IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 759 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 730 OF 2014

FORBES MARSHALL CODEL PRIVATE LIMITED... Petitioner 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 Forbes Marshall Codel Private Limited with Forbes Marshall Private Limited and their respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.
Mr. S Ramakantha Official Liquidator, present
Mr. P.S Gujjar, i/b Mr. H.P Chaturvedi for Regional Director.

CORAM: S. J. Kathawalla, J.
DATE: 13th February, 2015

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 Forbes Marshall Codel Private Limited with Forbes Marshall Private Limited and their respective shareholders.

3. Learned Advocate for the Petitioner states that the Petitioner Company is engaged in the business of designers, traders, promoters, manufacturers, merchants, importers, exporters, repairers and agents for the sale and the purchase of and dealers in instruments, apparatus, appliances etc.

4. Learned Advocate for the Petitioners states that the Transferor Company is the 100 % subsidiary of the Transferee Company and due to complementary nature of business the amalgamation of Forbes Marshall Codel Private Limited with Forbes Marshall Private Limited will enable in achieving economies of scale, lesser regulatory / procedural compliances, integrate, rationalize and streamline the management structure of the merged business, pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs, amalgamation of the companies would eliminate duplication of work, administrative services, and will result in cost savings, cost saving in fees/ duties payable on statutory and procedural compliance, facilitate inter transfer of resources and costs and optimum utilization of Assets, synchronizing of efforts to achieve uniform corporate policy, ease in decision making and to reflect the consolidated net worth of these companies in one balance sheet.

5. The Petitioner Company and the Transferee Company have approved the said Scheme by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. Learned Advocate for the Petitioner further states that since the Transferor Company is wholly owned subsidiary of the Transferee Company and all

the shares of the Transferor Company are presently held by the Transferee Company, Forbes Marshall Private Limited and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor 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 Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Forbes Marshall Private Limited, the Transferee Company was dispensed with, by order dated 14th November , 2014 passed in CSD NO. 730 of 2014.

7. The learned Advocate for the Petitioner further states that, Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Summons for Direction.

8. The learned Advocate appearing on behalf of the Petitioner Company has stated that the Petitioner Company has complied with all requirements as per directions of this Hon’ble Court and they have filed necessary affidavits of compliance with the Hon’ble Court. Moreover, Petitioner Company 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 Company is accepted.

9. The Official Liquidator has filed his report on 5th February 2015 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 10th February 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 paragraphs 6, of the said affidavit it is stated that:-

6. That the Deponent further submits that, the Tax issue if any arising out of this scheme shall be subject to final decision of 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.

11. As far as the observations in paragraph 6 of the Affidavit of the Regional Director is concerned, The Transferee Company through their counsel undertakes that it is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

12. The Learned Counsel for Regional Director on the 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 undertaking and submission given by the advocate on behalf of the Petitioner Company. The said undertaking given by the Petitioner Company is 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 interest

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) of the Petition.

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

17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Official Liquidator, High Court, Bombay. Costs 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 Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay.

(S. J. KATHAWALLA, J)