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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 62 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 800 OF 2014

LBi Technologies India Private Limited
…..Petitioner /Second Transferor Company

AND

COMPANY SCHEME PETITION NO. 63 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 801 OF 2014

Resultrix Media Private Limited…Petitioner/Third Transferor Company

AND

COMPANY SCHEME PETITION NO. 64 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 799 OF 2014

Twenty Twenty Webtech Private Limited
…Petitioner /First Transferor Company

AND

COMPANY SCHEME PETITION NO. 65 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 802 OF 2014

TLG India Private Limited
….Petitioner/Transferee Company

In the matter of the Companies Act, 1956 (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 between Twenty Twenty Webtech Private Limited and Lbi Technologies India Private Limited and Resultrix Media Private Limited with TLG India 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.

Ms. Nisha Valani, i/b Mr. H.P Chaturvedi for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator present in Company Scheme Petition nos. 62 of 2015, 63 of 2015 and 64 of 2015.

CORAM: S.C. Gupte, J.

DATE: 3rd July, 2015

1. Heard the learned counsel for the Petitioner Companies. 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 Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation between Twenty Twenty Webtech Private Limited and Lbi Technologies India Private Limited and Resultrix Media Private Limited with TLG India Private Limited and their Respective Shareholders and Creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 62 of 2015 is engaged in the business of providing a range of digital and communication solutions, which cover a gamut of services like creative, strategy, social media and technology. Petitioner in company Scheme Petition no 63 of 2015 is engaged in the business of providing a range of interactive communication services, which primarily includes search engines marketing (SEM), search engine optimization (SEO), web design & development, web analytic , social media marketing & advertising. Petitioner in Company Scheme Petition No. 64 of 2015 Company is

engaged in providing strategic social media advice to aid in the development of social media insights and strategies for media and communication to various clients. The Transferee Company is engaged in the business of advertising contractors and agents.

4. The rational for Scheme is that the amalgamation will enable consolidation of the Groups Operations into one entity and provide impetus for the growth of the Transferee Company. The consolidation by way of amalgamation will lead to stronger and wider capital and financial base for future growth/expansion. The amalgamation will lead to better leverage of facilities and infrastructure for better administration. The amalgamation will result in economy of scale and reduction in administrative, managerial and other expenditure, operational rationalization and optimal utilization of various resources. Duplication of administrative functions will be eliminated resulting in reduced expenditure. The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Companies and Transferee Company. There will be improvement in financial structure and management of the Transferee Company. The consolidation of all the businesses would increase the long term value for shareholders and investors.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

7. The learned Advocate appearing on behalf of the Petitioners 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 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit dated 12th day of June, 2015 stating therein that save and except as stated in paragraph 6 of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

9. In paragraphs 6(a) and 6(b) of the said Affidavit, the Regional Director has stated that:-

(a) *Clause 12(vi) of the Scheme provides for adjustment for differences in Accounting Polices between the 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) *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. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

11. So far as the observations made in paragraph 6(b) of the Affidavit of the 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 Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. The Official Liquidator has filed his report on 30th April 2015 objected to the scheme of Amalgamation. In case of Lbi Technologies India Private Limited, is concerned, the objections raised primary are two fold (i) inspite of Company incurring losses, the Directors remuneration has gradually increased on year-on-year basis and (ii) the reasons for writing off amounts due from related party are not known and to this extent the affairs of Lbi Technologies India Private Limited have been conducted in a manner prejudicial to the interest of its members and to public.

13. M/s Lbi Technologies India Private Limited have filed an Affidavit in rejoinder dated 7th May 2015 and have stated that none of the shareholders and Creditors of the Petitioner Company have objected to the Scheme and the proposed Scheme does not violate of any statutory provisions.

