THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.528 OF 2014.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 474 OF 2014.

ENRICH RD INFRAPROJECTS PRIVATE LIMITED

....Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO.529 OF 2014.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 475 OF 2014.

AB&CO GLOBAL PRIVATE LIMITED

....Petitioner/ Transferee Company

In the matter of the Companies Act 1 of 1956;

AND

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

AND

In the matter of Scheme of Amalgamation of ENRICH RD INFRAPROJECTS PRIVATE LIMITED, the Transferor Company

WITH

AB&CO GLOBAL PRIVATE LIMITED, the Transferee Company

Called for hearing

Mr. Rajesh Shah with Mr. Chandrakant Mhadeshwar i/b Rajesh Shah & Co., Advocate for the Petitioners in all Petitions.

Mr. R. C. Master with Mr. D. A Athawale i/b Dr. H. Chaturvedi for Regional Director in all Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP Nos. 528 of 2014.

CORAM: S. J. Kathawalla, J.

DATE : 9th January, 2014

PC:

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

2. The sanction of the Court is sought to a Scheme of Amalgamation of ENRICH RD INFRAPROJECTS PRIVATE LIMITED, the Transferor Company with AB&CO GLOBAL PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of execution of electro-mechanical and Civil Contractor & to construct, execute, equip, develop, repair, maintain, manage or control all types of infrastructure facilities including road, metro ways, marine dredging, bridge, dam, airport, runway, railway and the Transferee Company is in business of execution of engineering Civil projects and contracts & to construct, execute, equip, develop, repair, maintain, manage supervise or control all types of infrastructure facilities within or outside the country including building, houses, offices, malls. The proposed scheme of Amalgamation will have the benefit that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company. The

amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies. The combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

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

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme

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

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertake 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 Official Liquidator has filed his report on 23rd December, 2014 in Company Scheme Petition Nos. 528 of 2014 stating 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

8. The Regional Director has filed an Affidavit on 27th day of November, 2014 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. Clause 14.3 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) It is observed from the Balance Sheet as at 31/03/2014 that both the Transferor and Transferee Company are loss making companies. In this regard tax implication if any arising out of the scheme is 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.

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

10 So far as the observation in paragraph 6 of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. 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 Petitioners. All above undertakings are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 528 of 2014 (a) to (d) are made absolute in terms of prayers clause (a) to (d) and 529 of 2014 (a) to (c) is made absolute in terms of prayer clauses (a) to (c).

14. The Petitioner Companies 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 receipt of the Order.

15. Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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.

16. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition No. 528 of 2014 to pay costs of Rs.10,000/- each

to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

18. 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. J. Kathawalla, J.)