

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 474 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 426 OF 2015.
AAA PIVOTAL ENTERPRISES PRIVATE LIMITED
....Petitioner/ the First Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.475 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 427 OF 2015
ACEROCK INFRASTRUCTURE & CONSULTING PRIVATE LIMITED
....Petitioner/ the Second Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 476 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 428 OF 2015.
SEALINK ENGINEERING SERVICES PRIVATE LIMITED
....Petitioner/ the Third Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 477 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 429 OF 2015.

TRANS-AMERICAS ENTERPRISE PRIVATE LIMITED

....Petitioner/ the Fourth Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 478 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 430 OF 2015

AAA CORPORATION PRIVATE LIMITED

....Petitioner/ the Transferee Company

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

AND

In the matter of Sections 391 to 394 read with
section 100 to 103 of the Companies Act, 1956
and section 52 and other relevant provision of the
Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between AAA PIVOTAL ENTERPRISES PRIVATE LIMITED and ACEROCK INFRASTRUCTURE & CONSULTING PRIVATE LIMITED and SEALINK ENGINEERING SERVICES PRIVATE LIMITED and TRANS-AMERICAS ENTERPRISE PRIVATE LIMITED with AAA CORPORATION PRIVATE LIMITED and their respective shareholders and creditors.

Called for hearing

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

Mr. P. S Gujar i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator present.

CORAM: S. C. Gupte, J.

DATE: 28th September, 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 AAA PIVOTAL ENTERPRISES PRIVATE LIMITED and ACEROCK INFRASTRUCTURE & CONSULTING PRIVATE LIMITED and SEALINK ENGINEERING SERVICES PRIVATE LIMITED and TRANS-AMERICAS

ENTERPRISE PRIVATE LIMITED with AAA CORPORATION PRIVATE LIMITED and their respective shareholders and creditors, under Sections 391 to 394 read with section 100 to 103 of the Companies Act, 1956 and section 52 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the First Transferor Company at present is carrying on business of generation of electricity through windmills and the Second Transferor Company has been carrying on the business of providing Consultancy Services and the Third Transferor Company has been carrying on the business of providing Consultancy Services & Investment activity and the Fourth Transferor Company has been engaged in the business of providing Consultancy Services and Trading activity and the Transferee Company has been carrying on the business of generation of electricity through windmills. The proposed scheme of Arrangement will have the benefit as per the opinion of the management, that the Transferor Companies and the Transferee Company are having common shareholders forming a single group, it would be much more desirable to synchronize the activities of all the Transferor Companies and Transferee Companies into a single entity and that the arrangement would provide synergistic linkages besides economics in cost by combining the total business functions and the related activities and operations and thus, contribute to the profitability of the Transferee Company and that the Arrangement would facilitate the availability of financial resources, managerial and technical abilities and marketing

expertise of all the Transferor Companies to the Transferee Company and that the Arrangement would facilitate a better co-ordination and efficient operational and economic control in the conduct of the business of the Transferee Company and with the enhanced capabilities and resources consequent to the undertakings of Transferor Companies being consolidated with that of Transferee Company, the transferee Company will have greater flexibility to market and meet customer needs and will be able to compete more effectively, thus further strengthening its market position, particularly the global market, more effectively and that the combined operation would facilitate substantial financial savings obviating the duplication in administration, personnel, marketing and allied costs and that a larger and growing company will mean enhanced financial and growth prospects for the people and organizations connected with the Company. It is therefore in the interest of members of the respective Companies that such merger may unlock shareholder value.

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 11th day of September, 2015 in Company Scheme Petition Nos. 474 to 477 of 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

8. The Regional Director has filed an Affidavit on 9th day of September, 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,

(a) It is observed that First Transferor Company and Transferee Company are having Wind Mills. Transfer of their assets to Transferee Company and seeking Tax exemption, if any, by Transferee Company is subject to the decision of Income Tax Authority.

(b) 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 High 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 Transferor Companies and Transferee company.

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its counsel undertakes that the First Transferor Company after the transfer of the assets to the Transferee Company and seeking Tax exemption if any by the Transferee 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. The said undertaking is accepted.
9. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies undertakes that the Petitioner Companies 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 the 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. 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 Nos. 474 to 477 of 2015 are made absolute in terms of prayers clause (a), (b) and (d) and 478 of 2015 is made absolute in terms of prayer clauses (a) and (c).
13. 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 the Order.
14. The Petitioners are 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 Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition Nos. 474 to 477 of 2015 to pay costs of

Rs.10,000/- each to the Official Liquidator, High Court, Bombay. 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.

(S. C. Gupte, J.)