IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 430 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 376 OF 2015

Radiant Hospitality Services Private Limited

……. Petitioner/ Transferor Company

COMPANY SCHEME PETITION NO. 431 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 377 OF 2015

OCS Group (India) Private Limited

…… Petitioner/Transferee Company

In the matter of the Companies Act, 1956 (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 of Radiant Hospitality Services Private Limited AND OCS Group (India) Private Limited AND their respective Shareholders and Creditors

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioner Companies

Mr. G. Hariharan i/b Mr. A. A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator present.

CORAM: S. C. Gupte, J.
DATE: 11th September, 2015

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Company Scheme 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 Radiant Hospitality Services Private Limited ('Transferor Company') and OCS Group (India) Private Limited ('Transferee Company') and their respective Shareholders and Creditors.

3. The Learned Counsel for the Petitioner Companies states that Radiant Hospitality Services Private Limited is has been engaged in the business of providing hospitality and cleaning services and OCS Group (India) Private Limited is primarily engaged and has been carrying on the business relating to engineering consultancy services.

4. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies are part of same group which intends to streamline and simplify the overall corporate structure as a part of their internal group restructuring. Further, the Scheme of Amalgamation will result into elimination of additional administrative costs; reduction of cumbersome co-ordination

efforts across multiple entities; efficient corporate structure; and effective administration of the businesses.

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

6. The learned counsel appearing on behalf of the Petitioner Companies has stated that Petitioner Companies have complied with all 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 and seeks sanction to the said proposed Scheme of Amalgamation.

7. The Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies 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 the Rules made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 8th September, 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up.

9. The Regional Director has filed an Affidavit on 2nd September, 2015, stating therein, save and except as stated in paragraph 6, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) to (c) of the said affidavit, the Regional Director has stated/observed that :-

   (a) The Shares of the Transferor Company and Transferee company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by Transferee Company to the shareholders of Transferor Company, the Transferee Company may be directed to comply with the provisions of FEMA/RBI regulations as applicable in this regard.

   (b) Clause 11.1 of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorized share capital of the Transferee company may not be sufficient to issue further shares as provided in clause 11.1 of the Scheme. In this regard, it is suggested that Transferee company may, if necessary and to the extent required, increase its Authorised Share Capital to facilitate issue and allotment of Shares under this Scheme. In this connection, the Transferee company may be directed to comply with the provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of the

Companies Act,1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

(c) *It is respectfully submitted that the tax implication, if any, arising out of Scheme is subject to final decision of Income Tax Authorities. The approval of 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 Income Tax Authority is binding on Transferor Company and Transferee Company.*

10. As far as observation made in Para 6(a) of the Affidavit of the Regional Director is concerned, the Transferee Company through their counsel undertakes that while issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company will comply with FEMA/RBI regulations as applicable in this regard.

11. As far as observation made in Para 6(b) of the Affidavit of the Regional Director is concerned, the Transferee Company through their counsel undertakes that, the Transferee Company will comply with provisions of section 61/64 of the Companies Act, 2013 corresponding to section 94/97 of the Companies Act, 1956 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms, for the purpose of increase in authorized share capital, if required.

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

13. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking/s given by the Petitioner Companies in Para 10, 11 and12. The said undertaking/s given by Petitioner Company is/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. None of the parties concerned have come forward to oppose the Scheme in the court.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 430 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) to (d) and Company Scheme Petition No. 431 of 2015 are made absolute in terms of prayer clause (a) to (c).

16. The Petitioner Companies are 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 the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. The Petitioner Companies are directed 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 the Order.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in the Company Scheme Petition No. 430 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 amended Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. C. Gupte, J.)