IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 12 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 830 OF 2014.

POONAWALLA FINVEST AND AGRO PRIVATE LIMITED

....Petitioner/ the Demerged Company

(Transferor Company)

AND

COMPANY SCHEME PETITION NO. 11 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 831 OF 2014.

POONAWALLA EXHILARATION STUD PRIVATE LIMITED

.... Petitioner/the Resulting Company
(Transferee Company)

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

AND

In the matter of Section 391 to 394 read with sections 100 to 103 of the Companies Act, 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Scheme of Arrangement BETWEEN POONAWALLA FINVEST AND AGRO PRIVATE LIMITED, Demerged Company (Transferor Company) AND POONAWALLA EXHILARATION STUD PRIVATE LIMITED, Resulting Company (Transferee Company) AND Their Respective Shareholders & Creditors

Called for hearing

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

Mr. R. C. Master i/b Mr. A. A. Ansari for Regional Director in both the Petitions.

CORAM: S. J. Kathawalla, J.
DATE : 18th 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 Petitions.

2. The sanction of the Court is sought to a Scheme of Arrangement BETWEEN POONAWALLA FINVEST AND AGRO PRIVATE LIMITED, the Demerged Company (Transferor Company) AND POONAWALLA EXHILARATION STUD PRIVATE LIMITED, the Resulting Company (Transferee Company) AND Their Respective Shareholders & Creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the Demerged Company/ the Transferor Company at present the Company is carrying on the business of stud farms related activities, power generation, leasing of

property and investments and the Resulting Company/ Transferee Company is carrying on the business of Stud Farm activities, power generation and investments. The proposed scheme of Arrangement will have the benefit that it would be advantageous for Transferor Company / Demerged Company to reorganize and segregate by way of transfer of its business and undertaking engaged to Transferee / Resulting Company and that the arrangement would provide synergistic linkages besides economies in costs by combining the business functions and the related activities and operations by transferring of business and undertaking to Transferee / Resulting Company and that the nature of risk and competition involved in of the demerged business is distinct and consequently the demerged business or undertaking is capable of attracting a different set of investors, strategic partners, lenders and other stakeholders and that there are also differences in the manner in which the demerged business is required to be managed and the Scheme of Arrangement will facilitate the effective management of these businesses and that the Scheme of Arrangement will facilitate in inviting the potential investors in the demerged business by domiciling the business in Transferee / Resulting Company and that it will be conducive to be better, to be more efficient and to focus on control and conduct of the demerged business and undertaking being transferred, through separate Company.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of

Arrangement 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 Regional Director has filed an Affidavit on 13th day of April, 2015 stating therein, save and except as stated in paragraph 6(a) and 6(b), 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 Deponents further submits that,

(a) With respect to Clause 10(b)(iii) of the scheme, it is submitted that, reserve arising out of this scheme is due to transfer of capital assets from Demerged Company to Resulting Company and hence such

reserve be credited to Capital Reserve Account of the Resulting Company instead of General Reserve of Resulting Company.

(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 the amalgamation, The decision of the Income Tax Authority is binding on the petitioner company.*

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner / the Resulting Company (Transferee Company) through its counsel undertakes that the Resulting Company (Transferee Company) will transfer such reserve be credited to Capital Reserve Account of the Resulting Company instead of General Reserve of the Resulting Company.

9. So far as the observation in paragraph 6(b) 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.

10. 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 is accepted.

11. 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.

12. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 12 of 2015 is made absolute in terms of prayers clause (a) and (c) and 11 of 2015 is made absolute in terms of prayer clauses (a) and (c).

13. 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.

14. Petitioners are directed to file a certified copy of 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 physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

15. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.

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

17. 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.)