IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.188 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.75 OF 2015

Ion Exchange Infrastructure Limited

.... Petitioner Company/ Transferor Company

AND

COMPANY SCHEME PETITION NO.189 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.76 OF 2015

Ion Exchange Projects and Engineering Limited

.... Petitioner Company\ Transferee Company

In the matter of the Companies Act,1956 (1 of 1956) and Companies Act, 2013 (18 of 2013);

AND

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

AND

In the matter of Scheme of Amalgamation of Ion Exchange Infrastructure Limited with Ion

Exchange Projects and Engineering Limited and their respective shareholders and creditors.

Called for hearing

Mr. Virag Tulzapurkar, Senior Advocate i/b M/s Rajesh Shah & Co., Advocate for the Petitioner Companies.

Mr. G. Hariharan, i/b Mr. A. A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator present in CSP No.188 of 2015.

Mr. Fredun De Vitre, Senior Advocate i/b M/s Ramesh Prasad Shaw, Advocate for KND Engineering Technologies Ltd, the Objector

CORAM: S. C. Gupte, J.

DATE : 28th October, 2015

PC:

1. Heard the learned counsel for the Petitioner Companies, the Regional Director, the Official Liquidator and the Objector.

2. The sanction of the Court is sought under sections 391 to 394 of Companies Act, 1956 to the Scheme of Amalgamation of Ion Exchange Infrastructure Limited ('the Transferor Company') with Ion Exchange Projects and Engineering Limited ('the Transferee Company') and their respective shareholders and creditors ('the Scheme'), under Sections 391 to 394 of the Companies Act, 1956 and the Companies Act, 2013 (to the extent notified and applicable).

3. Learned Counsel appearing on behalf of the Petitioner Companies 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 also undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956 / 2013, and the rules made here under. The said undertaking is accepted.

4. Learned Counsel for the Petitioner Companies stated that Ion Exchange Infrastructure Limited is engaged in the business of engineering and construction services whereas Ion Exchange Projects and Engineering Limited is engaged in the business of execution of large EPC projects related to water treatments and provide design, supply, erection and commissioning of projects in industries related to Power, Steel, Petrochemical and other sectors.

5. Learned Counsel appearing on behalf of the Petitioners states that the proposed scheme of Arrangement will have the benefit as per the opinion of the management that the Transferor Company and Transferee Company are group entities wherein the parent company viz., Ion Exchange (India) Limited, holds 76 percent and 100 percent shareholding respectively and that the proposed Scheme would result in consolidation of the operations of the Transferor Company and the Transferee Company which would derive the following benefits for the consolidated entity and that will enable pooling and more efficient utilisation of resources, greater economies of scale, reduction in

overheads and other expenses and improvement in various operating parameters and that will reduce managerial overlaps and also the number of entities within the group and also create a stronger base for future growth of the amalgamated entity and shall enable a simplified and streamlined business structure and aid in focused risk management and human resource practices which will minimize regulatory and procedural compliance and that will enable reduction in administrative functions and multiple record-keeping and to eliminate duplication of efforts and enable reduction expenditure and enable better operational synergies and that will enable the combination of resources in order to cater to different market segments which will consolidate the market position in the industry to offer variety of business solutions under single roof.

6. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

7. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by this Court in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

8. The Regional Director has filed an Affidavit on June 17, 2015 stating therein that save and except as stated in para 6(a) to 6(c), it appears that the Scheme is not prejudicial to the interest of the shareholders and the public. In para 6(a) to 6(c) of the said Affidavit, the Regional Director has stated as follows:-

"6. That the Deponent further submits that,

(a) With reference to clause 12.1.7 of the scheme, it is submitted that the reserve if any arising out of the scheme be credited to Capital Reserve Account of the Transferee Company.

(b) Clause 14 of the Scheme provides for change in the object clause of the Memorandum of Association of the Transferee Company. In this connection, the Transferee Company may be directed to comply with provisions of section 13(1), (6) and 15 of the Companies Act, 2013 and to file amended copy of Memorandum of Association along with Form No.21 with the Registrar of Companies.

(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."

9. So far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Transferee Company through its Counsel undertakes that the reserve, if any, arising out of this Scheme be credited to Capital Reserve Account of the Transferee Company.

10. So far as the observations made in paragraph 6 (b) of the affidavit of the Regional Director is concerned, the Transferee Company through their Counsel undertakes to comply with the provisions of section 13 read with Section 15 of the Companies Act, 2013, in respect of amendment of the object clause of the Memorandum of Association of the Transferee Company and to file amended copy of the Memorandum of Association along with INC-28 with the Registrar of Companies, Maharashtra at Mumbai.

11. So far as the observation made by the Regional Director in paragraph 6 (c) of the affidavit of the Regional Director is concerned, the Transferee Company through its Counsel undertakes that the Petitioner is bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on the instructions of Mr. M. Chandana Muthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that he is

satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

13. The Official Liquidator has filed report in Company Scheme Petition No. 188 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 without being wound up.

14. No objector has come before the court to oppose the Scheme nor has any other party controverted any of the averments made in the petitions, except two creditors of the Transferor Company namely M/s Brady & Morris Engineering Limited ("Brady & Morris") and M/s KND Engineering Technologies Limited ("KND Technologies").

