IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 235 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 743 OF 2014

ROWENA ADS & FILMS PRIVATE LIMITED

…Petitioner/Transferor Company No.1

AND

COMPANY SCHEME PETITION NO. 236 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 744 OF 2014

EALDOR RETAILS PRIVATE LIMITED

…Petitioner/Transferor Company No.2

AND

COMPANY SCHEME PETITION NO. 237 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 745 OF 2014

ABHILASHA MONEY OPERATIONS PRIVATE LIMITED

…Petitioner/Transferor Company No.3

WITH

COMPANY SCHEME PETITION NO. 238 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 746 OF 2014

CHOICE OFFICE SOLUTIONS 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

Rowena Ads & Films Private Limited,

Ealdor Retails Private Limited,

Abhilasha Money Operations Private Limited

With

Choice Office Solutions Private Limited

Called for hearing

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

Mr. G. K. Sovani i/b Mr. A.A. Ansari for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No.235 of 2015 to 238 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 ROWENA ADS & FILMS PRIVATE LIMITED, EALDOR RETAILS PRIVATE LIMITED, ABHILASHA MONEY OPERATIONS PRIVATE LIMITED with CHOICE OFFICE SOLUTIONS PRIVATE LIMITED and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. 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.

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 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 has stated that the Transferor Companies 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 9th October, 2015, on 12th October, 2015, in Company Scheme Petition Nos. 235 to 237 of 2015 stating that the affairs of the Transferor Companies 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 dated 14th October, 2015 stating therein, save and except as stated in paragraph 6 (a) to 6 (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 11.3 of the scheme states that the difference between the amounts recorded as Share Capital issued and the* *amount of Share Capital of the Transferor Company No.1/2/3 shall be adjusted in the General Reserves. In this regard, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising shall be debited to Goodwill Account of the Transferee Company.*

*(b) Clause 11.4 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Companies 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.*

*(c ) Clause 13.3 of the Scheme provides for insertion of Main Objects clauses of the Transferor Companies in the Memorandum of Association of the Transferee Company as Main Objects. In this regard, the Transferee Company may be directed to pass necessary resolution for amendment of object clause and it may further be directed to comply with provisions of section 13 (1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*

*(d ) The Income Tax Department vide its letter no.ITO-9 (1)(1)/Amalgamation/2015-16 dated 25/08/2015, annexed*

*hereto as Exhibit-D, has informed the deponent herein that "the Transferor Company No.3 is having outstanding tax liability of an amount of Rs.2,34,75,930/- for the Assessment Year 2009-2010 and Rs.1,95,48,348/- for the Assessment Year 2012-13. Hence, the right of the Department to recover the above tax liability of Abhilasha Money Operations P. Ltd. needs to be protected". In this regard, it is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. 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 companies.*

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 the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising shall be debited to Goodwill Account of the Transferee Company.
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 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.

10. So far as the observation in paragraph no.6 (c) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes to comply with provisions of section 13 (1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.

11. So far as the observation in paragraph no.6 (d) of the Affidavit of Regional Director is concerned, the Petitioners through its advocates submit that an Appeal has been filed against the demand made by the Income Tax Authority; by the Transferor Company No. 3, which is pending with Commissioner of Income Tax, (Appeal) (16). In this regard the Advocate further submits that the Transferor Company No.3 shall have liberty to exercise all its legal rights under applicable law including Income Tax Act, 1961. 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 Petitioner companies after giving effect to the Scheme. The Petitioners further state that they are bound to Comply with all applicable provisions of Income Tax Act and all tax issues arising out of Scheme will be made and answered in accordance with law.

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.235 of 2015 to 238 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 Petitioners in the Company Scheme Petition Nos. 235 of 2015 to 237 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.

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