IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 623 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 297 OF 2015

M/S. TECHNO FORCE (INDIA) PRIVATE LIMITED
... Petitioner / Transferor Company

WITH

COMPANY SCHEME PETITION NO. 624 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 298 OF 2015

M/S. TECHNOFORCE SOLUTIONS (INDIA) PVT. LTD.
... Petitioner / Transferee Company

In the matter of Companies Act,1956;
And
In the matter of Section 391 to 394 of the Companies Act;
And
In the matter of M/S. TECHNO FORCE (INDIA) PRIVATE LIMITED (TRANSFEROR COMPANY)
And
M/S. TECHNOFORCE SOLUTIONS (INDIA) PVT. LTD. (TRANSFEREE COMPANY);

Called for hearing

Mr. Sandeep S. Kumbhar for Petitioners

Mr. Anil D. Yadav i/b Mr. A. A. Ansari for Regional Director

Mr. S. Ramakantha, Official Liquidator present

Coram: K. R. Shriram J.

Date: 11th December 2015

PC:

1. Heard Learned Counsel for the 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 a arrangement embodied in the Scheme of Amalgamation between M/s. Techno Force (India) Pvt. Ltd. (Transferor Company) with M/s. Techno Force Solutions (India) Pvt. Ltd. (Transferee Company).

3. The Learned Advocate of the Petitioner Company states that Petitioner Company / Transferor Company is engaged in the business of manufacturing consulting, selling, exporting, importing in the field of chemical process equipments for evaporating drying, distillating, filtering, solid & fluid handling, degassing, pasteurizing,

crystallizing, required in chemical and allied industry. The Learned Advocate of the Petitioner Company / Transferor Company further submits that Petitioner Company / Transferor Company is engaged in the business as per the main objects and also the objects incidental or ancillary to the Attainment of the Main Objects as per the Memorandum of Association of the said Company.

4. The Learned Advocate of the Petitioner Company / Transferee Company states that Transferee Company is engaged in the business of manufacturing consulting, selling, exporting, importing in the field of chemical process equipments for evaporating, drying, distillating, filtering, solid and fluid handling, disgassing, pasteurizing, crystallizing required in chemical and allied industry. The Learned Advocate of the Petitioner Company / Transferee Company further submits that Petitioner Company / Transferee Company is engaged in the business as per the main objects and also the objects incidental or ancillary to the Attainment of the Main Objects as per the Memorandum of Association of the said Company.

5. The Learned Advocate for the Petitioner Companies further states that the Scheme of amalgamation will be advantageous and upon amalgamation, the business of Transferee Company will be carried out more efficiently, effectively and beneficially, as it would enable Transferee Company to obtain advantages of economies of large scale. The amalgamation will enable the transferee Company to consolidate the business and lead to synergies in operation and create a stronger financial base. It would be advantageous to combine the activities and operations of above said companies into a single company for synergistic linkages and the benefit of combined financial resources this will be reflected in the profitability of the Transferee Company etc.

6. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the respective Company Scheme Petition.

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 Companies 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.

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. The said undertaking is accepted.

9. The Official Liquidator has filed his Affidavit dated 30th November 2015 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner. Therefore the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed his affidavit dated 17th November 2015 inter alia stating therein that save and except as stated in paragraph Nos. 6(a) to (f) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph

Nos. 6(a) to (f) of the said Affidavit, the Regional Director has stated as under:

6. That the Deponent further submits that:

(a) Clause 3.1 of the Scheme provides for revaluation of land, factory buildings and work shop machinery and equipments. Further, Clause 3.3 of the Scheme states that any surplus arising in the revaluation of the assets of the Transferor Company, as adjusted by the amount of capital reserve or goodwill shall be added to or as the case may be, subtracted from the general reserves of the Transferee Company. In this regard, it is submitted that the surplus arising on revaluation, shall be treated as Revaluation Reserve and said revaluation reserve has to be transferred to/recorded in the Revaluation Reserve Account of the Transferee Company. It is also submitted that the said revaluation reserve account is not available for adjusting the cash loss sustained by the Transferee Company.

(b) Clause 10.2(ii) of the Scheme states that 50,00,000 number of 10% Optionally Convertible Non-cumulative Preference Shares of Rs. 10/- each issued by the Transferee Company to the Transferor company shall stand cancelled. Such cancellation of share capital would amount to reduction of share capital of the Transferee Company. The scheme is silent with respect to compliance of Section 100 of the Companies Act, 1956 corresponding to section 66 of the

Companies Act, 2013. In this regard, it is submitted that the Petitioner Companies may be directed to incorporate a suitable clause in the scheme itself and amend the scheme accordingly.

(c) *Clause 12.2 of the Scheme provides for insertion of Main Objects clauses of the Transferor Company in the Memorandum of Association of the Transferee Company as Main Objects. In this regard, the Transferee Company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amend copy of Memorandum of Association with necessary form with Registrar of Companies.*

(d) *Clause No. 10.2(i) of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorized share capital of Transferee Company may not be sufficient to issue further shares as provided in Clause No.10.2(i) of the Scheme even though 50,00,000 number of 10% Optionally Convertible Non cumulative Preference Shares of Rs. 10/- each issued by the Transferee Company to the Transferor Company shall stand cancelled, that part of the Authorised Capital will not be available for reissue of new shares pursuant to this Scheme. In this regard, it is suggested that the Transferee Company may 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 provisions of Section 61/64 of Companies Act, 2013 corresponding to Section 94/97 of 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.