15. Pursuant to the Transferor Company serving individual notice of the date of hearing upon all its Unsecured Creditors, Brady & Morris has filed a letter on record of this Hon'ble High Court on the 15th day of April, 2015 stating that a certain amount was payable to them and that they would have no objection to the Scheme if the amount was acknowledged as payable. The Authorised Signatory of the Transferor Company, Mr. Bharat Mehta, had submitted his rejoinder affidavit to the said letter of Brady & Morris stating that pursuant to discussion between the Transferor Company and Brady & Morris, the latter has given its no objection to the Scheme vide letter dated the 29th day of June,

2015. The said no-objection of Brady & Morris had been annexed along with the rejoinder affidavit of Mr. Bharat Mehta and the matter is settled there.

16. KND Technologies had on receipt of the notice of hearing of Petition of the Scheme written a letter to the Transferor Company on the 6th day of April, 2015 asking for the payment of an amount of Rs.1,64,95,435/- (Rupees One Crore Sixty Four Lacs Ninety Five Thousand Four Hundred Thirty Five only).

17. KND Technologies had later, on the 2nd day of July, 2015 served an affidavit ("Objecting Affidavit") on the advocate of the Transferor Company stating therein its objection to the Scheme. KND Technologies had in the said affidavit, *inter alia*, alleged that the Transferor Company was delaying the payment of the said amount.

18. KND Technologies in their Objecting Affidavit had also reproduced the Minutes of the Meeting held on the 27th day of June, 2014 held for the finalization of accounts between the authorised representatives of KND Technologies and Transferor Company. KND Technologies stated in the Affidavit that in the said meeting it was agreed that the Transferor Company will release the full retention amount in parts at the same rate as and when the retention amount is received from Steel Authority of India Limited, Indian Iron and Steel Plant ("IISCO"). KND Technologies further alleged that it has learned that IISCO had, in November 2014, released part retention amount to

the Transferor Company, however the Transferor Company had not paid any amount with regards to the same to KND Technologies.

19. KND Technologies in the Objecting Affidavit had also claimed an interest on the outstanding dues. KND Technologies also alleged that if the Scheme is sanctioned by this Court, it would not be in interest of the Transferor Company or its creditors and that the Scheme does not appear to be fair or just to the unsecured creditors.

20. KND Technologies further submitted that it would be in the interests of justice, equity and fair play that the Transferor Company be directed to make payment of Rs.1,64,95,435/- (Rupees One Crore Sixty Four Lacs Ninety Five Thousand Four Hundred Thirty Five only) along with interest of Rs.4,77,238/- (Rupees Four Lacs Seventy Seven Thousand Two Hundred Thirty Eight only).

21. KND Technologies further alleged that the Transferor Company's financial position (after the Scheme and assuming it is to be sanctioned on the terms as prayed) will put in jeopardy the payment of the admitted dues of KND Technologies.

22. The Authorised Signatory of the Transferor Company has submitted its rejoinder to the Objecting Affidavit denying the allegations of KND Technologies.

23. The Transferor Company denied that the said amount of Rs.1,64,95,435/- (Rupees One Crore Sixty Four Lacs Ninety Five Thousand Four Hundred Thirty Five only) is a debt and submitted that the said amount is not a debt or a debt due now but money retained in terms of the work order issued by the Transferor Company to KND Technologies on 13th day of April, 2009 which was subsequently amended on 19th day of April, 2010 ("the Work Order"). The amount would become payable to KND Technologies only upon satisfaction of the terms and conditions defined in the Work Order.

24. The Transferor Company further submitted that occasion to pay any amount of retention money has not arisen and that it will depend upon the completion of the work in terms of the Work Order and that the work is not yet complete. As and when the debt is due and payable, the Transferee Company agrees to be liable to pay the same to KND Technologies. In view of this position, nothing further needs to be said on the subject. By virtue of clause 4.2 of the Scheme indicates that all liabilities of the Transferor Company shall be deemed to be the liabilities of the Transferee Company on and with effect from the Appointed Date of the Scheme, viz. 1st day of April, 2014. These will include the liability as may be due to KND Technologies.

25. The Transferor Company also annexed the Net Worth certificate issued by a Chartered Accountant showing that the net worth of the Transferee Company

post the Scheme becoming effective, is sufficient to discharge all its debts in the ordinary course and submitted that intentions of the Transferor Company and the Transferee Company were never to defeat or delay the rightful claim of any Unsecured Creditor.

26. The Transferor Company clarified that it had not received any retention amount from IISCO post the meeting held on the 27th day of June, 2014 and that the said allegation was intentionally stated to misguide this Court.

27. From the material on record, the Scheme appears to be fair and reasonable and does not violate of any provisions of law and is not contrary to public policy. None of the parties, except Brady & Morris and KND Technologies, who may otherwise be concerned have come forward to oppose the Scheme in this court.

28. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 188 & 189 of 2015 are made absolute in terms of prayer clause (a) of the respective Petitions.

29. The Transferee Company to lodge a copy of this order and the Scheme of Amalgamation 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 receipt of the final order.

30. The Petitioner Companies are directed to file a copy of the final order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, through INC-28 pursuant to the Companies Act, 2013, in addition to physical copy as per the provisions of the Companies Act, 1956.

31. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in the Company Scheme Petition Nos. 188 of 2015 to pay cost of Rs 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

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

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.