IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 141 OF 2015
CONNECTED WITH
COMPANY SUMMONS OF DIRECTION NO. 3 OF 2014

Radiant Energy Systems Private Limited …Petitioner Company

WITH

COMPANY SCHEME PETITION NO. 142 OF 2015
CONNECTED WITH
COMPANY SUMMONS OF DIRECTION NO. 2 OF 2014

Waterwings Equipment Private Limited …Petitioner Company

WITH

COMPANY SCHEME PETITION NO. 143 OF 2015
CONNECTED WITH
COMPANY SUMMONS OF DIRECTION NO. 1 OF 2014

Forbes Enviro Solutions Limited …Petitioner Company

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

Radiant Energy Systems Private Limited

AND

Waterwings Equipments Private Limited;
WITH
Forbes Enviro Solutions Limited
AND
their respective shareholders.

Called for Hearing

Mr. Dhiraj Mhetre i/b Desai & Diwanji, Advocates for the Petitioner

Shri M.D Sharma i/b Mr. A.A. Ansari for Regional Director in Company Scheme Petition No. 141 to 143 of 2015

Mr. S. Ramakantha, Official Liquidator, Present Company Scheme Petition No. 141 to 143 of 2015

Coram: S.C Gupte, J.

Dated: 21st August 2015

P.C.:

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

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, read with Rules 67 to 87 of the Company (Court) Rules, 1956, to the Scheme of Amalgamation between Radiant Energy Systems Private Limited (Transferor Company No.1) and Waterwings Equipment Private Limited (Transferor Company No. 2) with Forbes Enviro Solutions Limited (Transferee Company) and their respective shareholders.

3. The Learned Advocate for the Petitioner Companies states that Transferor Company No. 1 is engaged in the business of acting as contractors and consultants for water treatment plants & water waste treatment plants. Transferor Company No. 2 is presently engaged in the business of manufacturing of water reverse osmosis plants, water treatments plants (WTP) and as annual maintenance contractors (AMC) and trading of spares

required for servicing of RO & WTP Plants. The Transferee Company is presently not carrying out any business activities.

4. The Learned Advocate for the Petitioner Companies states that as per Clause No. 9.1 of the Scheme, as the entire share capital of the Transferor Companies and the Transferee Company is held by Eureka Forbes Limited ("EFL") , upon the scheme becoming effective the Transferee Company shall without any further application, act or deed, without further payment, issue and allot to the sole shareholder of the Transferor Companies total number of 27,77,263 equity shares of the face value of Rs. 10/- each of the Transferee Company in the manner prescribed below:

Radiant Energy Systems Private Limited:

Shareholder	No. of shares held in Radiant	No. of shares issued in Transferee Company	Exchange Ratio
EFL	7,250	13,22,763	182.45 equity shares of FESL of Rs. 10/- each fully paid up for 1 equity share of Radiant of Rs. 100 each fully paid up
Total	7,250	13,22,763	

Waterwings Equipment Private Limited:

Shareholder	No. of shares held in Waterwings	No. of shares issued in Transferee Company	Exchange Ratio
EFL	50,000	14,54,500	29.09 equity shares of FESL of Rs. 10/- each fully paid up for 1 equity share of Waterwing of Rs. 10 each fully paid up
Total	50,000	14,54,500	

5. The Learned Advocate for the Petitioner Companies states that in pursuance of Order dated 24 January, 2014 passed in Company Summons for Direction No. 1 of 2014, the convening and holding the meeting of the Equity Shareholders was dispensed with, in view of consent given by all the seven Equity Shareholders. Furthermore, there were no Secured Creditors or Unsecured Creditors of the Petitioner Company; hence the question of convening and holding meetings of Secured Creditors and Unsecured Creditors did not arise. The Learned Advocate for the Petitioner Companies states that as on date there are no secured and unsecured creditors as mentioned in paragraph 31 of the Company Scheme Petition No. 143 of 2015.

6. The Learned Advocate for the Petitioner Companies states that in pursuance of Order dated 24 January, 2014 passed in Company Summons for Direction No. 2 & 3 of 2014, the convening and holding the meeting of the Equity Shareholders was dispensed with in view of consent given by all the seven Equity Shareholders. The meeting of the Secured Creditors was also dispensed with in view of consent given by the secured creditor. Furthermore, the meeting of the Unsecured Creditors was dispensed with upon an undertaking given by the Petitioner Companies to issue individual notice of the date of hearing of the Petition by Registered Post A.D. to all its Unsecured Creditors and also to publish the same in two local newspapers, one in English and one in Marathi having circulation in Pune.