14. On the issue of Directors remuneration going up as stated in paragraph 14.7 at page 184 of the Official Liquidators report, the Counsel appearing for the Petitioner has, in response, urged that none of the Directors of the Petitioner Company are promoters of the Petitioner Company and they are engaged in day to day operations of the Company and have expertise in the business carried on by the Petitioner and are accordingly paid in accordance with prevailing salary package payable in companies carrying on similar line of business and no provisions of the Companies Act 1956 have been breached in fixing remuneration payable to the Directors. The Counsel for the Petitioners invite my attention to page 185 of the Official Liquidators report, where the Auditor has observed that there is nothing that has come to their knowledge that suggests that Directors have derived any undue benefits directly or indirectly from any transactions including inter-company loans and investments, sole selling agency, managerial remuneration etc.

15. On the issue of writing off amount due from related party, Petitioner Company has in Affidavit in rejoinder, stated that the Company is into Advertising & Media Industry where transactions are based on the basis of man hour/man days billing. Bills are raised periodically after complying man hour/ man day worked on each contracts and these bills are in normal course approved by the end customers and in a given case the customer approves that bill and finds that there is excess billing and approves the bill on the lower side it is not possible to send the reverse or send revised bill since on 31st March the Company has closed its Books of Accounts and the respective bills are booked in the accounts, the excess billing is already entered into Book of Accounts and the only way to reduce the excess bill amount with the actual is to write off which the Petitioner Company has done in the present case. The Counsel appearing for the Petitioner has stated that writ off is an tax issue. The Deputy Commissioner of Income Tax , Circle 10 (2) Mumbai had denied deduction of Rs. 1,19,05,382 for the Assessment year 2011-12 against which the Petitioner Company has filed Appeal before the Commissioner of Income Tax (Appeals) and the matter is sub-judice.

16. The Counsel for the Petitioner on instructions state that the Transferee Company undertakes that if any tax amount is due and payable, the Transferee Company undertakes to pay the same in accordance with law.

17. In case of Resultrix Media Private Limited, the Official liquidator has concluded that the company had incurred heavy losses by incurring expenses aggregating to Rs. 285.09 lakhs paid to associate/group/ related parties and to this extent the affairs have been conducted in a manner prejudicial to the interest of its members and to public.

18. The counsel for the Petitioners in response stated that there is no bar for entering into transactions with group companies and nothing in the report suggest that any provisions of the

Companies act, 1956 have been breached. It is further stated that the Auditor at page 209 of the Report has observed that there is nothing that has come to his knowledge that suggests that Directors have derived any undue benefits directly or indirectly from any transactions including inter-company loans and investments, sole selling agency, managerial remuneration etc. At page 210 it is further observed that no instances of misapplication, misappropriation and breach of trust on the part of management of the company was revealed.

19. The Counsel for the Petitioners further submitted that the Auditor has made contrary observations with same set of facts made available to him. In his first report in case of LBi technologies and Resutrix Media the auditor has concluded that affairs of the company have not been conducted in the manner prejudicial to the interest of its members or to public interest and whereas in the Supplementary report in case of LBi Technologies the auditor has observed that Company is incurring heavy losses, Directors remuneration is gradually increasing year-on-year as mentioned in para 14.7 and as the reason for writing off amount due from related party are not know as mentioned in par 14.8 and further observed that to this extent the affairs of the LBI Technologies India Private Limited have been conducted in a manner prejudicial to the interest of its members or to public interest. In the case of Resultrix Media Private Limited, he has concluded that the company has incurred heavy losses by incurring expenses aggregating to Rs.285.09 lacs paid to associate /group/related parties and to this extent the affairs of Resultrix Media have been conducted in a manner prejudicial to the interest of its members and to public interest. On both the issues, the Counsel for the Petitioners has stated that accounts of the Transferor Company have been adopted and approved by the shareholders in the Annual General Meetings held from time to time.

20. 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.

21. 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.

22. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 62 to 65 of 2015, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

23. The Petitioners are 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 receipt of the order.

24. Petitioners are 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.

25. The Petitioners in all the Petitions to pay costs of Rs.10,000/- each to the Regional Director. Petitioners in Company Scheme

Petition Nos. 62 of 2015 to 64 of 2015 to pay sum of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks, from date of the Order.

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

27. 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.C. GUPTE, J)