IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICITON

COMPANY SCHEME PETITION NO 28 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 895 OF 2014

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter Scheme of Amalgamation of Pedriano Investments Limited (Transferor Company) with Sofreal Mercantrade Private Limited (Transferee Company) and their respective shareholders and creditors

Sofreal Mercantrade Private Limited ...Petitioner

Called for Hearing

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

Ms. Purnima Awasthi, i/b Mr. H.P. Chaturvedi for Regional Director.

CORAM: S.J. Kathawalla, J.

DATE: 13th March 2015

1. Heard 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 under Sections 391 to 394 of the Company Act, 1956, to the Scheme of Amalgamation of

of Pedriano Investments Limited with Sofreal Mercantrade Private Limited and their respective shareholders and creditors.

3. Learned Advocate for the Petitioner states that the Petitioner Company is currently engaged in trading activities.

4. The circumstances that necessitated and justified the Scheme of Amalgamation and the advantage thereof are that the Scheme of Amalgamation intends to consolidate the operations to reduce the multi country risks.

5. The Petitioner Company approved the said Scheme by passing the Board Resolution which is annexed to the Company Scheme Petition.

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

7. Learned Advocate appearing on behalf of the Petitioner has stated that they have 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 undertakes 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 are accepted.

8. The Regional Director has filed an Affidavit on 26th February 2015 stating therein, save and except as stated in paragraph 6 (a) to (d), 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:

(a) *Clause 6.5 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard – 14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.*

(b) *Transferee Company shall ensure that the Transferor Company is complying with all the statutory requirement as per Mauritius Law to strike off name of the Transferor Company from the record of Registrar of Companies, Mauritius.*

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

(d) *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 for 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.*

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner Company

undertakes it shall pass such accounting entries which are necessary in connection with the Scheme of Arrangement and to comply with any other applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes that the Petitioner Company will ensure that the Transferor Company shall comply with all the statutory requirement as per Mauritius Law to strike off the name of the Transferor Company from the record of Registrar of Companies, Mauritius.

11. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with FEMA/RBI regulations as may be applicable while allotting new shares to the shareholders of the Transferor Company.

12. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Transferee Company 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.

13. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the submissions and undertakings given by the Petitioner Companies as stated hereinabove. 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 is not violative of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, all the Company Scheme Petition is made absolute in terms of prayer clause (a) subject to compliance of all the statutory requirement as per Mauritius Law.

16. The Petitioner Company to file a copy of this order and the Scheme of Amalgamation, 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.

17. Petitioners 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 21/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 to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. 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 duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S.J. Kathawalla, J)