

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.
(ORIGINAL JURISDICTION)

COMPANY PETITION NOS. 20 & 21 OF 2014
CONNECTED WITH
COMPANY APPLICATION NOS. 15 & 16 of 2014

IN THE MATTER OF THE COMPANIES ACT, 1956 (1 OF 1956)
SECTIONS 391 AND 394:

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT OF
AND

IN THE MATTER OF
SMS INTERNATIONAL INFRASTRUCTURE LTD. ... Petitioner/Transferor
Company

And

SMS ENVOCARE LTD Petitioner/Transferee Company.

Mr. Nitin Lalwani, Advocate for the Petitioner Company.

Mr. R.D. Wakode, Advocate, for Regional Director.

Mr. M. V. Chakranarayan, Official Liquidator Present.

CORAM : A.S.CHANDURKAR J.

DATE : JULY 31, 2015

Common Order :

1. The present petitions have been filed for sanction of the Scheme of Merger of M/s SMS International Infrastructure Limited (hereinafter referred to as the Transferor company) into M/s SMS Envocare Limited (hereinafter referred to the Transferee Company). The court examined the petition filed by the petitioner Transferor Company and Transferee Company. The petitioner Transferor Company and the Transferee Company had earlier filed Company Application No.15/2014 of M/s SMS International Infrastructure Limited and 16/2014 of M/s SMS Envocare Limited seeking directions of this Court for dispensing with convening of meetings. Vide

order dated 12th September, 2014, this Court allowed both the Applications and dispensed with the requirement of convening meetings of shareholders, secured and un-secured creditors of the Transferor Company and the Transferee Company.

2. the petitioner, Transferor company and Transferee company have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. This Court vide order dated 19/12/2014 had directed notice of petition to be issued to the Regional Director (Western Region), Mumbai Registrar of Companies, Mumbai and the Official Liquidator, Nagpur. Citations were also directed to be published in Lokmat Times (English) and Lokmat Samachar (Hindi) for the next date of hearing. Affidavit of service has been filed by the petitioners showing compliance regarding service on Regional Director, Western Region, Registrar of Companies, Mumbai and the Official Liquidator and also regarding publication of citation in the aforesaid newspaper.

3. The Court examined the report filed by the Official Liquidator stating therein that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or Creditors or the public.

4. The Court also examined the Affidavit filed by the Regional Director, Western Region, ministry of Corporate Affairs, Mumbai submitted in this Court on behalf of the Central Government. In para No.6 the Regional Director has expressed that the surplus if any arising out of this scheme shall be credited to Capital Reserve Account and deficit if arising shall be debited to Goodwill Account of the Transferee Company. The petitioner transferee Company has filed an affidavit in this Court on 27th July 2015 and has stated that the surplus if any arising out of this Scheme shall be credited to the capital reserve account and deficit if arising shall be debited to the Goodwill

account and that the tax issue, if any, arising out of the Scheme shall be subject to final decision of the Income Tax Authorities. The approval of the Scheme by this Court may not deter the Income Tax Authorities from scrutinizing the tax returns filed by the petitioner Company after giving effect to the amalgamation. The decision of the Income Tax Authorities would be binding on the Petitioner Company.

5. In view of the aforesaid undertaking given by the Petitioner Company, the Court is satisfied that the points raised by the Regional Director have been duly answered in the Court. The statements made in the affidavit dated 27/07/2015 filed on behalf of the transferee Company are accepted.

6. The Court has also noted that no objection has been received to the Scheme of Arrangement from any other party. The Transferor Company and Transferee Company have submitted affidavit confirming that neither the Petitioner Company nor their counsel have received any objection pursuant to citation in the newspapers.

7. Upon hearing Mr Nitin Lalwani, Advocate for the petitioner, Mr Raj Wakode, Advocate for the Regional Director, and the Official Liquidator and in view of the approval of the Scheme of Arrangement by the shareholders and creditors of the Transferor Company and the Transferee Company; and there being no investigation proceedings pending in relation to the Petitioner Company under Sections 235 to 251 of the Companies Act, 1956.

8. **THIS COURT HEREBY SANCTIONS THIS SCHEME OF ARRANGEMENT** as filed along with the Company Petition and hereby declares the same to be binding on all the shareholders and creditors of the transferor Company and the transferee Company and all concerned and approves the said scheme of arrangement with effect from the appointed

date i.e. 1st April, 2013.

9. **THIS COURT HEREBY ORDERS :**

- i) That, all the property, rights and powers of the transferor company specified in the first, second and third parts of the Schedule hereto and all other property, rights and powers of the transferor Company be transferred without further act or deed to the transferee Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to an vest in the transferee Company for all the estate and interest of the transferor Company therein, but subject nevertheless to all charges now affecting the same, and
- ii) That, all the liabilities and duties of the transferor Company be transferred without further act or deed to the transferee Company and accordingly the same shall pursuant to Section 394(2) of the Companies Act, 1956 be transferred to an become the liabilities and duties of the transferee Company; and
- iii) That, all the proceedings now pending by or against the transferor Company be continued by or against the transferee Company; and
- iv) That the transferor company do within 30 days after the date of this order cause a certified copy of this order be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor Company and register with him in the file kept by him in relation to the transferee Company and the files relating to the said two companies shall be consolidated accordingly and

- v) that any person interested shall be at liberty to apply to the Court in the above matter for any directions that may be necessary.

10. The Petitioner Companies in both the Company Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai towards his costs. The Petitioner Companies in Company Petition Nos. 20 and 11 of 2014 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court of Judicature at Bombay, Nagpur Bench, Nagpur towards his costs. Costs to be paid within ten weeks from the date of the order.

11. All concerned authorities to act on authenticated copy of this order along with the Scheme of Amalgamation. Petitions are disposed of accordingly.

JUDGE

SCHEDULE

Particulars	Amount (Rs)
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Part-I

Short Description of Freehold Property of the Transferor Company

Computer and Accessories	27202.00
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Part-II

Short Description of Leasehold Property of the Transferor Company

NA	NA
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Part-III

Short Description of all Stocks, Shares, Debentures and other Charge Action of the Transferor Company

Other Non Current Assets: Preliminary Expenses	163487.00
Long Term Loans and Advances Security Deposit	3000.00

Annexure-I

INVESTMENT	Amount (Rs.)
SMS International PTE Ltd	4358.00
Total	4358.00

Annexure-2

TRADE RECEIVABLES	Amount(Rs.)
NA	NA
Total	

Annexure-3

CASH AND CASH EQUIVALENT	Amount (Rs.)
Cash and bank Balance	141210.00
Total	141210.00

Annexure-4

SHORT TERM LOAN AND ADVANCES	Amount (Rs.)
Staff Advance	123002.00
Prepaid Expenses	80000.00
Total	203002.00