

THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 148 OF 2015.

CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 504 OF 2015.

AQUA CHILL SYSTEMS INDIA PRIVATE LIMITED,
....Petitioner Company.
WITH
COMPANY SCHEME PETITION NO.149 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 503 OF 2015.

TRI GEN ENERGY DESIGN PRIVATE LIMITED
....Petitioner Company.

In the matter of the Companies Act 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 AQUA CHILL
SYSTEMS INDIA PRIVATE LIMITED

WITH

TRI GEN ENERGY DESIGN PRIVATE
LIMITED

Called for hearing

Mr. Chandrakant Mhadeshwar with Mr. Satish Raut, Advocates for the
Petitioners in both Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme
Petition No. 149 of 2015.

Mr. N. D. Sharma i/b Mr. A. A. Ansari for Regional Director in all the
Petitions.

CORAM: S. C. Gupte, J.

DATE : 16th October, 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 AQUA CHILL SYSTEMS INDIA PRIVATE LIMITED with TRI GEN ENERGY DESIGN PRIVATE LIMITED, under Sections 391 to 394 of the Companies Act, 1956.

3. The Transferor Company and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and Transferee Company 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 rule made there under whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 11th September, 2015 in Company Scheme Petition No. 149 of 2015 stating that the affairs of

the Transferor Company has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 08th July, 2015 stating therein, save and except as stated in paragraph 6(a) and 6(b), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) and 6(b) of the said Affidavit, it is stated as under.

“6. (a) *With reference to clause 9.3 (iii) of the Scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to good will account of Transferee Company.*

(b) 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 Authorities and 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 Company.”

8. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Company through their counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to good will account of Transferee Company.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to

comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law

10. 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 undertaking given by the Advocate for the Petitioner Company. the said undertaking is accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute in terms of prayer clauses (a).

13. The Petitioner Companies 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 the order.

14. Petitioners are directed to file a copy of this order along with a copy of the amended 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.

15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 149 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

17. 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. C. Gupte, J.)

C E R T I F I C A T E

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by : Shankar Gawde, Stenographer