IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 239 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 697 OF 2014

PANAMA OVERSEAS PRIVATE LIMITED
…Petitioner/Transferor Company

WITH

COMPANY SCHEME PETITION NO. 240 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 696 OF 2014

CHOICE COMPUSOFT PRIVATE LIMITED

…Petitioner/Transferee Company

In the matter of Section 391 to 394 of the Companies Act, 1956

And

In the matter of scheme of Amalgamation

between

Panama Overseas Private Limited
With

Choice Compusoft Private Limited.

Called for hearing

Mr. Shreesh Oak, Advocate for the Petitioners in both the Petitions.

Mr. Nisha Valani i/b Mr. A.A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No.239 of 2015.

CORAM : S. C. Gupte, J.

DATE : 23rd 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 Petitions.
2. The sanction of the court is sought to a Scheme of Amalgamation and Arrangement of PANAMA OVERSEAS PRIVATE LIMITED With CHOICE COMPUSOFT PRIVATE LIMITED and their respective shareholders and creditors, 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, Petitioners Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions 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 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 dated 24th September, 2015, on 29th September, 2015, in Company Scheme Petition Nos. 239 of 2015 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit dated 14th October, 2015, on 14th October, 2015, stating therein, save and except as stated in paragraph 6 (a), (b), (c) & (d) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (a) to 6 (d) of the said Affidavit, it is stated as under:-

6. (a) Clause 11.4 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 Statndard-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) Clause 13.3 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 copy of Memorandum of Association alongwith Form No.21 with the Registrar of Companies.

(c) That the Deponent further submit 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) With respect to clause 11 of the scheme, it is submitted that surplus if any, arising out of this scheme be transferred Capital Reserve and deficit if any be transferred to Gooodwill Account to Transferee Company.

8. So far as the observation in paragraph no.6 (a) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that in addition to the compliance of Accounting Statndard-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.
9. So far as the observation in paragraph no.6 (b) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes to comply with provisions of section 13 (1), (6) and 15 of the Companies Act, 2013 and to file copy of Memorandum of Association alongwith Form No.21 with the Registrar of Companies.
10. So far as the observation in paragraph no.6 (c) of the Affidavit of Regional Director is concerned, the Petitioners 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.
11. So far as the observation in paragraph no.6 (d) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that the Surplus, if

any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and deficit if any be transferred to Goodwill Account of Transferee Company.

12. 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.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos.239 of 2015 and 240 of 2015 are made absolute in terms of prayer clause (a).

15. The Petitioner Companies to lodge a copy of this order and the amended Scheme duly authenticated by the Company Registrar, High Court (O.S.), 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.

16. Petitioners are directed to file a copy of this order alongwith a copy of the amended Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. The Petitioner Companies to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition Nos. 239 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.

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

19. All concerned regulatory authorities to act on a copy of this order alongwith amended Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S. C. Gupte, J.)

Certificate

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

Uploaded by: Mr. Shankar Gawde, Stenographer.