IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 807OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 790 OF 2014

EASIOPTION BPO SERVICES PRIVATE LIMITED ...Petitioner Company.

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 read with sections 78, 100 to 103 of the Companies Act, 1956 or Corresponding applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Easioption BPO Services Private Limited with Easiprocess Private Limited and their respective shareholders and creditors

Called for Hearing

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioner Company.

Mr. M.S Bharadwaj i/b Mr. H.P Chaturvedi for Regional Director.

Mr. J. P. Sen, Senior Counsel, instructed by Mr. S. Ramakantha, Official Liquidator .

CORAM: S. J. Kathawalla, J.

DATE: 30th April 2015

1. Heard the learned counsel for the Petitioner Company, the Regional Director and the Official Liquidator. No other party has come before the court to oppose the Scheme nor has any party 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 read with sections 78, 100 to 103 of the Companies Act, 1956 or Corresponding applicable provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Easioption BPO Services Private Limited with Easiprocess Private Limited and their respective shareholders and creditors.

3. The learned Counsel for the Petitioner state that the Petitioner company has been rendering Business Process Outsourcing services which includes opening of new accounts and administration services related to savings and investments, mortgage loans, finance and accounting support services, IT support and other related services as well as the support functions of its clients. The Transferee Company commenced its business in 2004 and is engaged in the provision of back-office processing support services primarily to One savings Bank Plc, UK, its parent company. The back-office services provided by the Transferee Company relates to opening of new accounts and administration services related to savings and investments, mortgage loans, finance and accounting support services, IT support services and other related services.

4. The Learned Counsel for the Petitioner submits that the proposed Scheme would, inter-alia result in better, efficient and economical management, control and running of their businesses, and for further development and growth of the business of the Transferee Company and for administrative convenience. The proposed amalgamation of the Petitioner Company with the Transferee Company would facilitate greater integration and greater financial strength and flexibility, maximise overall shareholder value and improve the competitive position of the combined entity. It would also the Petitioners submit achieve greater efficiency in cash management and unfettered access to cash flows generated which can be deployed more efficiently to fund organic or inorganic growth opportunities, cost savings from more focused operational efforts, rationalization, standardisation and simplification of business processes, productivity improvements and rationalization of administrative expenses.

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

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

7. The Counsel for the Petitioner Company further states that the Petitioner Company has complied with all requirements as per the directions of this

Court and has filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Company through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and the rules made there under. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 15th April 2015 objected to the scheme of Amalgamation on the ground that in determining the share swap ratio, while the shares of the Transferee Company have been valued by a combination of four methods, namely (i) the Net Asset value (ii) Profit Earning Capitalization (iii) Relative value combination and (iv) Discounted cash flow Methods, the shares of the Transferor company have been valued only employing the Net Asset value method which would yield the lowest value. The Official Liquidator expresses an apprehension that this would skew the shares swap ratio.

9. The Counsel appearing for the Petitioner has, in response, urged that only the net asset value method was adopted in valuing the shares of the Transferor Company on account of the fact that the Transferor Company was no longer carrying on business. He further submits that the use of the Net Asset value method would, if at all result in an undervaluation of the shares of the Transferor Company. Both shareholders of the Transferor Company have consented to the Scheme. He has relied on the judgments of High Courts in 1997 (89) CC 285(A.P.), Nav Chrome Ltd. and in 2000 (3) ALD 600 Vadlamudi Rama Rao vs. Asian Coffee Ltd in support of the proposition that in the event of a scheme receiving the consent of the shareholders, the Company Court should not in ordinary course reject the scheme on same objection as to the method of valuation. He has further

pointed out that while M/s Singhi & Co, the chartered Accountants appointed by the Official Liquidator have noted the difference in the methods of valuation adopted, they have also concluded that the affairs of the Company were conducted in a proper manner.

10. I have considered the objection raised in the Official Liquidator's Report and I am of the view that it does not constitute a ground for rejection of the scheme.

11. The Regional Director has filed an Affidavit on 2nd March, 2015 stating therein that save and except as stated in paragraph 6(a) to (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) and (b) of the said Affidavit, the Regional Director has stated that :

6. That the Deponent further submits that,

(a) *The shares of the Transferor Company is held by foreign body Corporate. Hence for allotment of new shares to the shareholders of Transferor Company, the Transferee company may be directed to comply with FEMA/RBI regulations as applicable in this regard.*

(b) *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*

Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.

12. So far as the observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes that the Transferee Company will comply with FEMA/RBI regulations as applicable in this regard.

13. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner 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 will be met and answered in accordance with law.

14. The learned Counsel for the Regional Director on instruction from Mr. 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 given by the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.

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, Company Scheme Petition No. 807 of 2014, filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

17. The Petitioner Company is directed 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 the order.

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

19. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director and to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks, from 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. J. Kathawalla, J.)