(e) 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 Petitioner Companies.

(f) Clause 13 of the Scheme provides for Modification and Amendments to Scheme wherein the Board of Directors of Transferor Company and Transferee Company have been authorized to make any 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 Companies may be directed to undertake to this effect.

11. As far as the objection of the Regional Director in paragraph 6(a) of his Affidavit is concerned, the Transferee Company through its Advocate submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall comply with / pass necessary entries in connection with the scheme under Accounting Standard - 5 and such other Accounting Standards which are necessary/ applicable in connection with the implementation of the scheme. The Transferee company agrees that no part of Revalution Reserve created by Revalution of Assets of the Transferor Company shall be added / subtracted to / from General Reserve and the same shall also be not available for adjusting the losses (if any) suffered by the Transferee company.

12. As far as the objection of the Regional Director in paragraph 6(b) of his Affidavit is concerned. The Transferee Company through its Advocate seeks liberty, as suggested by the Regional Director to amend and add the following paragraph as a clause No. **2.3** of the scheme after the existing clause No. **2.2.**

Clause No. 2.3 : "Since Transferor Company holds 50 lakhs 10% optionally convertible non cumulative

preference shares of Rs. 10/- each aggregating amount of Rs. 5,00,00,000/- (Rupees Five Crores only) in the share capital of the Transferee Company upon the scheme becoming effective these shares of Transferee Company shall get cancelled and consequently there will be reduction of paid up share capital of Transferee Company and such reduction shall be effected as an integral part of this Scheme under Section 100 to 103 of Companies Act, 1956 corresponding to Section 66 of the Companies Act, 2013 and the order of the High Court sanctioning the scheme shall be deemed to be also order under Section 102 of Companies Act, 1956 for the purpose of confirming the reduction". Liberty to amend is granted. The amendment to be carried out within a period of four weeks. The said Scheme of amalgamation thus stands modified.

13. As far as the objection of the Regional Director in paragraph 6(c) of his Affidavit is concerned, the Transferee Company through its advocate undertakes that as suggested by the Regional Director that Companies shall comply with all the applicable

provisions of the Companies Act including filing of forms, payment of fees and duties etc. and to comply with provisions of Section 13(1) & (6) read with Section 15 the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956. As regards amendments to Main Object Clause of the Transferee Company for incorporating Main Object clause of the Transferor Company (clause 12.2 of the Scheme) shall be complied with. The Petitioner Company undertakes to file amended copy of Memorandum of Association with necessary form with Registrar of Companies. The said undertakings are accepted. Liberty to amend is granted. The amendment to be carried out within a period of four weeks. The said Scheme of amalgamation thus stands modified.

14. As far as the objection of the Regional Director in paragraph 6(d) of his Affidavit is concerned, the Transferee Company through its Advocate submits that requisite Authorised Share Capital of the Transferee Company shall be increased to accommodate issue of new shares to the Shareholders of the Transferor Company pursuant to this scheme. Transferee Company undertakes that all the applicable provisions

of the Companies Act with regard to increase in Authorised Share Capital shall be followed by merging the existing Authorised Share Capital of the Transferor Company of Rs. 50,00,000/- (Rupees Fifty lakhs only) with that of the Transferee Company as also by addition of new Authorised Share Capital of Rs. 50,00,000/- (Rupees Fifty lakhs only) represented by 5,00,000 (Five Lakhs) Equity Shares of Rs. 10/- (Rupees Ten only) each and undertakes that they shall file requisite forms, will make payment of fees and duties etc. Thus on amalgamation Authorised Share Capital of the Transferee Company would be Rs. 6,45,00,000/- (Rupees Six crores forty five lakhs only) represented by 14,50,000 (Fourteen lakhs fifty thousand) Equity Shares of Rs. 10/- (Rupees Ten only) each and 50,00,000 (Fifty Lakhs) Preference Share of Rs. 10/- (Rupees Ten only) each.

15. As far as the objection of the Regional Director in paragraph 6(e) of his Affidavit is concerned, the Transferee Company through its Advocate submits that the Tax issue (if any) arising out of the scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by this Court may not deter the

Income Tax Authority to scrutinize the tax returns filed by the Transferee company after giving effect to the scheme.

16. As far as the objection of the Regional Director in paragraph 6(f) of his Affidavit is concerned, the Transferee Company through its Advocate undertakes that modification and amendment (if any) to the scheme shall not be made by the board of directors of the companies without obtaining prior approval of this Court. The said undertaking is accepted.

17. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandan 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 amended clause No. 2.3 of the said Scheme and with the undertakings given by the Petitioner Company though their Advocate. In view thereof the said undertakings are accepted.

18. 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.

19. Since all the requisite statutory compliances have been complied, the Company Scheme Petition No. 623 of

2015 and 624 of 2015 are made absolute in terms of prayer clauses (a) to (m).

20. The Petitioner Companies 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.

21. Petitioner Company is directed to 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 INC-28 in addition to physical copy, as per the relevant provisions of the Companies Act 1956/2013, whichever is applicable.

22. The Petitioners to pay costs of Rs. 10,000/- each to the Regional Director, Western region, Mumbai and the Petitioner in Company Scheme Nos. 623 of 2015 to pay 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.

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

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

(K. R. Shriram J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by: Mr. Shankar Gawade, Stenographer.