IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 253 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 199 OF 2015

In the matter of the Companies Act, 1956;

And

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

And

In the matter of Scheme of Amalgamation of Rishiraj Enterprises Limited. with ILMS Developers Private Limited.

Rishiraj Enterprises Limited.)
a Company incorporated under the)
Companies Act 1956 and)
having its registered office at)
Friendship Centre, Opp YMCA Garden,)
Mumbai Central(East),Agripada,)
Mumbai 400 011 …) …..Petitioner Company

Called for Hearing

Mr. Ramesh Saraogi , Advocate for the Petitioner Company.
Mr. Y.R. Mishra i/b A.A. Ansari for Regional Director.
Mr. S. Ramakantha, Official Liquidator Present.

Coram: S. C. Gupte, J.

Date: 31st July, 2015

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner. No objector has come before the Court to oppose the Scheme 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 of the Companies Act, 1956 to the Scheme of Amalgamation of Rishiraj Enterprises Limited. with ILMS Developers Private Limited.

3. The Petitioner Company is engaged in the business of Civil construction work / job work and related activities. The Transferee Company is also engaged in the business of Civil construction work / job work and related activities.

4. The Learned Counsel for the Petitioner states that amalgamation will result into consolidation and expansion of activities, will result into optimum and better utilization of resources, will reduce the multiplicity of work and will reduce the overheads.

5. The Amalgamating Company and the Amalgamated Company has approved the said Scheme of Amalgamation by passing the Board

Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The learned Advocate for the Petitioner Company further states that the Petitioner Company have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioner Company have stated that the Petitioner Company has complied with all requirements as per the directions of this Court and filed necessary Affidavit of Compliance in this behalf. The Petitioner Company further undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 and Companies Act, 2013 as may be applicable, and the Rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 5th June 2015 stating therein that the Affairs of the Petitioner/ Amalgamating Company has been conducted in a proper manner and that the Petitioner/ Amalgamating Company may be ordered to be dissolved by this Hon'ble Court.

9. The Regional Director has filed an Affidavit on 23rd July, 2015 stating therein that save and except as stated in paragraph 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(a), (b), (c) and (d) of the said Affidavit, the Regional Director has stated that :-

6(a) - With reference to clause 15.5 of the scheme, it is submitted that the reserve arising out of the scheme is only a notional value and no revenue is generated by Transferee Company on such amalgamation. Hence, the proposed amalgamation reserve shall not be treated as free reserve of the Transferee Company and shall not form part of the net worth of the company.

6(b) - Clause 15.6 of the scheme provides for adjustments for differences in Accounting Policies between Transferor and Transferee Company. In this regard, it is submitted that in addition to the Compliance of Accounting Standard – 14, the transfreree 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.

6(c) - Clause 13.3 of the scheme provides for change of name of Transferee Company. In this connection Transferee Company may be directed to comply with the provisions of section 13(2) and 13(3) read with 15 of the Companies Act, 2013 in respect of filing necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the Computerized MCA 21 system of allotting the names, it is systematically not possible to reserve the names. Therefore, the name if available at the time of filing such application, shall be made with Registrar Of Companies, Mumbai.

6(d) - That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject final decision of Income Tax Authority and approval of the 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 Authoity 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.

10. As far as observation made in paragraph 6(a) of the Affidavit of Regional Director are concerned, the Petitioner Company through their Advocate states that the treatment of amalgamation reserve shall be as per the applicable provisions of the Companies Act and applicable Accounting Standards and such amalgamation reserves arising out of the Scheme will not be treated as free reserves.

11. As far as observation made in paragraph 6(b) of the Affidavit of Regional Director are concerned, the Petitioner Company through their Advocate undertakes to comply with the requirements of the relevant applicable Accounting Standards.

12. As far as observation made in paragraph 6(c) of the Affidavit of Regional Director are concerned, the Petitioner Company undertakes to comply with the provisions of section 13 read with 15 of the Companies Act, 2013 and filing of necessary forms with the Registrar of Companies.

13. As far as observation made in paragraph 6(d) of the Affidavit of Regional Director are concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all the applicable provisions of the Income Tax Act, and all tax issues arising out of the scheme will be met and answered in accordance with the law.

14. That the Petitioner Company is a wholly owned subsidiary company of the Transferee Company and as per clause 13.1 of the scheme of amalgamation, no shares are proposed to be issued to any person due to this amalgamation and after the scheme being sanctioned, no new shares are required to be issued to the members of the Transferee Company. The scheme does not affect the rights and interests of the members and creditors of the Petitioner Company and does not involve any reorganization of the share capital of the Transferee Company and as per observations made by this court in Mahamba Investment Limited Vs IDI Limited (2001) Company Cases 105, filing of separate Company Scheme Petition by the Transferee Company, ILMS Developers Private Limited was dispensed with vide order dated 13th March, 2015 passed in Company Summons For Direction No. 199 of 2015.

15. The Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director,(Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

16. 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.

17. Since all the requisite statutory compliances have been fullfilled, Company scheme Petition No. 253 of 2015 , filed by the Petitioner is made absolute in terms of prayer clause (a) of the Petition.

18. The Petitioner Company is directed to file 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 order.

19. Petitioner Company is 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 E-Form INC- 28 in addition to the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act, whichever is applicable.

20. The Petitioner Company to pay costs of Rs. 10,000/- each to the Regional Director and to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks, from the date of the order.

21. Filling and issuance of the drawn up order is dispensed with.

22. 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.C. Gupte J.)