IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 467 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 390 OF 2015

Top Investments and Finance Private Limited....Petitioner Company

In the matter of Companies Act, 1956 (1 of 1956);

And

In the matter of Section 391 to 394 of Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Top Investments and Finance Private Limited with Tolani Shipping Company Limited

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mrs. S.V. Bharucha i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator Present

CORAM: S. C. Gupte, J.

DATE: 16th September, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 of the Companies Act, 1956, to the Scheme of Amalgamation of Top Investments and Finance Private Limited with Tolani Shipping Company Limited.

3. The Learned Counsel for the Petitioner states that Petitioner Company is engaged in the business activity that is presently limited to management of its resources and investment.

4. The Learned Counsel for the Petitioner states that the Scheme will result into following benefits namely that the Transferor Company is a wholly owned subsidiary of the Transferee Company and amalgamation shall be beneficial to the interest of the shareholders, employees and creditors, will result in legal integration of the business, reduction of the shareholding layers and direct control of assets of the Transferor Company in the hands of the Transferee Company; The proposed amalgamation will reduce managerial overlaps, which are necessarily involved in running multiple entities; There shall be a reduction in regulatory and legal compliances /

filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc. and consequential reduction in administrative costs of both the companies. Creating value for shareholders of the Transferee Company and creating better synergies across the Group and optimal utilisation of resources.

5. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that since the Transferor Company is wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company, Tolani Shipping Company Limited and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Tolani Shipping Company Limited, the Transferee Company was dispensed with, by orders dated 8th May, 2015 passed in CSD NO. 390 of 2015.

7. The Learned Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in Company Summons for Direction.

8. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 12th August, 2015 stating therein that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Court.

10. The Regional Director has filed an Affidavit on 9th September, 2015 stating therein, save and except as stated in paragraph 6 thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

“6. That the Deponent respectfully 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. So far as the observations made in paragraph 6 of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company undertakes that the Petitioner Company is bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. 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 Petitioner Company. The said undertaking given by the Petitioner Company is accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 467 of 2015 is made absolute in terms of the prayer clause (a) of the Company Scheme Petition.

15. The Petitioner Company is directed to file a copy of this order and the 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 issuance of Order.

16. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with concerned E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013 whichever is applicable.

17. The Petitioner Company to pay cost 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.

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

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

(S. C. Gupte, J.)