

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.434 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.392 OF 2015
Enam Shares & Securities Private Limited.
.....Petitioner/the Transferor Company.

AND

COMPANY SCHEME PETITION NO.435 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.393 OF 2015
Enam Securities Private Limited.
.....Petitioner/the Transferee Company.

In the matter of the Companies Act I of
1956.

AND

In the matter of Sections 391 to 394
and read with Sections 100 to 103 of
the Companies Act, 1956.

AND

In the matter of the Scheme of
Arrangement between:

Enam Shares & Securities Private
Limited.

AND

Enam Securities Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co, Advocate for the Petitioner in
both the Petition.

Mr.P.Khosla i/b Shri. A. A.Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 434 of 2015.

CORAM: S. C. GUPTE, J

DATE:28THAUGUST,2015

PC:

1. Heard learned counsel for parties. None appears 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 under Sections 391 to 394 and read with Sections 100 to 103 of the Companies Act, 1956, to a Scheme of Arrangement between Enam Shares & Securities Private Limited and Enam Securities Private Limited and their respective shareholders.
3. The Learned Advocate for the Petitioner Companies states that the Transferor Company mainly carrying on business of Investment & dealing in shares & securities and also earning rental income. The Transferee Company is presently engaged in business of Investment in Shares & Securities.
4. The Learned Advocate for the Petitioner Companies further states that the Scheme of Arrangement shall result into efficient management control and the amalgamation would result in

optimum utilization of management and other resources and would reduce the administrative costs and other overheads which are presently being multiplied because of separate entities and the reduction of Share Capital of the Transferee Company be effected to bring the capital within serviceable limit.

5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner in Company Scheme Petition No 435 of 2015, states that that Scheme includes reduction and consequent cancellation of Share Capital of the Transferee Company and the same shall be effected as integral part of the Scheme as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholders and the procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 8th May,2015 passed in CSD No 393 of 2015.

7. 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 Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Advocate appearing on behalf of the Petitioners has stated 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 Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 27th August, 2015 in Company Scheme Petition No. 434 of 2015, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed his Affidavit on 12th August, 2015 inter alia, stating therein that save and except as stated in paragraphs 6 (a) & (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) & (b) of the said Affidavit, the Regional Director has stated that :

“6. That the Deponent further submits that:-

- a) *Clause 10.3 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted 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 to comply with other applicable Accounting Standard such as AS-5 etc.

- b) 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. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) 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.

12. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is 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 undertakings and

submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.434 of 2015 filed by the Transferor Company are made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.435 of 2015 filed by the Transferee Company are made absolute in terms of prayer clauses (a) to (e).

16. 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.

17. Petitioner is directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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.

18. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No.434 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

19. Petitioner in Company Scheme Petition No.435 of 2015 to publish a notice of registration of order and form of minutes of reduction of capital by Registrar of Companies once each in the two local newspaper, viz, "The Free Press Journal" in English language and translation thereof in "Navshakti" in Marathi Language, both having circulation in Mumbai and also in the Maharashtra Government Gazette within 14 days of registration.

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 and Form of Minutes annexed as Exhibit "I" to the Company Scheme Petition No.435 of 2015 duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. GUPTE, J.)