IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 377 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 265 OF 2015

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

And

In the matter of Sections 391 & 394 of the Companies Act, 1956 (1 of 1956);

And

In the matter of Scheme of Amalgamation of Warden Offshore Private Limited with Warden International (Agencies) Private Limited

Warden Offshore Private. Limited.)
("WOPL" or the "Transferor Company"))
is a company incorporated under the)
Companies Act, 1956 having its)
Registered Office at Warden House,)
340, J.J. Road, Byculla, Mumbai – 400 008.)
CIN: U61100MH2007PTC166685) …Petitioner Company

Called for hearing:

Mr. Rashmin A. Jain i/b. M/s. Kanga & Company, Advocates for the Petitioner Company.

Mrs. M. Kajle i/b. Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S.C Gupte J.

DATE: 28th August 2015

PC:

1. Heard learned counsel for the parties. 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 to a Scheme of Amalgamation of Warden Offshore Private Limited ("WOPL" or the "Petitioner Company" or the "Transferor Company) with Warden International (Agencies) Private Limited ("WIPL" or "the Transferee Company"), under Section 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioner Company states that the Petitioner Company is engaged in the business to purchase, charter, hire or otherwise acquire, sell, exchange, let or give on charter or otherwise deal with boats and vessels. The Transferee Company is engaged in the business as Agents, indenting agents, commission agents, professional advisors in the field of hydro carbon & oil and gas sector.

4. The Learned Counsel for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company. The management of both companies desires reduction in administrative and operative cost and streamlining the structure and therefore, this Scheme is proposed. The proposed Amalgamation will result in the combined businesses of the Transferor Company and the Transferee Company to be carried on more economically, efficiently and beneficially and the arrangement would be in the interests of both the Companies and their shareholders as the businesses carried on by both the Companies are akin and supplementary to each other. The Amalgamation would strengthen the management of the Transferee Company effectively because of avoidance and elimination of unnecessary duplication of time, costs and expenses, incurring for administration of operations of both the Companies. It will combine the activities and operations into a single Company for synergistic linkages besides the benefit of financial resources of each other. It will enhance financial strength and flexibility and consolidate, integrate the operations. It will make it possible synergies in business activities; attain economies of scale, for further development and growth of the business of the Transferee Company. It will also result in pooling of resources in most optimum manner of both

the Companies and enable the Amalgamated Company(s) to run its business more profitably/ effectively.

5. The Board of Directors of the Transferee Company as well as Board of Directors of the Petitioner Company/ the Transferor Company have considered and proposed the amalgamation of the entire business and undertaking of the Transferor Company with the Transferee Company in order to benefit the stakeholders of the said companies. The Transferor and Transferee Companies approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that, 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 respective Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary Affidavits of compliance in the Court. Moreover, in Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and 2013 the Rules made thereunder which is applicable. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 11th August 2015 stating therein that save and except as stated in para 6. (a), (b), (c), (d) and (e), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6(a) to 6(e) of the said Affidavit, the Regional Director has stated that:

   6(a) The issued Class 'B' Equity Share capital of the Transferee company is wrongly mentioned in clause 3.2 of the Scheme as Rs.11,059,000 instead of Rs.23,068,830/-, which appears to be typographical error. In this regard, it is submitted that the petitioner company may be directed to correct the aforesaid error in the Scheme.

   (b) Clause 15.3 of Scheme provides for adjustment of differences in Accounting Policies between Transferor Company and Transferee Company.

In this regard, it is submitted that in addition to compliance of Accounting Standard-14, Transferee Company shall pass accounting entries which are necessary in connection with Scheme to comply with other applicable Accounting Standard such as AS-5, etc.

(c) Clause 15.5 of the Scheme states that upon the coming into effect of this Scheme and with effect from the Appointed Date, for the purpose of accounting for and dealing with the value of the assets and liabilities of Transferor company in the books of Transferee company, the fair value of the immovable assets of the Transferor company shall be determined as of the Appointed Date and the accounted appropriately. In this regard, the Petitioner company was advised that the assets and liabilities of Transferor company be transferred to Transferee company on book value basis instead of fair value basis as Clause 15.1 provides for following the pooling of interest method as provided in AS-14. Accordingly, the Advocate for the petitioner company vide its letter dt. 29/07/2015 has clarified that the fair value of the immovable assets of the Transferor company should be read as 'Book Value" of the immovable assets of the Transferor company. Copy of the said letter is annexed hereto as Exhibit 'B2'.

(d) It is respectfully submitted that the tax implication, if any, arising of the Scheme is subject to final decision of Income Tax Authority. 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 Transferor Company and Transferee Company.

(e) Clause 19 of Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make an 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 Company may be directed to undertake to this effect".

9. So far as the observation made by the Regional Director in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes to correct the figure as mentioned in Clause 3.2 of the Scheme as Rs.23,068,830/- instead of the incorrect figure of Rs.11,059,000/- and further undertakes to amend the scheme accordingly. Amendment to be carried out within a period of two weeks from today.

10. So far as the observation made by the Regional Director in paragraph 6(b) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes 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 and to comply with other applicable Accounting Standard such as AS-5 etc.

11. So far as the observation made by the Regional Director in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the petitioner company through its counsel states that the fair value of the immovable assets of the Transferor company should be read as 'Book Value" of the immovable assets of the Transferor company in clause 15.5 of the Scheme and further undertakes to amend the scheme accordingly. Amendment to be carried out within a period of two weeks from today.

12. So far as the observation made by the Regional Director in paragraph 6(d) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes 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 law.

13. So far as the observation made by the Regional Director in paragraph 6(e) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Board of Directors of the Transferor Company and Transferee Company will not exercise the liberty to modify or amend the Scheme without obtaining prior approval from the Hon'ble High Court.

14. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs,

Western Region, Mumbai states that they are satisfied with the undertakings given by the Learned Counsel for the Petitioner Companies. The undertakings given by the Petitioner Company are accepted.

15. The Official Liquidator has filed his report on 12th August 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved.

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. None of the parties concerned have come forward to oppose the Scheme in the court.

17. Since all the requisite statutory compliance have been fulfilled, Company Scheme Petition No. 377 of 2015 is made absolute in terms of prayers (a) to (g).

18. The Petitioner Company to lodge a copy of this order and 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 issuance of the order by the Registry.

19. Petitioner Company 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 21/E-Form – INC 28 in addition to physical copy as per the provisions of the Companies Act, 1956/2013.

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

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

22. All authorities concerned 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.)