IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 506 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO. 442 OF 2015

In the matter of Sections 391 to 394 of the Companies Act, 1956 read with the other applicable provisions of the Companies Act, 1956 and Companies Act, 2013

AND

In the matter of the Scheme of Amalgamation of Yennai Hydrocarbon Services Private Limited with SES Energy Services India Private Limited and their respective shareholders

Yennai Hydrocarbon Services Private Limited, a company incorporated under the Companies Act, 1956 and having its registered office at B113/114, Arjun Centre, Govandi Station Road, Govandi (East), Mumbai – 400088, Maharashtra.

……….. **PETITIONER**

<u>Called for hearing:</u>

Mr. Ajay Fernandes, Counsel instructed by J. Sagar Associates, Advocates for the Petitioner.

Mr. Udayan A. Shah i/by Mr. A.A. Ansari, for the Regional Director.

Mr. S. Ramakantha, Official Liquidator, present.

Coram: S. C. Gupte, J

Date: 30th October, 2015

P.C.:

1. Heard learned counsel for the parties. No objector has come before the Court to oppose the Scheme nor has any party controverted the averments made in the Petition.

2. The sanction of the Court is sought under the provisions of Sections 391 to 394 of the Companies Act, 1956 read with the other applicable provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Yennai Hydrocarbon Services Private Limited ("**Transferor Company**" or "**Petitioner Company**") with SES Energy Services India Private Limited ("**Transferee Company**") and their respective shareholders.

3. The learned counsel for the Petitioner Company states that the Petitioner Company is engaged in the business of providing services in the upstream oil and gas industry with its operations focused on slickline, well testing and pumping services. The Transferee Company is engaged in serving the drilling, completion and production-related needs of oil and gas companies in India and its territorial waters through a diversified portfolio of specialized oilfield services and equipment.

4. The learned counsel for the Petitioner Company further states that since the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company along with its nominee and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner 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 V. IDI Limited (2001) 105 Company Cases*, filing of a separate Company Summons for Directions and Company Scheme Petition by the Transferee Company was dispensed with, by Order dated 12 June 2015 passed in CSD No. 442 of 2015.

5. The Scheme of Amalgamation envisages amalgamation of the Transferor Company with the Transferee Company resulting in consolidation of the entire business of the Transferor Company into the Transferee Company. The amalgamation will also help strengthening the position of the amalgamated entity, by enabling it to harness and optimize the synergies of the two companies. Accordingly, it would be in the best interests of the Transferor Company and the Transferee Company, and their respective shareholders. The proposed amalgamation will consolidate and simplify the group structure and is expected to lead to significant operational, capital and corporate synergies.

6. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing board resolutions which are annexed to the Company Scheme Petition.

7. The learned counsel for the Petitioner Company states that the Petitioner Company has complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the orders passed in the Company Summons for Directions.

8. The learned counsel for the Petitioner Company states that the Petitioner Company has complied with all requirements as per directions of this Court and has filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with the statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The undertaking is accepted.

9. The Official Liquidator filed his report on 28th October, 2015 in the above Company Scheme Petition stating *inter alia* 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. However, in paragraph 8 of his report, the Official Liquidator, based on the perusal of report of the Chartered Accountant, has observed that the Transferor Company has not complied with the provisions of Section 225 of the Companies Act, 1956 and recommends to undertake compounding of offence under Section 621A of the Companies Act, 1956.

10. In so far as the observation made in paragraph 8 of the report of Official Liquidator is concerned, the learned counsel appearing for the Petitioner Company submits that the

Petitioner Company undertakes to compound the said offence under section 621A of the Companies Act, 1956. The said undertaking is accepted.

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

"a) With reference to clause 7.2 of the Scheme, it is submitted that the Transferor Company is 100% subsidiary of the Transferee Company. Hence, amalgamation in the nature of merger of following pooling of interest method as provided in AS - 14 is applicable under the fact and circumstances of the case. It is therefore suggested that the assets and liabilities of Transferor Company shall be transferred on book values basis instead of on fair value basis as provided in the scheme.

b) That the Deponent further submits that the Tax issue if any arising out of the Scheme shall be subject to final decision of the 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."

12. In so far as the observation made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company submitted that on 10 October 2014 (i.e. the Appointed Date), with an objective to acquire the entire business of the Transferor Company, the Transferee Company acquired 100% shareholding of the Petitioner Company at a fair value and the Petitioner Company became the wholly owned subsidiary of the Transferee Company. A valuation report from an independent valuer was obtained by the Petitioner Company taking into account fair value of the Transferor Company. Therefore, it is proposed to record all Assets and Liabilities, as per the accounting treatment provided in the Scheme, at their fair values by adopting of Purchase Method of accounting in accordance with the Accounting Standard 14 issued by the Institute of Chartered Accountants of India. The said undertakings are accepted.

13. In so far as the observation made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, learned counsel appearing for the Petitioner Company submits that the Petitioner Company undertakes to comply with all applicable provisions of the 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.

14. The learned counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs Western Region, Mumbai have not raised any further objections to the submissions made by the Petitioner Company. The said submissions and undertakings are accepted.

15. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned has come forward to oppose the Scheme of Amalgamation.

16. Since all the requisite statutory compliances have been fulfilled, the above Company Scheme Petition is made absolute in terms of prayer clauses (a) to (d) and (f) to (h).

17. The Petitioner Company to lodge a copy of this order and the Scheme of Amalgamation 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 order.

18. The Petitioner Company is directed to file a copy of this 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 the physical copy, as per the relevant provisions of the Companies Act 1956/2013.

19. The Petitioner Company in Company Scheme Petition to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from date of order.

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

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

(S.C. GUPTE J.)

<u>CERTIFICATE</u>

I certify that this upload is a true and correct copy of the original signed order.

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