IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 552 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 486 OF 2015

APNA PAISA MARKETING AND SERVICES PRIVATE LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 553 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 487 OF 2015

ANDROMEDA SALES AND DISTRIBUTION PRIVATE LIMITED

………… Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Apna Paisa Marketing and Services Private Limited AND Andromeda Sales and Distribution Private Limited AND Their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi with Mr. Ajit Singh Tawar i/b Hemant Sethi & Co., Advocates for the Petitioners in all the Petitions.

Mr. Dushyant Kumar, i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

Mr. S Ramakantha Official Liquidator, present in Company Scheme Petition No. 552 of 2015.

CORAM: S.C. Gupte, J.

DATE: 30th October, 2015

1. Heard the learned counsel for the Petitioner Companies. No objector has come 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 of the Companies Act, 1956, to the Scheme of Amalgamation of Apna Paisa Marketing and Services Private Limited and Andromeda Sales and Distribution Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Petitioners in Company Scheme Petition No. 552 of 2015 is presently in the online businesses that primarily supplies loan leads to lenders and/or direct selling agents or generates revenue through advertisements in respect of primarily loan related content and in the business of sending electronic direct mailers to customers registered on its website and Petitioner in Company Scheme Petition No. 553 of 2015 is presently engaged in the business of providing direct sales and distribution services of financial products to various clients including banks, financial institutions, insurance companies, etc.

4. Learned Counsel for the Petitioners states that the rationale for the merger is that both the companies believe that the restructuring would benefit the companies and its stakeholders on account of simplification of structure to have effective and centralized management and greater administration efficiency.

5. The Transferor Company and Transferee Company have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Counsel the Petitioners state that Petitioner Companies have complied with all directions passed in respective company summons for Directions and that the Company Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. The learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all 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 there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 14th October, 2015 stating therein that save and except as stated in paragraph 6 (a)to 6(d) it appears that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6(a) to 6(d) of the said affidavit it is stated that:

   a) *Clause 13.1 of the Scheme provides for issue of Compulsorily Convertible Preference Shares by the Transferee Company to the shareholders of the Transferor Company pursuant to this Scheme. Whereas, it is observed that there is no provision for issue of such Compulsorily Convertible Preference Shares by the Transferee Company in its existing Authorized Share Capital. In this regard, it is suggested that the Transferee Company shall amend its Authorized Share Capital suitably before issuing such new shares either by increasing the Authorized Share Capital of Transferee Company by such number of preference share capital or by converting the unissued portion of the authorized* *capital into Compulsorily Convertible Preference Shares to the extent, it is required for issuing new preference shares.*

b) *Clause 14.2 of the Scheme provides for insertion of a new object clause in the Memorandum of Association of the Transferee Company. In this regard, the Transferee Company may be directed to pass necessary resolution for amendment of object clause and it may and it may further be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to Section 40 read with Section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*

c) *Clause 15.4 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 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) *It is respectfully submitted that the tax issue, 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 return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

9. As far as observations made in paragraph 6 (a) of the affidavit of the Regional Director is concerned, the Transferee Company undertakes that the Authorized Share Capital of the Company shall be suitably amended before issuing Compulsorily Convertible Preference Shares by increasing the number of shares in the Authorized Share Capital by the number of Compulsorily Convertible Preference Shares to be issued on the scheme becoming effective as has been laid out in Clause 13.1 of the Scheme.

10. In reply to the aforesaid observations raised by the Regional Director in paragraph 6(b) of his Affidavit, the Transferee Company undertakes to pass resolution for amendment of object clause and shall also undertakes to comply with the provisions of section 13(1) & (6) read with section 15 of the Companies Act, 2013 along with section 40 read with section 18 of the Companies Act, 1956 and file amended copy of Memorandum of Association along with filing of necessary forms with the Registrar of Companies.

11. As far as observations made in paragraph 6 (c) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

12. As far as observations made in paragraph 6 (d) of Affidavit of the Regional Director is concerned, the Petitioner / Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

13. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional

Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submission given by the Petitioner Companies.

14. The Official Liquidator has filed his report on 15th October, 2015 stating 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 by this Court.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 552 and 553 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) of the respective Company Scheme Petition.

17. The Petitioner Companies to lodge 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 issuance of Order.

18. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013 whichever is applicable.

19. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 552 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the 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 along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.C. Gupte. J.)

CERTIFICATE

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

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