IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 658 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 346 OF 2014

Man Industries (India) Limited

.... Petitioner Company

AND

COMPANY SCHEME PETITION NO. 659 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 347 OF 2014

Man Infraprojects Limited

.... Petitioner Company

IN THE MATTER of the Companies Act (or re-enactment thereof upon effectiveness of the Companies Act, 2013);

AND

IN THE MATTER of Sections 391 to 394 read with Section 78 (corresponding provisions u/s 52 of the Companies Act, 2013) and Sections 100 to 103 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified)

AND

IN THE MATTER of Scheme of Arrangement between Man Industries (India) Limited and Man Infraprojects Limited and their respective Shareholders and Creditors.

Called for hearing:

Mr. Snehal Shah i/b. M/s. Kanga & Company, Advocates for the Petitioner in Company Scheme Petition No. 658 of 2014.
Mr. Ajit Anekar i/b. M/s. Auris Legal, Advocate for the Petitioner in Company Scheme Petition No. 659 of 2014.
Mr. B.M. Chatterjii, Senior Advocate i/b. Mr. H. P. Chaturvedi for Regional Director in both the Petitions.

CORAM: S.J. Kathawalla J.
DATE: 20th March2015

PC:

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

2. The sanction of the Court is sought to a Scheme of Arrangement between Man Industries (India) Limited and Man Infraprojects Limited and their respective shareholders and creditors under Sections 391 to 394 read with Section 78 (corresponding provisions u/s 52 of the Companies Act, 2013) and Sections 100 to 103 of the Companies Act, 1956

(or any corresponding provisions of the Companies Act, 2013 as may be notified).

3. The Learned Counsels for the Petitioners state that Man Industries (India) Limited/ Transferor Company is the flagship company of Man Group and the main business line includes manufacturing & coating of large diameter carbon steel pipes and real estate and Man Infraprojects Limited/ Transferee Company is presently engaged in the business of real estate and is now forward integrating into the high value realm of IT parks, SEZs, residential complexes and commercial complexes. The Board of Directors' of the Petitioner Companies have approved the Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions. The Learned Counsels for the Petitioners submit that the proposed Scheme of Arrangement would result in two independent listed companies, which would provide opportunities to the respective businesses to attract different set of investors, strategic partners, lenders and other stakeholders and would enable respective management(s) to concentrate on core businesses and strengthen competencies and provide independent opportunities to increase scale of operations, etc., resulting in focused management attention to the respective businesses and segregation of businesses with distinct risk-reward profiles and would create long term value by unlocking value of the respective businesses and the existing shareholders of Man Industries (India) Limited would be eligible to get equity shares of Man Infraprojects Limited in

addition to their existing shareholding in Man Industries (India) Limited.

4. The Learned Counsels for the Petitioners further state that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.

5. The Learned Counsels appearing on behalf of the Petitioners state that the Petitioners have complied with all requirements as per directions of this Court and that the Petitioners have filed necessary Affidavits 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 and Companies Act, 2013 and the Rules made thereunder as may be applicable. The said undertaking is accepted.

6. The Regional Director has filed an Affidavit on 11th November 2014 stating therein that save and except as stated in para 6(a), (b), (c), (d) and (e) it appears that the Scheme is not prejudicial to the interest of shareholders and public. The said para is reproduced below:

"*6. That the Deponent further submits that :*

a) Clause 22.6 of the Scheme states that the difference, arising out of this Scheme, shall be recorded as Capital Reserve, if the difference is a credit balance or as Goodwill, if the difference is a debit balance and *the capital reserve shall be adjusted against the debit balance of the Profit & Loss Account of Man Infraprojects. In this regard, it is submitted that the Capital Reserve arising out of the Scheme is not a free reserve and therefore not available for adjustment towards revenue loss and hence, it is suggested that the last sentence appearing in the said clause 22.6 of the scheme, viz. "Capital Reserve, if any, shall be adjusted against the debit balance of the Profit & Loss Account of Man Infraprojects", be deleted.*

b) *The Stock Exchanges viz. BSE and NSE vide its letter dated 18/02/2014 and 19/02/2014 respectively, has directed the petitioner company to delete / remove from the Scheme the reference of "family settlement being an integral part of the Scheme". However, the said references are reflected in the rationale for the scheme as well as clause 14 of the said scheme. The petitioner companies have to remove the relevant portion from the said scheme. In this regard, the petitioner company has given modified clauses of the Scheme vide its letter dated 03/11/2014 and copy of the said letter is annexed hereto and marked as Exhibit-D. It is therefore suggested that the Petitioner company be directed to suitably amend the said clauses in the scheme as directed by BSE and NSE.*

c) *It is observed from the Shareholder's position of the company that the Shares of M/s. Man Industries (India) Limited are held by Non Resident Indian. Hence, while giving effect to the Scheme, by issuing* *new shares by the Resulting Company to the shareholders of Demerged Company, the Resulting Company has to comply with the provisions of FEMA/ RBI regulations as applicable in this regard.*

