IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 439 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 372 OF 2015

Leathbind Investment Private Limited … Petitioner Company

In the matter of the Companies Act, 1956
AND
In the matter of Petition under Sections 391 to 394 of the Companies Act, 1956
AND
In the matter of Leathbind Investment Private Limited, a company incorporated under the provisions of the Companies Act, 1956
AND
In the matter of Scheme of Amalgamation
BETWEEN
Leathbind Investment Private Limited
…Transferor Company
WITH
Preferential Investments Private Limited
…Transferee Company
AND
their respective shareholders and creditors

Called for Hearing

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

A.R. Verma i/b. Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: S. C. GUPTE, J

DATE: 30th September, 2015

P.C.:

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 Leathbind Investment Private Limited, the Transferor Company with Preferential Investment Private Limited, the Transferee Company and their respective shareholders.
3. The learned Advocate for the Petitioner Companies states that the both the Transferor Company and the Transferee Company is also engaged in the business of investment activities.
4. The learned Advocate for the Petitioner Companies further states that the Scheme of Amalgamation would enable the consolidation of legal entities which would result in reduced number of entities within the group, minimize cost and administrative hassle of maintaining multiple legal entities, the consolidation would help in pooling of financial resources to ensure smooth operations and diversification of business; and would ultimately contribute to the future business and profitability of the merged entity. The amalgamation of Transferor Companies and Transferee Company is, therefore, beneficial in the long-term interests of the shareholders and all stake holders of these companies.

5. The learned counsel appearing on behalf of the Petitioner Company submits that by an order passed by this court on 8th May, 2015 in Company Summons for Direction No. 372 of 2015, the filing of a separate Company Summons for Direction and Company Scheme Petition in relation to the proposed Scheme by Preferential Investment Private Limited, the Transferee Company has been dispensed with as the Transferor Company is wholly owned subsidiary of the Transferee Company and no new shares will be issued and that there will be no change in the capital structure of the Transferee company and that the scheme will not adversely affect the rights of members or creditors of the Transferee Company and in view of the judgment of this court in Mahaamba Investment Limited v/s IDI Limited (2001) Company Cases 105.

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 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.

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 there under. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 22nd September, 2015 stating therein that the Affairs of the Transferor Company has 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) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

"*6. That the Deponent further submits that:-*

a) Clause 14.4 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) With reference to clause 14 of the Scheme it is submitted that the surplus if any arising out of the Scheme be credited to Capital Reserve Account of transferee company.

c) *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 in paragraph 6(a) of his affidavit is concerned, the Transferee 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(b) of his affidavit is concerned, Learned Advocate for Petitioner on instructions, submits and clarifies that upon the Scheme being sanctioned, under clause 14 of the Scheme there will be no creation of capital reserve but deficit i.e. goodwill is generated and the same will be adjusted against the General Reserve in the financial statements of the Transferee Company and hence there is no creation of new reserves and thus such adjustment against the General Reserve will be in accordance with all applicable Accounting Standards and principles

13. So far as the objection of the Regional Director as stated in paragraph 6(c) of his Affidavit is concerned, the Petitioner Company 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.

14. 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 made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.439 of 2015 filed by the Transferor / Petitioner Company is made absolute in terms of prayer clauses (a) and (b).

17. 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.

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

19. The Petitioner 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.

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

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

(S. C. GUPTE, J.)