IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 120 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 27 OF 2015

PCA Advisors India Private Limited ...Petitioner Company
[CIN: U74120MH2010FTC209458]

AND

COMPANY SCHEME PETITION NO. 121 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 28 OF 2015

Bain Capital Advisors (India) Private Limited ..Petitioner Company
[CIN: U65999MH2008FTC181834]

In the matter of the Companies Act, 1956 or any re-enactment thereof;

And

In the matter of Petitioner under Sections 391 to 394, of the Companies Act, 1956 or any re-enactment thereof;

And

In the matter of Scheme of Amalgamation of

PCA Advisors India Private Limited

with

Bain Capital Advisors (India) Private Limited.

Called for Hearing:

Mr. Tapan Deshpande, Advocate instructed by Amarchand & Mangaldas & Suresh A. Shroff & Co., Advocates for the Petitioner Companies.

D R Shah, Advocate i/b. Mr. H. P. Chaturvedi, Regional Director in both Petitions

S. Ramakantha, Official Liquidator, present in CSP no. 120 of 2015

Coram : S. J. Kathawalla, J.

Date: 18th April, 2015

PC

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

2. Learned Advocate for the Petitioner Company states that the Petitions have been filed to seek sanction to the Scheme of Amalgamation of PCA Advisors India Private Limited with Bain Capital Advisors (India) Private Limited (Scheme), pursuant to the provisions of Sections 391 to 394 of the Companies Act, 1956.

3. The Transferor Company is engaged *inter alia* in the business of, rendering investment advisory services. The Transferee Company is engaged *inter alia* in the business of rendering investment advisory services. The learned Advocate for the Petitioner Companies says that the rationale and significant benefits of the Scheme are that, the Transferor Company and the Transferee Company are part of the same group of companies and the proposed amalgamation will allow the group to streamline its holding in India; the proposed amalgamation also allows for the pooling of financial resources of both companies and will lead to benefit from reduced administrative costs and overheads; and as the Transferor Company has been dormant and no business has been conducted over a year, it was decided to merge it into the Transferee Company. The Board of Directors of the Transferor Company and the Transferee Company, have approved said Scheme by passing their respective board resolutions which are annexed to the respective Company Scheme Petitions.

4. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

5. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 or any re-enactment thereof and the Rules made thereunder. The said undertakings are accepted.

6. The Regional Director has filed an Affidavit on 13th April, 2015, stating therein, that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders of the Petitioner Companies and public. In paragraph 6 of the Affidavit it is stated that:

> "*6. That the Deponent further submits that:-*
>
> *(a) Clause 20 (a) (vii) of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Comp[any. 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 equity shares of both the Transferor and Transferee Company are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with FEMA/RBI regulations as applicable in this regard.

(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."

7. As regards objection set out in paragraph 6 (a), of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Transferee Company states that the Transferee Company undertakes to pass such

accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with other applicable Accounting Standards.

8. As regards objection set out in paragraph 6 (b), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with FEMA/RBI regulations as applicable in regard to allotment of new shares by the Transferee Company to the shareholders of Transferor Company.

9. As regards objection set out in paragraph 6 (c), of the Affidavit of the Regional Director is concerned, the Transferee Company through its counsel 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 will be answered in accordance with law.

10. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, 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 given hereinabove by the Petitioner Companies through its Advocate. The undertakings given by the Petitioner Companies are accepted.

11. The Official Liquidator has filed his Report on 8th April, 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 by this Court.

12. 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.

13. Since all requisite statutory compliance have been fulfilled, Company Scheme Petition No. 120 of 2015 filed by the Transferor Company is made absolute in terms of prayer clauses (a) and (b) and Company Scheme Petition No. 121 of 2015 filed by the Transferee Company is made absolute in terms of prayer clause (a).

14. The Transferee Company to lodge a copy of this order along with a copy 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, within 60 days from the date of the order.

15. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar, High Court [O.S.], Bombay, with the concerned Registrar of Companies, electronically, along with e-form 21/ INC 28 in addition to physical copy as per the provisions of Companies Act, 1956/2013, whichever is applicable.

16. The Petitioner Companies in the respective Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 120 of 2015 to pay a sum of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

17. Filing and issuance of the respective drawn up orders are dispensed with.

18. All concerned Regulatory authorities to act on a copy of this order along with the Scheme, duly authenticated by the Company Registrar, High Court [O.S.], Bombay.

(S. J. Kathawalla, J.)