d) *Clause 13.1 of the Scheme provides for issue of shares upon scheme becoming effective. The authorised share capital of Man Infraprojects may not be sufficient to issue shares as per said clause. In this regard, it is suggested that M/s. Man Infraprojects Limited may, if necessary and to the extent required, increase its Authorised Share Capital to facilitate issue and allotment of Shares under this Scheme. In this connection, M/s. Man Infraprojects Limited may be directed to comply with provisions of section 61/64 of the Companies Act, 2013 corresponding to section 94/97 of the Companies Act, 1956, in respect of filing fee and stamp duty as applicable on the said forms.*

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 Petitioner companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner companies.*"

7. The Petitioner in Company Scheme Petition No. 659 of 2014 filed an Affidavit dated 6th January 2015 dealing with Para 6(a) and (b) of the Affidavit of the Regional Director. In response, the Regional Director filed further Affidavit *inter alia* stating as under:

"...It is further submitted that after giving effect to the scheme, while preparing the financial statement and the profit and loss account of the company, how the said capital reserve arising out of the scheme can be utilised, it a matter to be examined by the statutory auditor independently post amalgamation."

8. The Learned Counsels appearing on behalf of the Petitioner Companies state that in respect of paragraph 6(a) of the Affidavit of the Regional Director, the Petitioner Company in Company Scheme Petition No. 659 of 2014 through their Counsel submits that as indicated by the Regional Director, after giving effect to the scheme, while preparing the financial statement and the profit and loss account of the company the statutory auditor will examine as to how the said capital reserve arising out of the scheme can be utilised.

9. The Learned Counsels appearing on behalf of the Petitioner Companies further state that in respect of paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsels undertake to delete the reference of "family settlement being an integral part of the Scheme." from the rationale of the Scheme and Clause 14 of the said Scheme. The Petitioner Companies had prior to the Scheme being approved by their Shareholders had complied with BSE & NSE letters dated 18.2.2014 and 19.2.2014, respectively by deleting the reference to the Family Settlement being an integral part of the Scheme from the Rationale. In view of the objections raised by the Regional Director in the said Affidavit, both the Petitioner Companies undertake, through their Counsels, to delete in entirety the last paragraph under the heading the Rationale for the

Scheme of Arrangement and the entire Clause 14 and Schedule IV from the Scheme which refers to the Share Exchange. Accordingly, the Petitioner Companies be and are hereby permitted to delete the para relating to family arrangement under the heading the Rationale for the Scheme of Arrangement and the entire Clause 14 and Schedule IV from the Scheme which refers to the Share Exchange.

10. The Learned Counsel appearing on behalf of the Petitioner Company in Company Scheme Petition No. 659 of 2014 states that in respect of paragraph 6(c) of the Affidavit of the Regional Director, is concerned the Petitioner Company in C.S.P No. 659 of 2014 through its Counsel undertakes that, for the allotment of new shares by Man Infraprojects Limited to the shareholders of Man Industries (India) Limited, Man Infraprojects Limited will comply with FEMA/RBI regulations as applicable in this regard.

11. The Learned Counsel appearing on behalf of the Petitioner Company in Company Scheme Petition No. 659 of 2014 states that in respect of paragraph 6(d) of the Affidavit of the Regional Director, is concerned the Petitioner Company in C.S.P No. 659 of 2014 through its Counsel undertakes to comply with the provisions of section 61/64 of the Companies Act, 2013 corresponding to section 94/97 of the Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms, if required.

12. The Learned Counsels appearing on behalf of the Petitioner companies further state that in respect of paragraph 6(e) of

the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel agree and confirm 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 answered in accordance with law.

13. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director 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 Learned Counsels for the Petitioner Companies. The undertakings given by the Petitioner Companies are accepted and the Petitioner Companies seek to amend the Scheme of Arrangement including consequential amendment of renumbering the Clauses after Clause 13 of the Scheme. Leave is granted to amend the Scheme of Arrangement as mentioned in para 9 hereinabove including the consequential amendments as prayed for. Amendments to be carried out within four weeks from the date of the Order.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 658 of 2014 is made absolute in terms of prayers (a) to (c) and Company Scheme Petition No. 659 of 2014 is made absolute in terms of prayers (a) to (c).

16. The Petitioner Companies to lodge a copy of this order and modified/amended 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.

17. Petitioners are directed to file a copy of this order along with a copy of the modified/amended Scheme with the concerned Registrar of Companies, electronically, along with E-Form – INC 28 in addition to physical copy as per the provisions of the Companies Act, 1956/2013.

18. The Petitioners in both the Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

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

20. All concerned regulatory authority to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S.J. Kathawalla J.)