IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 163 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 598 OF 2014

Sipra Services & Investments Private Limited…Petitioner

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 Ahlstrom Capital Solar Private Limited with Sipra Services & Investments Private Limited and their Respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company
Mr. P.S Jetly i/b Mr. A.A Ansari for Regional Director .

CORAM: S. C. Gupte, J.

DATE: 31st July, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 to the Scheme of Amalgamation of Ahlstrom Capital Solar Private Limited with Sipra Services & Investments Private Limited and their Respective Shareholders.

3. The Counsel for the Petitioner submits that the Petitioner Company is primarily engaged in the business of industrial management consultancy in engineering Industry. The Transferor Company is engaged in the business to generate, install operate, maintain, prepare, service, research and develop, accumulate, receive, transmit, distribute, sell, supply, import, export, develop, accumulate, receive, transmit, distribute, sell, supply, import, export, trade to offer customizes solution, any kind of technical, administrative or consultancy services or otherwise deal in electric power by establishing solar thermal power-plant and other plants based on renewable energy, since 2010.

4. The learned Counsel for the Petitioners submit that the rational for the rational for the scheme is that the Transferee Company is engaged in the business of providing consulting and technical service providing for manufacturing companies using best technology. The Transferor company is using same line of technology to provide services and consultancy to its clients but serving different class of industries and customers. The Amalgamation of the two companies will enable the Transferee Company to enhance its services across different class of customers more efficiently. The Transferee Company will benefit from synergies, economies and consolidation of management. The Transferee Company will benefit from this synergy in the products and services as the nature of business carried on by both the Companies is complementary to each other. Achieving economies of scale. Lesser regulatory/procedural compliances. Integrate, rationalize and streamline the management structure of the merged business. Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs. Amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings. Cost saving in fees/

duties payable on statutory and procedural compliance. Facilitate inter transfer of resources and costs and optimum utilization of Assets. Synchronizing of efforts to achieve uniform corporate policy. Ease in decision making. To reflect the consolidated net worth of these companies in one balance sheet.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Company has approved the said Scheme of Amalgamation by passing Board Resolutions which is annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The learned Advocate appearing on behalf of the Petitioner Company 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 Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 23rd July, 2015 stating therein, save and except as stated in paragraphs 6 (a), 6 (b) and 6(c) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), 6 (b) and 6(c) of the said Affidavit, the Regional Director has stated that:-

(a) The Registered office of the Transferor Company is situated in the State of National Capital Territory of Delhi. Hence, present Scheme of Amalgamation between the Transferor company and Transferee

Company will be subject to the condition of obtaining similar approval from Hon 'ble High Court of New Delhi in respect of Transferor company.

(b) *The Shares of the Transferor company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company has to comply with the provisions of FEMAI RBI regulations as applicable in this regard.*

(c) *Clause 14.9 of Scheme provides for adjustment for differences in Accounting Policies between Transferor Company & Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Staadard-l4, Transferee Company shall pass such accounting entries which are necessary in connection with Scheme to comply with other Accounting Standard such as AS-5 etc.*

(d) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authority. 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.*

9. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner clarifies that present Scheme of Amalgamation between the Transferor Company and Transferee Company will be subject to the condition of obtaining similar approval from Hon 'ble High Court of New Delhi in respect of Transferor Company.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner through their Counsel undertakes that while

giving effect to the Scheme, the Transferee Company shall comply with the provisions of FEMA/ RBI regulations as applicable in this regard.

11. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to comply and follow the accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme.

12. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director is concerned, the Petitioner through their counsel submits that the Petitioner is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of 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, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 163 of 2015 is made absolute in terms of the prayer clause (a) of the Company Scheme Petition.

16. The Petitioner Company is directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 order from the Delhi High Court in respect of Transferor Company.

17. Petitioner is directed to file a copy of this order along with a copy of the Scheme 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.

18. The Petitioner to pay to the Regional Director, Western Region, Mumbai cost of Rs.10,000/- . Cost to be paid within four weeks from today.

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

20. 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. C. Gupte, J.)