IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 471 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 318 OF 2015.

U. Y. INDUSTRIES PRIVATE LIMITED

....Petitioner/ the Demerged Company

In the matter of the Companies Act, 1 of 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between U. Y. INDUSTRIES PRIVATE LIMITED (the Demerged Company) and OCEAN INFRAHEIGHTS PRIVATE LIMITED (the Resulting Company) and their respective Shareholders and Creditors

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Ms. Nisha Valani i/b Mr. A.A. Ansari for Regional Director.

CORAM: K. R. Shriram J.

DATE: 20th November, 2015

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought to a Scheme of Arrangement between U. Y. INDUSTRIES PRIVATE LIMITED, the Demerged Company and OCEAN INFRAHEIGHTS PRIVATE LIMITED, the Resulting Company, under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor/ Demerged Company has been *inter alia* carrying business of activities as developers, designers, contractors, sub-contractors, for all types of constructions and developmental work for all sectors & departments whether governmental or otherwise in India or outside India and the Transferee/ Resulting Company and has been engaged in business to construct, let out, furnish and carry on all or any of the functions of proprietors of flats, dwelling houses, colonies, multiplexes, malls, shops. The proposed scheme of Arrangement will have the benefit which will

reduced set-up and operating costs resulting in cost efficiency coupled with a greater financial flexibility and that the demerger of the demerged Undertaking (Infrastructure and Real Estate Development Business) would enable the Demerged Company to focus on and enhance its Core Business by streamlining its operations; and that the demerger will enable the Demerged Company and Resulting Company to pursue different business strategies and raise resources for meeting their respective growth requirements and this proposed Demerger would thus enable the Resulting Company to carry on and conduct the Infrastructure and Real Estate Development Business more efficiently and advantageously, as also permit the Demerged Company to carry on its core Business more efficiently and advantageously and the Demerged Business has tremendous growth and profitability potential and requires focused leadership and management attention and fund raising from investors based on their sectoral preferences and the nature of technology, risk and competition involved in each of these businesses is distinct and is capable of addressing independent business opportunities, deploying different technologies and attracting a different set of investors, strategic partners, lenders and other stakeholders and facilitating sector specific Technology & Marketing tie-ups and collaboration including arrangements and there are also differences in the manner in which each of these businesses are required to be conducted and managed. The Scheme will result in focused business operations of Demerged and the Resulting Company and allow them increased flexibility in taking advantage of the huge growth opportunities in their respective business segments and cash management and funds deployment of the both the business of the demerged Company and Resulting Company can be efficiently handled and cost savings are expected to flow from rationalization and simplification of business processes and elimination of duplication of work in various support functions and greater internal control on the business processes by segregating different businesses and ease of decision-making of the respective verticals.

4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Arrangement and by passing Board Resolution which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in the Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.

6. 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.

7. The Regional Director has filed an Affidavit on 6th day of November, 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 of the said Affidavit, the Regional Director has stated that:-

> *"6. That the Deponent further submits that,*
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> *(a) That the Registered Office of the Resulting Company is situated in the State of Uttar Pradesh. Hence the Resulting Company has to file similar petition before the Hon'ble High Court of Allahabad for approving the said scheme.*
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> *(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.*

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Registered Office of the Resulting Company is situated in the State of State of Uttar Pradesh and the Resulting Company had already filed similar petition before the Hon'ble High Court of Allahabad for approving the said scheme and the same is pending. The Learned Counsel for the Petitioner Company further submits that this Scheme of Arrangement be approved subject to sanctioning of the said Scheme by Hon'ble High Court of Allahabad.

9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company are 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.

10. 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 undertakings given by the Petitioner. The above undertakings are accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is made absolute in terms of prayers clause (a) and (c).

13. The Petitioner Company 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 the Order.

14. The Petitioner is directed to file a certified copy of 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.

15. The Petitioner Company to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the Order.

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

17. 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.

(K. R. Shriram J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.