IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 488 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 433 OF 2015

Wiltrans Logistics & Shipping Company Private Limited

……. Petitioner/the First Transferor Company

COMPANY SCHEME PETITION NO 489 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 434 OF 2015

Wilhelmsen Ships Service Private Limited

……Petitioner/the Third Transferor Company

COMPANY SCHEME PETITION NO 490 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 435 OF 2015

Wilhelmsen Maritime Services Private Limited

…… Petitioner/the Transferee Company

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

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Wiltrans Logistics & Shipping Company Private Limited AND WSS Business Services India Private Limited AND Wilhelmsen Ships Service Private Limited WITH Wilhelmsen Maritime Services Private Limited AND their Respective Shareholders

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah& Co., Advocates for the Petitioner Companies

Mr. M D Sharma i/b Mr.A.A. Ansarifor Regional Director.

Mr. S. Ramakantha, Official Liquidator present.

CORAM: S. C. Gupte, J.

DATE: 16th October, 2015

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956, to the Scheme of Amalgamation of Wiltrans Logistics & Shipping Company Private Limited AND WSS Business Services India Private Limited AND Wilhelmsen Ships Service Private Limited WITH Wilhelmsen Maritime Services Private Limited AND their Respective Shareholders.

3. The Learned Counsel for the Petitioner Companies states that the Transferee Company and First Transferor Company are engaged in the business of handling of ships agency, freight forwarding activities and sale of marine product and the Third Transferor Company is engagedin the business of maintain, repair, fit out, refit, improve, insure or alter or manufacture ships, vessels, tugs, barges, lighters or any engines, boilers, tackles, machinery, gear, furniture equipment and stores and any parts required for ships or vessels and any apparatus for use in connection therewith.

4. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies are part of same group. Further, the Third

Transferor Company is wholly owned subsidiary of the Transferee Company. The Scheme of Amalgamation in intended for right sizing the Balance Sheet and reflect true picture of assets and liabilities, reduce operational cost of maintaining multiple entities by sharing common service requirements, reduce number of legal entities at India level and enable regulatory compliant structure.

5. The learned Counsel for the Petitioner Companies further states that the Board of Directors of the Petitioners Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.

6. The learned counsel appearing on behalf of the Petitioners Companies has stated that Petitioner Companies have complied with all directions passed in the respective Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that the Petitioners Companies have complied with all requirements as per directions of this Court and they have filed necessary Affidavit 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 whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 12th October, 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved without being wound up.

9. The Regional Director has filed an Affidavit on the 23rd day September, 2015, stating therein, save and except as stated in paragraph 6(a) to 6(e) of the said affidavit, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) to 6(e) of the said affidavit, the Regional Director submits that:-

6. That the Deponent further submits that,

a) The Registered office of the Second Transferor Company is situated in the State of Kerala. Hence, present Scheme of Amalgamation between the Transferor companies and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Kerala at Ernakulum in respect of Second Transferor company.

b) Clause no. 10.5 of the scheme states that the Difference being the excess of the net assets of the Transferor Companies over the face value of the shares issued pursuant to this Scheme and the amount of investment in the Third Transferor Company in the books of the Transferee Company shall be credited to the Amalgamation Reserve Account of the Transferee company and in case of deficit the same would stand adjusted against the reserves of the Transferee Company. In this regard, it is submitted that the Amalgamation Reserve arising out of this Scheme shall not be treated as free reserve and cannot form part of the net worth of the Transferee Company.

c) Clause 10.6 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Companies and Transferee Company. In this regard, it is submitted that in addition to 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.

d) *The Shares of First Transferor Company are held by Foreign Body Corporate. Hence, while giving effect to the Scheme, by issuing new shares by the Transferee Company to the shareholders of Transferor Company, the Transferee Company has to comply with provisions of FEMA/ RBI regulations as applicable in this regard.*

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.*

10. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Counsel for the Petitioner Companies states that Application for present Scheme of Amalgamation between the Transferor Companies and Transferee Company with respect to Second Transferor Company has already been admitted by the Kerala High Court and petition to obtain sanction for the Scheme has been filed with the Kerala High Court.

11. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Counsel for the Transferee Company undertakes that the Amalgamation Reserve arising out of the Scheme shall not be treated as free reserve and would not form part of the net worth of the Transferee Company.

12. In so far as observations made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Counsel for the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5, etc.

13. In so far as observations made in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Counsel for the Transferee Company undertakes to comply with the provisions of FEMA/ RBI regulations as applicable.

14. As far as observations made in paragraph 6(e) of Affidavit of the Regional Director is concerned, the Counsel for the Petitioner Companies submits that the Petitioner Companies are bound to comply with all the applicable provisions of the Income-tax Act, 1961 and all tax issues arising out of the Scheme shall be met and answered in accordance with law.

15. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by Petitioner Company is accepted.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos.488, 489 and 490 of 2015, filed by the Petitioner Companies are made absolute in terms of prayer clause (a)to (d) of the respective Company Scheme Petitions.

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

19. The Petitioner Companies are directed to lodge a copy of this order and the Scheme along with the Form of Minutes, 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 the Order.

20. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in the Company Scheme Petition No. 488 and 489 of 2015 to pay cost of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.