IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 364 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.107 OF 2015

Fabtech Project Technologies Private Limited

….Petitioner Company

AND

COMPANY SCHEME PETITION NO. 365 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.108 OF 2015

Fabtech Modular Technologies Private Limited

….Petitioner Company

AND

COMPANY SCHEME PETITION NO. 366 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.109 OF 2015

Channel U Entertainment Private Limited

….Petitioner Company

And

COMPANY SCHEME PETITION NO.367 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.110 OF 2015

Fabtech Technologies International Limited …. Petitioner Company

In the matter of the Companies Act, 1956

AND

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

AND

In the matter of the Scheme of Arrangement and Reconstruction between Fabtech Projects Technologies Private Limited, Fabtech Modular Technologies Private Limited, Channel U Entertainment Private Limited, and Fabtech Technologies International Limited, Transferee Company and their respective members and creditors

Called for Hearing

Mr. Sanjay Udeshi alongwith Mr. Darshan Ashar i/b M/s Sanjay Udeshi & Co, Advocate for the Petitioners.

G. Hariharan i/b Mr. A.A. Ansari for the Regional Director.

Mr. S. Ramakantha Official Liquidator present in C.S.P. No. 364 and 365 of 2015.

CORAM : S.C.GUPTE, J
DATE : 29th September, 2015

P.C.:

1. Heard Counsel for the parties. None appears before the Court to oppose the Scheme nor any party has contraverted 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 Scheme of Arrangement and Reconstruction between Fabtech Projects Technologies Private Limited, Fabtech Modular Technologies Private Limited, Channel U Entertainment Private Limited, and Fabtech Technologies International Limited, Transferee Company and their respective members and creditors.

3. The Learned Counsel for the Petitioners state that the Transferor Company No. 1 and Transferor Company No. 2 are engaged into

business of providing off the shelf solutions pharmaceutical industry and Transferor Company No. 3 is engaged in the business of entertainment and feature making business. and Transferee Company is engaged in the business of business of providing complete turnkey solutions to pharmaceutical industry.

4. The Proposed Scheme of Arrangement would, therefore, be advantageous to combine their activities and operations into a single company for synergistic linkages and the benefit of financial and other resources of each other. This will be reflected in the profitability of the Transferee Company. The Arrangement and Reconstruction will result in cost saving for the companies to the extent they are engaged in related activities which is expected to result in higher profitability levels for the Transferee Company. It is believed that the proposed restructuring of the companies will create / unlock greater value for their shareholders in future and allow a focused strategy in operations, which would be in the best interest of all the Companies, their shareholders and other stakeholders. The Demerger proposed by this Scheme of Arrangement and Reconstruction will enable the investors to choose whether to hold investments in businesses with different investment characteristics or to select investments in a business, which best suit their investment strategies and risk profiles. It will also enable attracting separate investors into the leftover divisions. The Transferee Company will have the benefit of the combined resources of Transferor Companies and Transferee Company i.e. Reserves, investments, and other assets, manpower, finances, customers, distributors, brands etc. The Transferee Company would be in a position to consolidate operations through optimum utilization of its resources and avoidance of duplication. The Transferee Company will be in position to have more efficient and more cost effective management system in view of consolidation of operations and larger size. Also the Transferee Company will be expanding its operations as the future opportunities in this line of business activity are flourishing. The Transferee Company

would also have a larger networth base, and greater borrowing capacity, which would provide it a competitive edge over the others, especially in view of the increasing competition due to liberalization and globalization, which will be beneficial in more than one ways to all the Transferor Companies and the Transferee Company and their shareholders and creditors.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

6. The Learned counsel for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Summons for Direction.

7. Counsel appearing on behalf of the Petitioner Companies state that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Companies through its counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 23rd day of September, 2015 stating therein save and except stated in paragraph 6 (a) and (e), of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 (a) and (e) of the said Affidavit, it is stated that;-

