IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 368 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 205 OF 2015

Moniez Investment Company Limited ….Petitioner Company/
Transferor Company No. 1

AND

COMPANY SCHEME PETITION NO. 369 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 206 OF 2015

Bassein Engineering Enterprises Private Limited
….Petitioner Company
Transferor Company No. 2

AND

COMPANY SCHEME PETITION NO. 370 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 207 OF 2015

Ethnik Exports Private Limited ….Petitioner Company
Transferor Company No. 3

And

COMPANY SCHEME PETITION NO. 371 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 208 OF 2015

Long Horn Holdings Private Limited … Petitioner Company
Transferor Company No. 4

And

COMPANY SCHEME PETITION NO. 372 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 209 OF 2015

Brij Associates Consultants (India) Private Limited

.. Petitioner Company
Transferee 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 Amalgamation of
Moniez Investment Company Private Limited, Transferor Company No. 1
Bassein Engineering Enterprises Private Limited, Transferor Company No. 2
Ethnik Exports Private Limited a Private Limited, Transferor Company No. 3
Long Horn Holdings Private Limited, Transferor Company No. 4
with
Brij Associates Consultants (India) Private Limited, Transferee Company and their respective Shareholders 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. 368 to 371 of 2015.

CORAM : S.C.GUPTE, J

DATE : 23rd 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 Amalgamation of Moniez Investment Company Private Limited, Transferor Company No. 1, Bassein Engineering Enterprises Private Limited, Transferor Company No. 2, Ethnik Exports Private Limited a Private Limited, Transferor Company No. 3, Long Horn Holdings Private Limited, Transferor Company No. 4 with Brij Associates Consultants (India) Private Limited, Transferee Company and their respective Shareholders and Creditors.

3. The Learned Counsel for the Petitioners state that the Transferor Company No. 1, engaged into business of making investment of the capital and other moneys of the company in the various kinds of shares, stocks, units, debentures, debentures- stock, bonds, obligations and securities of any kind issued or guaranteed by any company, corporation or undertaking of whatever nature in India or abroad and Transferor Company No. 2 is engaged in the business of providing services related to engineering services like contracting, erecting, installing, surveys and other related service and also to manufacture, import or export in gas industries and telecommunication industries where cables network and other related service or products are provided and Transferor Company No. 3 is engaged in the business as an Export house and to act as general agents, exporters, importers, distributors, authorized representatives, selling agents, brokers and suppliers of manufacturers, wholesalers and traders for

India and abroad and Transferor Company No. 4 is engaged in the business of an investment company and to buy, invest in and acquire and hold shares, stock debenture, debenture- stock, bonds, obligations and securities issued or guaranteed by it and company constituted or carrying on business in India or elsewhere along with consultancy and advisory services and Transferee Company is engaged in the business of of merchant exporter of Engineering goods and also consultants for administration, management, finance and organization and also are importers and exporters and deal in all varieties of commodities and to carry on the business of distributors and as agents/indentors in all kinds of goods, either manufactured, semi-manufactured or raw materials.

4. The Proposed Scheme of Amalgamation will be beneficial to the Amalgamated Company as it will have greater efficiency in overall business including economies of scales, cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund investing and financing related activities and their growth opportunities in the businesses of the Companies, to maximize shareholder value. The Amalgamation will result in cost saving for both the Transferor Companies and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth for the Amalgamated Company and cost savings for the Amalgamated Company. The Amalgamated Company will have the benefit of the combined resources of the Transferor Companies and the Transferee Company i.e. product portfolio, market share, scale, efficiency, logistic and distribution network, combined employees base, reserves, investments, and other assets, manpower, finances, customers, distributors, brands, mitigating competition, etc. The Amalgamated Company would be in a position to carry on consolidated operations through optimum utilization of its resources and avoidance of duplication. The Amalgamated 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 very good. The Amalgamated Company would also have a larger net worth base, and greater borrowing capacity, which would provide it a competitive edge over others, especially in view of the increasing competition due to liberalization and globalization, which will be beneficial in more than one ways to both the Transferor Companies and the Transferee Company and their shareholders and creditors, as both the Transferor Companies and the Transferee Company plan to meet the competition in more effective way by combining their asset base and operations.

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 21st day of September, 2015 stating therein save and except stated in paragraph 6 (a) and

(b), 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 (b) of the said Affidavit, it is stated that;-

"6. That the Deponent further submits that,

a) Clause 13 (c) of the scheme provides for adjustment for differences in Accounting Policies between the 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.

b) The Deponent further submits that the Tax issue if any arising out of the Scheme shall be subject to final decision of Income Tax Authority and approval of the Scheme by the 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'

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 that in addition to compliance of Accounting Standard 14, the Petitioner Company will pass such accounting entries which may be necessary in connection with the Scheme to comply with other applicable accounting standards.

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 that that the Petitioner Companies 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.

11. 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.

12. The Official Liquidator has filed his report dated 14th day of September, 2015 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

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, the Company Scheme Petition Nos. 368 to 372 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) and (c).

15. 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.

16. 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/ INC 28 in addition to physical copy, as per the provision of the Act 1956 or Companies Act 2013 whichever is applicable.

17. 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. 368 to 371 of 2015 towards their costs. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(S.C. Gupte J.)