IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 299 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 648 OF 2014

Dhawalgiri Properties Private Limited….Petitioner

AND

COMPANY SCHEME PETITION NO. 300 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 649 OF 2014

Optical Disk Marketing (India) Private Limited….Petitioner

AND

COMPANY SCHEME PETITION NO. 301 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 650 OF 2014

Disha Infin Consultants Private Limited…..Petitioner

In the matter of Companies Act, 1956 (1 of 1956)

And

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

And

In the matter of Scheme of Amalgamation of Dhawalgiri Properties Private Limited and Optical Disk Marketing (India) Private Limited with Disha Infin Consultants Private Limited and their Respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company
Mr. P.Khosla i/b Mr. A.A Ansari in all the Petitions.

Mr. S. Ramakantha, Official Liquidator in Company Scheme Petition No. 299 of 2015 and 300 of 2015.

CORAM: K.R. SHRIRAM, J

DATE: 4th DECEMBER 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Composite Scheme of Amalgamation 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 Dhawalgiri Properties Private Limited and Optical Disk Marketing (India) Private Limited with Disha Infin Consultants Private Limited.

3. The learned Counsel for Petitioners submit that Dhawalgiri Properties Private Limited is engaged in the business of Constructions and development of Infrastructure. Optical Disk Marketing (India) Private Limited is engaged in the business of buying, selling, exporting and importing and dealing in electronics and electrical equipments, components, devices and appliances of all types. Disha Infin Consultants Private Limited is engaged in the business of Consultancy, trading of security and shares, and financial/investment activity.

4. The rational for Scheme is Synergies in procurement, manufacturing, administration and marketing operations, Achieving economies of scale, Avoiding duplication of efforts, costs and resources, Lesser regulatory / procedural compliance,

Integrate, rationalize and streamline the management structure of the merged business, Combined capital resources would strengthen the financial position of the merged entity and result in increasing leveraging capacity of the merged entity i.e. its capacity to borrow funds for business purposes, Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs, Amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings, Cost saving in fees/ duties payable on statutory and procedural compliance, Facilitate inter transfer of resources and costs and optimum utilization of assets, Synchronizing of efforts to achieve uniform corporate policy, Ease in decision making, To reflect the consolidated net worth of these companies in one balance sheet.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all

requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 20th August, 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 by this Court.

9. The Regional Director has filed an Affidavit on 6th November, 2015 stating therein, save and except as stated in paragraphs 6(a) & (b) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) Clause No. 11.1of the Scheme states that excess of the value of the net assets of the Transferor Companies over the paid up value of the shares to be issued and allotted shall be credited in the books of the Transferee Company to a separate account to be named and styled as "amalgamation Reserve Account" and the said account shall be considered as free /general reserve and shall form part of the net worth of the Transferee Company. In this regard, it is submitted that surplus/reserve arising on transfer if capital assets from Transferor Company to Transferee Company and that part of the reserve cannot be construed

as free reserve and cannot form part of the net worth of the Transferee Company.

(b) *The income Tax Department vide their two letters dated 18/05/2015 and 24/07/2015 have informed that the First Transferor Company and Second Transferor Company are having outstanding demand of Rs.18,65,398/- and Rs. 3,67,058/- respectively. Copy of the said letters is annexed herewith as Exhibits D1 & D2. In this regard, the Transferee Company may be directed to safeguard the interest of Income Tax Department with respect to aforesaid income tax dues.*

(c) *It is respectfully submitted that the Tax implication, if any arising out 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.*

10. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioners through their Counsel clarifies that surplus / reserve if any arising on account of transfer of capital assets from Transferor Company to Transferee Company will not be construed as free reserve and will not form a part of net worth of the Transferee Company.

11. As far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners states that as per clause 3.2 of the Scheme all debts, liabilities, duties and obligations of the

Transferor Companies shall be the debts, liabilities, duties and obligations of the Transferee Company. The Counsel for the Petitioners clarify that all liabilities including Income Tax shall be the liability of the Transferee Company .

12. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that approval of the scheme by this Court will not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner companies after giving effect to the Amalgamation and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. 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 and clarification submission given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 299 of 2015; 300 of 2015 and 301 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petitions.

16. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 receipt of the order.

17. Petitioner is directed to file a copy of this order along with a copy of the Scheme 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.

18. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 299 of 2015 and 300 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(**K.R. SHRIRAM**, **J**.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

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