"6. That the Deponent further submits that,

a) Clause 9(e) and 21(ii) (c) of the scheme states that the Difference arising out of the Scheme of Amalgamation and Demerger respectively, shall be credited to General Reserve Account and deficit, *shall be debited to Goodwill Account of the Transferee Company. 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 26(A) of the Scheme provides for Split of Authorised Share Capital wherein it is provided that the Authorised Share Capital of the transferor Company No.3/Demerged Company being 1,00,000 equity shares of Rs. 10/- each amounting to Rs.10,00,000/- shall be added to the Authorised Share Capital of the Transferee Company. In this regard, it is submitted that splitting of the Authorised Share Capital of the Demerged Company, then merging with Authorised Share Capital of the Transferee Company is not in consonance with the provision of Section 61 of the Companies Act, 2013 corresponding to Section 94 of the Companies Act, 1956 and hence, the Petitioner Companies may be directed to amend the Scheme suitably by deleting that part of the said clause and by correcting the figures accordingly in the post arrangement capital of Transferee Company.*
c) *Clause 26(B) of the Scheme provides for Change in object-clause in the Memorandum of Association of the Transferee company. In this regard, the Transferee company may 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 from with Registrar of Companies.*
d) *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.*
e) *Clause 28 of scheme provides of Modification and Amendments to Scheme wherein the Board of Directors of Transferor Companies and Transferee Company have been authorized to make any amendments to Scheme, if necessary, after the Scheme is approved by the Hon'ble High Court. Such liberty shall not be exercised by Board of Directors without obtaining prior approval from the Hon'ble High Court. The Petitioner Companies may be directed to undertake to this effect.*

9. As far as the content of paragraph 6 (a) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies states undertakes that 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.

10. As far as the content of paragraph 6 (b) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes to amend the Scheme by deleting in Clause No. 26 A (a) line no. 6 starting from the word "and Transferor Company No. 3 on the Effective Date, being 100,000 Equity Shares of Rs. 10/- each amounting to Rs. 1,000,000/- (Rupees Ten Lakhs Only)" and by correcting the figures in clause 26 A (b) from 160,000 to 60,000 and 1,600,000 to 6,00,000 and in figures in line No. 7 from Sixteen to Six and 1,51,60,000 to 1,50,60,000 and 15,16,00,000/- to 15,06,00,000/- and in figures from line No. 7 from Sixteen to Six. The Learned counsel seeks liberty to carry out amendment in the Scheme. The said liberty is granted and the amendment to be carried out within two weeks from today.

11. As far as the content of paragraph 6 (c) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies 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 from with Registrar of Companies.

12. As far as the content of paragraph 6 (d) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies states that that the Transferor Companies and the Transferee Company are bound to comply with the applicable provisions of the income Tax Act and all tax issues arising out of Scheme will be met and answered in accordance with the law.

13. As far as the content of paragraph 6 (e) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies undertakes that any amendment or modification to the

Scheme, the Board of Directors shall obtain the order and approval from the Hon'ble High Court.

14. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandana muthu, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with undertaking given by the Petitioner Companies mentioned hereinabove. The said undertaking is accepted.

15. Learned Counsel for the Petitioner Company submits that the transferee company has tendered an affidavit dated 23rd September, 2015 of Mrs. Aakriti Tambi the Authorised Signatory of the Transferee Company accordingly giving its undertaking as mentioned in paragraph 4 to 8 of the said affidavit.

16. The Official Liquidator has filed his report dated 11th day of September, 2015 stating therein that the affairs of the Transferor Company No. 1 and 2 have been conducted in a proper manner and that the Transferor Company No. 1 and 2 may be ordered to be dissolved.

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 364 to 367 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a).

19. The Petitioner to 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 60 days from the date of this Order.

20. Petitioner is directed to file a copy of this order alongwith a copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form 21, in addition to physical copy, as per the provision of the Act.

21. Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to pay a sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay, in Company Scheme Petition No. 364 and 365 of 2015 towards their costs. Costs to be paid within four weeks from today.

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

23. All concerned regulatory authorities to act on a copy of this order alongwith the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(S.C. Gupte J.)