IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 396 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.203 OF 2015

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 amongst

Surmee Agencies Private Limited, the

Transferor Company

WITH

Raheja Universal (Pvt) Limited, the Transferee Company

AND

Their respective shareholders and creditors

Surmee Agencies Private Limited, a company)
incorporated under the Companies Act, 1956)
("Act") and having its registered office at)
Raheja Centre Point, 294, C.S.T. Road Near)
Mumbai University, Off Bandra Kurla Complex,)
Santacruz (E), Mumbai - 400098.)…Petitioner Company

Called for Hearing

Mr. Laxmi Mankar, Advocate for the Petitioner

Mr.D. N. Mishra i/b A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

Mr.S. Kadam for Objector.

CORAM : S. C. Gupte, J.

DATE : 16th September, 2015

PC :

1. Heard learned counsel for parties.

2. The claim is opposed by a creditor of transferor company M/s.Surmee Agencies Pvt.Ltd. The objector has claimed that there is a liability of about Rs.28.15 crores inclusive of interest together with further interest at the rate of 24% per annum from 1st July 2013 till payment or realisation. The Petitioner has filed the reply to the objector's affidavit submitting that in accordance with the scheme of amalgamation, the transferee company, which is in a very sound financial position and which is in a position to take care of all debts and liabilities of the transferor company, shall be responsible for the liability owed to the objector.

3. Learned Counsel for the objector has no further objection if the transferee company discharges its liability owed to the objector subject to award of the arbitrator, which is presently pending adjudication in an arbitral reference, being rendered and such award attaining finality.

4. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation amongst Surmee Agencies Private Limited, the Transferor Company with Raheja Universal (Pvt) Limited, the Transferee Company and their respective shareholders and creditors.

5. The Transferor Company and the Transferee Company are presently engaged in the business of construction and real estate development.

6. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

7. The learned Counsel for the Petitioners states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Petition is been filed in consonance with the orders passed in Company Summons for Direction.

8. The learned Counsel appearing on behalf of the Petitioners state that they have complied with all requirements as per directions of this Court as passed in the Company Scheme Petition and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956, to the extent made effective, and the rules made thereunder. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 08th September, 2015 in Company Scheme Petition Nos. 396 of 2015, inter alia, stating therein that the affairs of the Transferor Company has not been conducted in a manner prejudicial to the interests of their members or to the public interest and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed his Affidavit on 15th September, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

(a) *With reference clause 14 of the Scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and deficit if any arising shall be debited to good will account of Transferee Company.*

(b) *Clause 14(iii) of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regards, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee company shall p[ass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 Etc.*

(c) *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.*

11. So far as the objection of the Regional Director, Western Region, Ministry of Corporate Affairs, as stated in paragraph 6(a) of his Affidavit is concerned, the learned Counsel of the Petitioners undertakes that *the surplus* if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and deficit if any arising shall be debited to good will account of Transferee Company.

12. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(b) of his affidavit is concerned, the Transferee Company through its advocate undertakes that in addition to accounting treatment given in the scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

13. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(c) of his Affidavit is concerned, the learned Counsel of the Petitioners submits that the Petitioners 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.

14. 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 the undertaking given by the Advocate for the Petitioner Company. The said undertaking is accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 396 of 2015 is made absolute in terms of prayer clauses (a) & (d).

17. The Petitioner Companies to lodge a copy of this order and the 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 this order.

18. Petitioner Company is directed to file/lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956.

19. The Petitioner in the Company Scheme Petition is directed to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

21. 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.

(S. C. GUPTE, J.)