

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 357 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 276 OF 2015

Suruchi Holdings Private Limited... Petitioner/ First Transferor Company

In the matter of the Companies Act,
1956/2013

AND

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

AND

In the matter of Suruchi Holdings Private
Limited, a company incorporated under the
provisions of the Act, 1956;

AND

In the matter of Scheme of Amalgamation
Of

Suruchi Holdings Private Limited,

And

Samiran Jaipur Windfarms Private Limited

With

Tanti Holdings Private Limited

Called for Hearing

Mr. NaserAli Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioner.

Mrs. S.V. Bharucha i/b. Mr. A.A. Ansari for Regional Director in the Petition.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S. C. GUPTE, J

DATE: 28th August, 2015

PC:

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor any party has controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to an arrangement embodied in the Scheme of Amalgamation of Suruchi Holdings Private Limited and Samiran Jaipur Windfarms Private Limited with Tanti Holdings Private Limited.
3. The learned Advocate for the Petitioner Company states that both the First Transferor and the Transferee Company are presently engaged in holding and investment activity and the Second Transferor Company is presently not having much business activity.
4. The learned Advocate for the Petitioner Company further states that the Scheme of Amalgamation would achieve integration of the business operations which are of similar strategic flexibility and a scale to pursue growth opportunities, minimize cost and administrative hassle of maintaining the combined entity will be able to showcase its strength and there will also be synergy benefits through combined operations and cost efficiencies and conducive to better and more efficient and economical control and conduct of the Companies.

5. The Petitioner Company and the Second Transferor and Transferee Company have also approved the said Scheme of Amalgamation by passing their respective Board Resolutions, which are annexed to the Company Scheme Petition.
6. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition is filed in consonance with the order passed in Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.
7. The Learned Advocate appearing on behalf of the Petitioner states that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.
8. The Official Liquidator has filed his report on 24th 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.
9. The Regional Director has filed his Affidavit on 8th July, 2015, *inter alia*, stating therein that save and except as stated in paragraphs 6 (a) & 6(b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs

6 (a) & 6(b) of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

- a) That the Registered Office of the Second Transferor Company and Transferee Company is situated in the State of Rajasthan and Gujarat respectively. Hence the present Scheme of Amalgamation between the Transferor Companies and the Transferee Company will be subject to the condition of obtaining similar approval from the Hon’ble High Court of Rajasthan and Gujarat in respect of Second Transferor Company and Transferee Company.*
- b) Clause 11.5 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Companies and Transferee Company. In this regard, it is submitted that in addition to 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.*
- c) It is respectfully submitted that the tax implication, if any, arising out of the scheme shall be subject to final decision of Income Tax Authority. The approval of the scheme by Hon’ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the petitioner company*

after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.”

10. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, Learned Advocate of the Petitioner states that the Second Transferor Company had filed Company Petition bearing No. 9 of 2015 before the Hon’ble Rajasthan High Court and the same is admitted and pending final hearing in due course. Further Transferee Company had filed Company Petition bearing No.112 of 2015 before the Hon’ble Gujarat High Court and vide Order dated 02-07-2015, the Scheme of Amalgamation has already been sanctioned by the Hon’ble High Court of Gujarat.
11. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Petitioner Company through its advocate undertakes that the Transferee Company shall pass such accounting entries, which are necessary in connection with the scheme to comply with other applicable Accounting Standard.
12. As far as the objection of the Regional Director in paragraph 6(c) of his affidavit is concerned, the Petitioner Company submit 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.
13. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, 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 Petitioner Company through their advocate. In view thereof, the undertaking is 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.357 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) & (b), subject to sanction of scheme from the High Court of Rajasthan.
16. The Petitioner Company to lodge a copy of this order along with 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.
17. Petitioner is directed to file/lodge a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay, with the concerned Registrar of Companies, electronically, along with E-Form 21 / INC 28 in addition to the physical copy as per relevant provision of the Companies Act, 1956 / 2013 whichever is applicable.
18. The Petitioner Company 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 the date of the order.

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 Scheme duly authenticated by Company Registrar, High Court (O.S.), Bombay.

(S. C. GUPTE, J.)