THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 412 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 328 OF 2015.

AVAKASH CONSULTANTS PRIVATE LIMITED,
....Petitioner/ First Transferor Company.
AND
COMPANY SCHEME PETITION NO.413 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 329 OF 2015.

STRATEGIC TRADING PRIVATE LIMITED,
....Petitioner/ Second Transferor Company.
AND
COMPANY SCHEME PETITION NO.414 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 330 OF 2015.

COLVA TRADEPLACE PRIVATE LIMITED,
....Petitioner/ Third Transferor Company.
AND
COMPANY SCHEME PETITION NO.415 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 331 OF 2015.

STRATEGIC PORTFOLIO ADVISORY COMPANY PRIVATE LIMITED,
....Petitioner/ Fourth Transferor Company.
WITH
COMPANY SCHEME PETITION NO.416 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 332 OF 2015.

GROWELL CONSULTANTS PRIVATE LIMITED,
....Petitioner/ Transferee Company.

In the matter of the Companies Act 1 of 1956;
AND
In the matter of Sections 391 to 394 of the Companies Act, 1956;
AND
In the matter of Scheme of Amalgamation and Arrangement of Avakash Consultants Private Limited

AND

Strategic Trading Private Limited

AND

Colva Tradeplace Private Limited,

AND

Strategic Portfolio Advisory Company Private Limited

WITH

Growell Consultants Private Limited and Their Respective Shareholders And Creditors.

Called for hearing

Mr. Rahul Oak, Advocate for the Petitioners in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 412 of 2015 to 415 of 2014 .

Mr. Nisha Valani i/b Mr. A. A. Ansari for Regional Director in all the Petitions.

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 and Arrangement of Avakash Consultants Private Limited, Strategic Trading Private Limited, Colva Tradeplace Private Limited and Strategic Portfolio Advisory Company Private Limited with Growell Consultants Private Limited and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. The Transferor Companies and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

5. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and Transferee Company have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rule made there under whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 19th August, 2015 in Company Scheme Petition Nos. 412 of 2015 to 415 of 2015 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed an Affidavit on 25th August, 2015 stating therein, save and except as stated in paragraph 6(a) to 6(c), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) to 6(c) of the said Affidavit, it is stated as under.

> *"6. (a) The face value of each preference share of GCPL is wrongly mentioned in unnumbered para 6 of clause 12.1 of the Scheme as Rs. 10/- instead of Rs. 100/- which appears to be typographical error. In this regards, it is submitted that the petitioner companies may be directed to correct the aforesaid error in the scheme accordingly.*
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> *(b) Clause 14.2 of the scheme states that upon the scheme coming into effect, the surplus, if any, of the net value of assets, liabilities and serves of the Transferor companies acquired and recorded by the Transferee Company over the face value of the new equity shares on merger issued and allotted pursuant to Clause 12.1 shall be adjusted in Reserves. In this regards, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company.*
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> *( c) It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. 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 Companies and Transferee Companies."*

8. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel agrees to amend unnumbered para 6 of clause 12.1 of the Scheme as the face values of the preference share of the GCPL mentioned in said clause shall be substituted by Rs.100/- instead of Rs. 10/-. Counsel for the Petitioner Company seeks leave of the court to amend Clause 21.1 of the scheme. Leave to amend is granted. Amendments to be carried out within two weeks from today.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company through its

counsel undertakes that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company.

10. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law

11. 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.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 412 of 2015 to 416 of 2015 are made absolute in terms of prayer clauses (a).

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

15. Petitioners are directed to file a copy of this order along with a copy of the amended 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, 1956/2013 whichever is applicable.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 412 of 2015 to 415 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

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

(S. C. Gupte, J.)