THE HIGH COURT OF JUIDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 618 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.522 OF 2013

EVERYTHING TRADING PRIVATE LIMITED
…Petitioner/ First Transferor Company.

AND
COMPANY SCHEME PETITION NO. 619 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 523 OF 2013

MALWA POLYMERS & CHEMICALS PRIVATE LIMITED
…Petitioner/ Second Transferor Company.

AND
COMPANY SCHEME PETITION NO. 620 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 524 OF 2013

INET COMMUNICATION TECHNOLOGIES PRIVATE LIMITED
…Petitioner/ Third Transferor Company.

WITH
COMPANY SCHEME PETITION NO. 621 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 525 OF 2013.

ANANT OFFICE SYSTEMS PRIVATE LIMITED
…Petitioner/ Transferee Company.

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

AND

In the matter of Sections 391 and 394, read with section 78, 101 to 103 of the Companies Act 1956;

AND

In the matter of Scheme of Amalgamation

Of

Everything Trading Private Limited

(The Transferor Company No.1)

AND

Malwa Polymers & Chemicals Private Limited

(The Transferor Company No.2)

AND

Inet Communication Technologies Private Limited

(The Transferor Company No.3)

WITH

Anant Office Systems Private Limited

(The Transferee Company)

Called for hearing

Mr. Vinay A. Rathi, Advocate for the Petitioners in all Petitions.

Mr. S. Ramakantha Advocate for the Official Liquidator, present in CSP Nos. 618 to 620 of 2014.

Mr. K.R. Choudhari i/b Dr. H.P. Chaturvedi for Regional Director in all Petitions.

CORAM : S. J. Kathawalla, J.

DATE : 23rd January, 2015

PC:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of Everything Trading Private Limited (The Transferor Company No. 1), Malwa Polymers & Chemicals Private Limited (The Transferor Company No. 2) And Inet Communication Technologies Private Limited (The Transferor Company No. 3) With Anant Office Systems Private Limited (The Transferee Company), under Sections 391 to 394, read with section 78, 101 to 103 of the Companies Act 1956.

3. Learned Counsel for the Petitioners states that the First Transferor Company is carrying on business as buyers, sellers, traders, merchants, indentors, brokers, agents, commission agents, holding investments and other related activities. Second Transferor Company is engaged in business as exporters, importers, buyers, sellers, super marketers' and/or distributors, wholesalers, retailers, traders, dealers, showroom owners, merchants, stockists, suppliers, indentors, packer, movers, preservers and other related activities and Third Transferor Company is engaged in the business as exporters, importers, buyers, sellers, super marketer's and/or distributors, wholesalers, retailers, traders, dealers, showroom owners, merchants, stockists, suppliers and other related activities and Transferee Company is doing the business either on its own account or on account of constituents as buyers, sellers, distributers, importers, exporters, processors, and to act as importers and exporters for and on behalf of the manufacturers in commodities, crops, minerals, raw materials, semi and manufactured products and other related activities .

4. The proposed scheme of Amalgamation will have the benefit to achieve greater management focus and keeping in mind the paramount and overall interest of the shareholders. It would result in business synergy and consolidation of these companies with a stronger asset base. The proposed amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity and it will result in usual economies of a centralized and a large company including elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency and to build a wider capital and financial base and to promote and secure overall growth of their businesses.

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

6. 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 and seeks sanction to the said proposed Scheme of Amalgamation.

7. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Companies and the Transferee Company have complied with the 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.

8. The Official Liquidator has filed his report on 9th January, 2015 in Company Scheme Petition Nos. 618 of 2014 to 620 of 2014 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 27.11. 2014 stating therein, save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, it is stated as under:

"6. That the Deponent further submits that :-

(a) With respect to clause 4 of the scheme pertaining to Accounting Treatment, 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 the same may be debited to good will account of Transferee Company.

(b) Clause 4.8 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..

(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.

(d) Clause 17of the Scheme provides for modification of of the provides for modification Scheme by the directors with shell be subject to further approval of Hon'ble High Court."

10. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner / Transferee Companies through its 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 the same may be debited to good will account of Transferee Company.

11. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner / Transferee Company under takes that in addition to compliance of Accounting Standard-14, the Transferee Companies will pass such accounting entry which are necessary in connection with this Scheme to comply with any other Accounting Standards.

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

13. So far as the observation in paragraph 6 (d) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that, Clause 17 of the Scheme provides for modification of the Scheme. The Learned Counsel for the Petitioner Company state that such power to modify the Scheme is subject to prior approval of the High Court. It is there for clarify that the power vested under Clause 17 of Scheme will be subject to the approval of the High Court.

14. 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.

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, Company Scheme Petition Nos. 618 of 2014, Company Scheme Petition Nos. 619 of 2014, Company Scheme Petition Nos. 620 of 2014 and Company Scheme Petition Nos. 620 of 2014, are made absolute in terms of prayer clauses (a) and (c).

17. The Petitioner Companies 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.

18. Petitioners Companies are 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 Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 2013.

19. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 618 of 2014 to 620 of 2014 of pay cost 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.

20. Filling 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 Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S. J. Kathawalla, J.)