IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 629 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 596 OF 2015.

SPLENDID AGRO INVESTMENTS PRIVATE LIMITED

....Petitioner/ the First Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 630 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 597 OF 2015.

CRYSTALINE SECURITIES (INDIA) PRIVATE LIMITED

....Petitioner/ the Second Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 631 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 598 OF 2015.

ZENITH COMMERCIALS PRIVATE LIMITED

....Petitioner/ the Third Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 632 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 599 OF 2015

ESSVEE INVESTMENT ADVISORS 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 of the Companies Act, 1956 and other relevant provision of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of SPLENDID AGRO INVESTMENTS PRIVATE LIMITED, the First Transferor Company and CRYSTALINE SECURITIES (INDIA) PRIVATE LIMITED, the Second Transferor Company and ZENITH COMMERCIALS PRIVATE LIMITED, the Third Transferor Company with ESSVEE

INVESTMENT ADVISORS PRIVATE LIMITED, the Transferee Company and THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Called for hearing

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

Mr. Anjani Kumar Singh i/b Mr. A.A. Ansari for the Regional Director.

Mr. S. Ramakantha, the Official Liquidator.

CORAM: K. R. Shriram, J.

DATE: 11th December, 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 Amalgamation of SPLENDID AGRO INVESTMENTS PRIVATE LIMITED, the First Transferor Company and CRYSTALINE SECURITIES (INDIA) PRIVATE LIMITED, the Second Transferor Company and ZENITH COMMERCIALS PRIVATE LIMITED, the Third Transferor Company with ESSVEE INVESTMENT ADVISORS PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the First Transferor Company at present company is carrying on business to aquire, cultivate and/ or irrigate lands for agricultural and/ or horticulture purposes, to give on lease, rent or hire such lands for agricultural purposes and Second Transferor Company is carrying on the business as share and stock bearers, dealers and members of OTC Exchange of India, financial brokers, underwriters, sub-underwriters and the Third Transferor Company is on the business of exporters, importers, traders, distributors, commission agents, dealers in organic and inorganic chemicals, readymade garments of cotton, nylon, terylene, silk, art-silk, rayon, jute, paper and the Transferee Company has been in the business of Consultants, Advisors, Service Provider in the areas of Capital Planning, Financial Planning and Invetsment Planning, and to carry on the business relating to Capital Markets. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management, that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources which will be reflected in the profitability of the Transferee Company and that the Amalgamation of the Transferor Companies with the

Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business and that the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of Amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation 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 19th day of November, 2015 in Company Scheme Petition Nos. 629 to 631 of 2015 stating that the affairs of the Transferor Companies has 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 24th day of November, 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) *Clause 13.5 of the scheme provides for adjustment for differences in Accounting Policy between Transferor Companies 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 as such as AS-5 etc.*

(b) *It has been observed from the Shareholding List of the Transferee Company that the First Transferor Company and Third Transferor Company are holding 57,200 and 5,500 Equity shares of Rs. 10/- each respectively in the share capital of Transferee Company. Upon the Scheme becoming effective, these shares shall get cancelled and consequently, there will be a reduction of paid up equity shares capital of the Transferee Company. The Scheme is Silent with respect to such reduction of paid up equity share capital of Transferee Company as well as compliance of Section 100 of Companies Act, 1956 corresponding to Section 66 of the Companies Act, 2013. In this regard, it is submitted that the Petitioner Companies may be directed to incorporate a suitable clause in the scheme itself and amend the Scheme accordingly to reflect such reduction of capital as an integral part of the Scheme.*

(c) 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 the Transferee Company.

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel 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.

10. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Equity Shares held by the First Transferor Company and Third Transferor Company in the Transferee Company will stand cancelled and consequently there will be a reduction of paid-up equity Share Capital of the Transferee Company. Hence, the Learned Counsel for the Petitioner Companies prays for the amendment to the Scheme by adding clause 13.7 of the Scheme as under:

"13.7 The First Transferor Company and the Third Transferor Company holds 57,200 and 5,500 Equity Shares of Rs.10/- each respectively in the Share Capital of the Transferee Company. Pursuant to this Scheme of Amalgamation, the investment of the First Transferor Company and the Third Transferor Company in the Transferee Company shall stand cancelled. The cancellation and reduction of the share capital account as aforesaid shall be effected as an integral part of this Scheme itself as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and the order of the Court sanctioning the Scheme shall be deemed to be an order under Section 102 of the Act confirming the capital reduction.” Leave to amend granted to be carried out within two weeks from the date of the order.

11. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit 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.

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 undertakings given by the Petitioners. The above undertakings 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. 629 to 631 of 2015 are made absolute

in terms of prayers clause (a), (b) and (d) and 632 of 2015 is made absolute in terms of prayer clauses (a) and (d).

15. 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.

16. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation duly amended 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 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. 629 to 631 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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

19. All concerned regulatory authorities to act on a copy of this order along with Amended 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.

Uploaded by : Shankar Gawde, Stenographer.