7. The benefit of the amalgamation of the Transferor Companies with the Transferee Company is that the Transferor Companies and the Transferee Company are wholly owned subsidiaries of EFL and it would be advantageous to combine the activities and operations into one single company. The amalgamation would enable the total business functions and the related activities and operations of the Petitioner Companies to be combined, thus avoiding duplication of costs and eventually contributing to the profitability of the amalgamated company.

8. The amalgamation of the Transferor Companies with the Transferee Company shall result in scaling down of administrative costs on account of economies of scale. It will be conducive to better and more efficient and economic control and conduct of the Petitioner Companies. The amalgamation will enable the company to pool its financial, managerial and technical and other resources. In particular, it will be necessary that the financial resources be pooled together, as the magnitude of the capital investments contemplated will be better met by the two companies merged together.

9. The Transferor Companies and Transferee Company have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petition No.141 and 142 of 2015 as Exhibit B and to the Company Scheme Petition No.143 of 2015 as Exhibit H.

10. The Learned Advocate for the Petitioner Companies further states that, the Transferor Companies and Transferee Company have complied with all the directions given in the order dated 24 January, 2015, passed in Company Summons for Directions No. 1 to 3 of

2014 and that the Company Scheme Petitions No. 141 to 143 of 2015 have been filed in consonance with the orders passed in the respective Company Summons for Directions.

11. The Learned counsel appearing on behalf of the Petitioner Companies 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 of compliance in the Court. Moreover, the Transferor Companies and Transferee Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under, whichever applicable. The said undertaking is accepted.

12. The Official Liquidator has filed his report on 22 June, 2015 in both, Company Scheme Petition No.141 of 2015 and Company Scheme Petition No.142 of 2015 stating therein that the affairs of Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved by this Court.

13. The Regional Director has filed an Affidavit on 12 August, 2015 stating therein that save and except as stated in paragraphs 6 (a) (b) (c) and (d) 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 that:

> *"6. That the deponent further submits that,*
>
> *(a) The appointed date provided in clause 1.2 of the scheme is not in consonance with provisions of section 139 of the Income Tax Act, 1961.In this regard the petitioner companies vide their separate letters dated 30/07/2015 (copies of the same annexed hereto and marked as Exhibit 'D1','D2', &'D3') undertake to change the appointed date from 01/04/2012 to 01/04/2013.*
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> *(b) With reference to clause 11(iii) of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company instead of General Reserve. In this regard the petitioner companies vide their separate letters dated 30/07/2015 (copies of the same annexed hereto and marked as Exhibit 'D1','D2', &'D3') clarified that such reserve shall be credited to Capital Reserve of Account in the books of the Transferee Company.*
>
> *(c) Clause 11(vi) 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.*

(d) *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."*

14. In as far as observation in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake to change the appointed date from 01 April, 2012 to 01 April, 2013 and amend the scheme accordingly. The amendment to be carried out within 2 weeks from today.

15. In as far as observation made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake to credit such reserve to the Capital Reserve Account in the books of the Transferee Company and not in the General Reserve Account.

16. In view of the above undertakings given by the Petitioner Companies through their Counsel, the Scheme and the above Petitions are allowed to be amended to change the appointed date from 01 April, 2012 to 01 April, 2013. Furthermore, the undertaking given by the Petitioner Companies through their Counsel with respect to crediting the surplus arising out of the Scheme to the Capital Reserve Account in the books of the Transferee Company and not in the General Reserve Account is accepted. Petitioner Companies are accordingly allowed to amend the Scheme and to carry out other consequential amendments.

17. In as far as observation made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that in addition to the compliance of Accounting Standard-14, the Transferee Company is bound to comply with other applicable Accounting Standards such as AS-5 etc.

18. In as far as observation made in paragraph 6 (d) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies are bound to comply with all 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.

19. 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 undertakings given by the Petitioner Companies. The aforesaid undertakings given by the Petitioner Companies are accepted.

20. 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.

21. Since all the requisite statutory compliances have been fulfilled, all the Company Petitions are made absolute in terms of prayer clauses (a), (b), (c) and (f) respectively.

22. The Petitioner Companies to file/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 sixty (60) days from the date of the Order.

23. The Petitioner Companies are directed to file a copy of this order along with a copy of the Schemes 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.

24. The Petitioner Companies to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai and to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

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

(S. C. Gupte, J.)