as under:-

"1[One] fully paid up non-convertible redeemable preference share of Rs. 10 each of the Transferee Company shall be issued and allotted for every 1 [One] fully paid up non-convertible redeemable preference share of Rs. 10 each held in the Transferor Company" on the terms and conditions set out in Schedule – A annexed hereto.

(ii) Words "*and Preference shares*" as appearing in clauses 5.2 to 5.6 and 6.3 of the Scheme.

(iii) Deleting Schedule-A annexed to the Scheme.

12. As far as observations made in paragraph 6 (c) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company submits that the Transferee Company is bound 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.

13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director is satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by Petitioner Company are accepted.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director agrees with the amendment sought by the Petitioner Companies as mentioned in paragraph eleven herein above and in view thereof leave to amend the scheme including all consequential amendments are granted. Amendment to be carried out within four weeks from today.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 93 of 2015 and 94 of 2015 are

made absolute in terms of prayer clause (a) of the respective Petitions.

17. The Petitioner Companies are directed to lodge a copy of this order and the amended 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 issuance of Order.

18. Petitioner Companies are directed to file a copy of this order along with a copy of the amended Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

19. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 93 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

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

(S.J. Kathawalla. J.)