IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 533 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 335 OF 2015

Bhoomika Constructions Private Limited
.....Petitioner/the Transferor Company.

AND

COMPANY SCHEME PETITION NO. 534 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 336 OF 2015

Dragon Eastwest Trading Private Limited
.....Petitioner/the Transferor Company.

AND

COMPANY SCHEME PETITION NO. 535 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 337 OF 2015

Dynasty Impoexpo Private Limited
.....Petitioner/the Transferor Company.

AND

COMPANY SCHEME PETITION NO. 536 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 338 OF 2015

Surekh Chitra Investments Private Limited
.....Petitioner/the Transferor Company.

AND

COMPANY SCHEME PETITION NO. 537 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 339 OF 2015

Trishul Sakti Investment Private Limited
.....Petitioner/the Transferor Company.

WITH
COMPANY SCHEME PETITION NO. 538 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 340 OF 2015

Viraj Profiles Limited
.....Petitioner/the Transferee Company.

In the matter of Companies Act, 1956 and Companies Act, 2013

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956

AND

In the matter of the Scheme of Arrangement
Of
Bhoomika Constructions Private Limited
And
Dragon Eastwest Trading Private Limited
And
Dynasty Impoexpo Private Limited
And
Surekh Chitra Investments Private Limited
And
Trishul Sakti Investment Private Limited
With
Viraj Profiles Limited (Transferee Company)
And
Their respective shareholders

Called for Hearing

Mr. Ashish Kamat i/b M/s. Crawford Bayley & Co., Advocates for the Petitioners in all the petitions.

Mr. D. N. Mishra i/b Shri. A. A. Ansari for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 533, 534, 535, 536 and 537 of 2015.

CORAM: K. R. SHRIRAM, J

DATE: 21st November, 2015

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme and nor any party has controverted any averments made in the 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 Scheme of Arrangement of Bhoomika Constructions Private Limited and Dragon Eastwest Trading Private Limited and Dynasty Impoexpo Private Limited and Surekh Chitra Investments Private Limited and Trishul Sakti Investment Private Limited (collectively referred to as the 'Transferor Companies') with Viraj Profiles Limited (Transferee Company) and their respective shareholders.

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioner/ Transferee Company in Company Scheme Petition No. 538 of 2015 states that as per clause (7) of the Scheme, the reduction of share capital of the Petitioner/Transferee Company shall be effected as an integral part of the Scheme and in view of the averments made in paragraphs 57 and 58 of the Company Summons for Direction No. 340 of 2015 and paragraphs 71 and 72 of the Company Scheme Petition, inter alia, stating that the reduction of share capital does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital. The Petitioner Company /Transferee Company has passed a Special Resolution pursuant to provisions of section 100 of the Companies Act, 1956 and in accordance with section 114 of the Companies Act, 2013 in the Extra Ordinary General Meeting of its Equity Shareholders for reduction of share capital of the Petitioner Company /Transferee Company and same is annexed as Exhibit “Y” to the Company Scheme Petition No. 538 of 2015. In view thereof, the procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with vide order

dated April 24, 2015 read with order dated July 3, 2015 passed in CSD No. 340 of 2015.

5. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

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

7. The Official Liquidator has filed his report on 26th August, 2015 in Company Scheme Petition Nos. 533 to 537 of 2015, inter alia, stating therein 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 his Affidavit on 6th November, 2015 inter alia, stating therein that save and except as stated in paragraph 6 of

the said Affidavit, 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 :

> "(a) *Clause 8.6 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.*
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> (b) *That the deponent further submits that, the Income Tax Department vide its letter no. DCIT/CC-3(2)/CSP-538/2015-16 dated 31/07/2015 is annexed hereto and marked as Exhibit 'D' has informed the deponent that against the 1st Transferor Company for the assessment year 2012-13 penalty levied under section 274 read with section 271(1)(c) of the Income Tax Act, 1961 is due and payable and the total outstanding demand payable by the assesse is Rs. 8,25,260/-. In this regard, Transferee Company may be directed to safeguard the interest of the Income Tax Department with respect to aforesaid income tax dues.*
>
> *(c) It is respectfully submitted that the tax issue if any arising out of this Scheme shall be subject to final decision of Income Tax Authority and the 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 Petitioner /Transferee Company will pass

such accounting entries which are necessary in connection with this Scheme to comply with any other applicable Accounting Standards including AS-5.

10. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the 1st Transferor Company has already made the payment against the demand on May 4, 2015 and the same has been informed to concerned office of Income-tax department vide letter dated May 27, 2015. In so far as the penalty proceedings under Section 271(1)(c) of the Income-tax Act, 1961 are concerned, the 1st Transferor Company has filed an appeal before CIT(A) – 51 on October 29, 2015 which is pending for hearing. The Petitioner/ Transferee Company through its counsel undertakes to safeguard the interest of the Income Tax Department with respect to the income tax dues of 1st Transferor Company subject to outcome of an appeal filed by the 1st Transferor Company and undertakes to comply with all applicable provisions of the Income Tax Act, 1961, and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of the Income Tax Act, 1961, and all

tax issues arising out of the Scheme will be met and answered in accordance with law.

12. 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 undertaking given by the Advocate for the Petitioner Company. The said undertakings given by the Petitioner Companies are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 533 to 537 of 2015 are made absolute in terms of prayer clause (a) and (b) and Company Scheme Petition No. 538 of 2015 is made absolute in terms of prayer clause (a) to (c).

15. The Petitioner Companies to lodge a copy of this order and the Scheme 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 receipt of this order.

16. The Petitioner Companies are directed to file/lodge a copy of this 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.

17. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner in the Company Scheme Petition Nos. 533 to 537 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

18. The Transferee Company, in Company Scheme Petition No. 538 of 2015 to publish a notice of registration of order by Registrar of Companies and form of minutes of reduction of capital annexed as Exhibit "Z" to the Company Scheme Petition No. 538 of 2015 once each in two local newspapers, viz, "Free Press Journal" in English Language and translation thereof in "Navshakti" in Marathi language, both having circulation in Mumbai within 14 days of registration. Publication of notice of registration of order and form of minutes of reduction of capital in Maharashtra Government Gazette is dispensed with.

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

20. All concerned regulatory authorities to act on a copy of this order along with the 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.

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