IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 122 OF 2015

IN

COMPANY SUMMONS FOR DIRECTION NO. 752 OF 2014

In the matter of Section 391 & 394 of the Companies Act, 1956

And

In the matter of Scheme of Amalgamation between ABC RACE TRADING PRIVATE LIMITED with RACE SHIPPING AND TRANSPORT COMPANY PRIVATE LIMITED

ABC RACE TRADING PRIVATE LIMITED, a Company incorporated under the Provisions of Companies Act, 1956 having its Registered Office at A-401, Remi-Biz Court, Veera Desai Road, Andheri (W), Mumbai 400054.

…Petitioner Company /Transferor Company

Called for hearing

Jayashri Manjrekar, Advocate for Petitioner

Mr.Y.R.Mishra i/b. Mr. A. A. Ansari for Regional Director
Mr. S. Ramakantha, Official Liquidator, present

CORAM:- S. C Gupte J.

DATED:- 24th July, 2015

PC:

1. Heard the learned counsel for the Petitioner Company. 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 to a Scheme of Amalgamation of ABC RACE Trading Private Limited (the "Petitioner Company / The Transferor Company) with Race Shipping and Transport Company Private Limited ("The Transferee Company") under Sections 394 to 394 of the Companies Act, 1956.

3. The Learned Advocate for the Petitioner states that the Transferor Company was incorporated on 01.11.1999 to engage in the manning and shipping services to the shipping industry and subsequently the business activities were changed for

empowering the Company to act as general commercial trading company etc. and the Transferee Company is also in similar type of businesses of providing services to the shipping industry and also as suppliers of stores, machinery, provisions and other requirement of ship etc.,

4. The Learned Advocate of the Petitioner states that the Petitioner Company / The Transferor Company, is wholly - owned subsidiaries of the Race Shipping and Transport Company Private Limited i.e., the Transferee Company, which together with its nominee/s holds 100% equity in the Transferor Company and the business activities of the Transferor Company and the Transferee Company being similar and supplementary to each other, the Petitioner Company / Transferor Company being wholly-owned subsidiary of the Transferee Company, has thought it fit to amalgamate with the Transferee Company, which would result into synergistic operating economies, besides economy in costs by combining the business functions and related activities which would enable the amalgamated company to carry on the business more advantageously, efficiently and effectively.

5. The Learned Advocate of the Petitioner states that the Board of Directors of the Petitioner Company has approved the Scheme of Amalgamation by passing Board Resolution which is annexed to the Company Scheme Petition.

6. The learned Advocate for the Petitioner states that Petitioner Company have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the order passed in Company summons for Direction.

7. Counsel appearing on behalf of the Petitioner 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 undertaking is accepted.

8. The Official Liquidator has filed his report on 08.06.2015 in the Company Scheme Petition No. 122 of 2015 stating therein 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.

9. The Regional Director has filed an Affidavit dated 23rd July,2015 stating therein that save and except as stated in paragraph 6 (a) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) It has been observed that neither the scheme nor the Petition provides for Accounting Treatment to be given while consolidating the financial statement of Transfer Company with that of Transferee Company post amalgamation. When the matter was taken up with the Petitioner Company, in response thereto, the Petitioner through their advocate on record Ms. Jayashri Manjrekar vide letter dated 08.07.2015 copy of the same annexed hereto and marked as Exhibit "D" clarified as follows"

"The Transferor Company is a 100% subsidiary of Transferee Company, therefore the identity is preserved and shall appear in the financial statement of Transferee Company in the same form in which they appeared in the financial statement of the Transferor Company."

The method of accounting is "pooling of interest method where in all assets, liabilities & P & L balance appearing in the financial statements of the Transferor Company would be aggregated with the corresponding balance appearing in the financial statement of the Transferee Company. The amount of share capital of the Transferor Company would be adjusted in reserves of Transferee Company.

The Deponent respectfully further submits that the Petitioner Company may be directed to incorporate this clause as Clause 8 (a) of the Scheme and accordingly Petitioner Company may carryout necessary modification in the Scheme filed before the Hon'ble High Court."

(b) With reference to proposed new clause 8(a) of the scheme, the deponent respectfully submits that the surplus if any, arising out this scheme be transferred Capital Reserve Account and deficit if any be transferred to Good will Account of Transferee Company.

(c) 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.

10. So far as the observations made in paragraph 6 (a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company undertake to incorporate the Clause 8 (a) of the Scheme as setout herein below and seek leave of this Hon'ble Court to amend the Scheme to carry out the necessary modification in the Scheme.

"8 (a) The Transferor Company is a 100% subsidiary of Transferee Company, therefore the identity is preserved and shall appear in the financial statement of Transferee Company in the same form in which they appeared in the financial statement of the Transferor Company. The Method of accounting is "pooling of interest method where in all assets, liabilities and P & L balance appearing in the financial statements of the Transferor Company would be aggregated with the corresponding balance appearing in the financial statement of the Transferee Company. The amount of share capital of the Transferor Company would be adjusted in reserves of Transferee Company."

In view of the above, leave to amend clause 8 of the scheme by adding a new sub clause 8(a) as stated herein above is granted and consequential amendment to be carried out within two weeks from the date of the order.

11. So far as the observations made in paragraph 6 (b) of the Affidavit of the Regional Director is concerned pertaining to the proposed new clause 8(a) of the Scheme, the Learned Counsel for the Petitioner Company submits that the surplus if any, arising out of this scheme will be transferred to Capital Reserve Account and deficit if any will be transferred to Good Will Account of the Transferee Company.

12. In so far as observation made in paragraph 6(C) of the Affidavit of the Regional Director, Petitioner Company submits that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme 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 undertaking given

by the Petitioner Companies. The said undertakings given by the Petitioner Company are accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and it not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 122 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a).

16. The Petitioner Companies are directed to lodge a copy of this order and the Scheme along with form of minutes, 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.

17. 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 INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013 whichever is applicable.

18. The Petitioner Company in the Company Scheme Petition to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 122 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.

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 Scheme and form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte J.)