IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 870 OF 2014.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 818 OF 2014.

AKANSHA HEIGHTS 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;
AND
In the matter of Scheme of Amalgamation and Arrangement of
Akansha Heights Private Limited
WITH
Mist Agro Private Limited
AND
Their Respective Shareholders and Creditors

Called for hearing
Mr. Rahul Oak, Advocate for the Petitioner in the Petitions.
Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition No. 870 of 2014.
Mr. K. R. Chaudhary i/b Dr. H.P.Chaturvedi for Regional Director.

CORAM: S. J. Kathawalla, J.

DATE : 10th April, 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 Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation and Arrangement of Akansha Heights Private Limited with Mist Agro

Private Limited and their Respective Shareholders and Creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. Learned Counsel for the Petitioners states that the Transferor Company is in business of infrastructure activities and the Transferee Company is in business of Agricultural activities. The proposed scheme of Amalgamation will have the benefit that the integration of the operations of Transferor Company and Transferee Company would have the benefit of eliminating duplication of processes resulting in cost savings and a simplified corporate structures and a simplified corporate structure and improved management and centralizing the activities of the two companies is expected to lead to improvement in operational and cost efficiency through economies of scale, optimization of resources into the enlarged merged company and post the amalgamation of Transferor Company and Transferee Company, Transferor Company will be dissolved and Consequently, there would be less regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings etc and therefore reduction in administrative costs.

4. The Transferor Company and Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.

5. The learned Advocate for the Petitioners further states that the Petitioner Company is a wholly owned subsidiary of the Transferee

Company and as per clause 12 of the scheme no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and in view of the averments made in paragraphs (26) and (27) of the Company Scheme Petition, interalia stating and there is no reorganization of the share capital of the Transferee Company and the creditors of the Transferee Company are not likely to be affected by the Scheme and also in view of the observation of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition in relation of the said Scheme by Mist Agro Private Limited, the Transferee Company was dispensed with pursuant to the order dated 14th November, 2014 passed in the Company Summons For Direction No. 818 of 2014.

6. The learned Advocate for the Petitioners further states that, Petitioner Company have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The learned counsel appearing on behalf of the Petitioners have stated that the Transferor Company and Transferee Company 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 rule made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 7th April, 2015 in Company Scheme Petition No. 870 of 2014 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 18th March, 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, it is stated as under.

> *"6. That the Deponent further submits that:-*
>
> *(a) With respect to clause 14.2 of the scheme , it is submitted that surplus if any, arising out of this scheme be transferred Capital Reserve Account and deficit if any be transferred to Good will Account of Transferee Company*
>
> *(b) Clause 15.5 of the scheme, deals with combination of authorized share capital of Transferor Company with Transferee Company. In this regard in the table, information provided therein is the Figures 1,500,000 be substituted by 1,050,000 numbers of shares and value there to be substituted by 1,05,00,000.*
>
> (c) *That the Deponent further submits that the tax issue, if any, arising out of the this Scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by this Hon'ble court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to the on amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.*
>
> *(d) The Deponent further respectfully submits that, the agricultural land owned/possessed by the Transferee*

Company shall not be converted into dry land/infrastructure land without the approval of State Government."

10. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel for the undertakes that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

11. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the counsel for the Petitioner submits that there are typographical mistake in numbers of share and value mentioned in Clause 15.2 of the Scheme. Hence, counsel for the Petitioner seeks leave to amend the clause 15.2 of the Scheme, as suggested herein above. Hence, numbers and value mentioned in clause 15.2 of the Scheme shall be amended as follows:-

> *The numbers of shares shall be amend as "1,050,000" instead of "1,500,000" and the value of shares shall be amend as 10,500,000" instead of "15,000,000".*

The amendment is granted. Amendment to be carried out within period of two weeks from date of the order.

12. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

13. So far as the observation in paragraph 6 (d) of the Affidavit of Regional Director is concerned, the Transferee Company through its counsel undertakes that the agricultural land owned/possessed by the Transferor Company shall not be converted into dry land/infrastructure land without the approval of State Government.

14. 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 undertaking given and amendment sought by the Advocate for the Petitioner Company. The said undertaking 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. 870 of 2015 is made absolute in terms of prayer clauses (a) and (c).

17. The Petitioner Companies are directed to lodge a copy of this order and the amended 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. Petitioners are directed to file a copy of this order along with a copy of the amended Scheme of Amalgamation 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.

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

(S. J. Kathawalla, J.)