IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.10.2015

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The Honourable Mrs.Justice PUSHPA SATHYANARAYANA

C.P.Nos.299 and 300 of 2015

Polaris Banyan Holding Private Limited
A Company incorporated under the
Companies Act, 1956 and
having its registered office at
No.224, Carex Centre, Anna Salai,
Chennai - 600 006.
Rep. by its Director Mr.Arun Jain

.. Petitioner in C.P.No.299 of 2015
/Transferor Company

AAUM Holdings (India) Private Limited,
A company incorporated under the
Companies Act, 1956 and
having its registered office at
No.244, Polaris House, Carex Center,
Anna Salai, Chennai - 600 017
rep. by its Director Mrs.Manju Jain

.. Petitioner in C.P.No.300 of 2015/
Transferee Company

Petitions filed under sections 391 to 394 of the Companies Act, 1956, to sanction the scheme of amalgamation.

For Petitioners	:	Mr.T.K.Bhaskar
For Regional Director Ministry of Company Affairs.	:	Mr.D.Simon Central Government Standing Counsel
Official Liquidator	:	Mr. Atchutha Ramaiah

C O M M O N O R D E R

These company petitions are preferred under sections 391 to 394 of the Companies Act, 1956 for sanctioning the scheme of amalgamation of the transferor company with the transferee company, so as to be binding on all the equity shareholders of the petitioners companies and on the said companies with effect from 1st April 2014. The scheme of amalgamation is annexed as Annexure - 8 in the petitions.

2. The petitioner in C.P.No.299 of 2015 is the transferor company and the petitioner in C.P.No.300 of 2015 is the transferee company.

3. A perusal of the records show that the petitioners have complied with the prescribed procedure. The main objects of the respective petitioner companies are set out in their respective

Memorandum of Association. A copy of the Memorandum and Articles of Association of the transferor company (petitioner in C.P.No.299 of 2015) and that of the transferee company (petitioner in C.P.No.300 of 2015) are annexed as Annexure – 1 to the respective petitions. The audited annual accounts of the transferor company and that of the transferee company for the year ended 31st March 2014, are marked as Annexure-2 to the respective petitions. Copy of the provisional balance sheet of the petitioner companies as on 31st March 2015, are annexed as Annexure-3 to the respective petitions.

4. There are no secured creditors for both the transferor and transferee company and the certificate of the Chartered Accountant to that effect are annexed as Annexure – '7' to the respective petitions. The copy of the resolution dated 10th June 2015 of the Board of Directors adopting the scheme of amalgamation is enclosed as Annexure-4 to the respective petitions.

5. Both the transferor and transferee companies have two equity shareholders each and the list of equity shareholders of the transferor

and that of the transferee companies are annexed as Annexure-5 to the respective petitions. The consent affidavits from the equity shareholders of both the transferor and the transferee company to the scheme of amalgamation are Annexed as Annexure - 6 in both the petitions. This Court, in its order dated 26.06.2015, in C.A.Nos.640 and 638 of 2015 in the case of the transferor company and the transferee company, dispensed with the convening, holding and conducting of the meeting of the equity shareholders for the purpose of considering and if thought fit, approving with or without modification, the scheme of amalgamation of the transferor company with the transferee company.

6. On notice, the Regional Director, Ministry of Corporate Affairs has filed his report objecting the scheme as follows:-

> *"7. Para 15 of Part B of the scheme of amalgamation contemplates to change the name of the transferee company as "Polaris Banyan Holding Private Limited" without going through the procedures enunciated under Section 13 and other applicable provisions of the Companies Act, 2013. This is objected to. The transferee company may be directed to go through the*

> *procedure enunciated under Section 13 and other applicable provisions and rules framed thereunder of the Companies Act, 2013."*

Except the above objection, the Regional Director has no other objection to the scheme being sanctioned.

7. To the above objection, the learned counsel for the petitioner has given explanation placing his reliance on the decision of this Court reported in ***(2015) 192 Comp Cas 152 (Mad) (Michelin India Tamil Nadu Tyres P. Ltd., In re (C.P.No.392 of 2014)***. The relevant paragraph at page 162 is extracted hereunder:-

> *"It seems to me, on a closer reading of Section 13 of the 2013 Act, as also Section 21 of the Companies Act, 1956, to which I will presently refer that the amalgamation is principally an internal arrangement of the company for a mutual benefit in enlarging its capital base. Normally, the procedure under Section 21 of the Companies Act, as amended as Section 13 of the 2013 Act, has to be complied with. However, it may be noted that on conversion, a company does not cease to exist to bring into existence any new company. In the*

scheme of things to emerge on an amalgamation, a transferor company is united with the transferee company. The scheme herein contemplates a change in their name. In the face of such facts, the question is whether the petitioner is to be subjected to the procedure under Section 21 of the Companies Act, as amended as Section 13 of the 2013 Act. This section requires special resolution to be passed on the proposed change of name of the company and the approval of the Central Government thereupon for changing the company's name. It may be noted that Chapter V is a complete code by itself on the subject of arrangement/compromise and reconstruction comprehensive enough to include a change in the name consequent on the amalgamation or arrangement."

From the reading of Section 13 of the Companies Act, 2013 and also in view of the above decision, I am of the view that the sole objection raised by the Regional Director is satisfactorily explained by the learned counsel for the petitioner.

8. Moreover, the Official Liquidator has also filed his report along

with the report of the Chartered Accountant, which is annexed as Annexure-A to the report of the Official Liquidator. The report of the Chartered Accountant states that the transferor company has no unpaid or unclaimed dividends and hence, the question of commenting on compliance of Section 205 A of the Companies Act, 1956 does not arise. Moreover, it is reported by the Chartered Accountants under Foot Note to the report as under:-

> *"1. Minutes book of the Transferor company produced only in loose sheets with binding for year wise.*
>
> *2. Investments to the value of Rs.1,00,19,341/- has been written off on reconciliation and an investment in on scrip has been revalued at cost during the current year by the transferor company as per the notes on Financial Statement for the year ended 31.03.2012.*
>
> *3. The addresses of the two Directors viz., Arun Jain and Anil Kumar Verma differs."*

To the above foot note, the transferor company has furnished their reply vide letter dated 30.09.2015, which is annexed as Annexure-B to the report of the Official Liquidator. The report of the Chartered

Accountant further states that the affairs of the transferor company have not been conducted in a manner which was prejudicial to the interest of their members or to public, or there were any transactions to attract the provisions of Sections 542 and 543 of the Companies Act, 1956. It is further stated that the records maintained in the office of the Registrar of Companies were also caused to be inspected by the said Chartered Accountant and there are no materials to indicate that the affairs of the transferor company were being conducted in a manner prejudicial to the interest of its members or public interest .

9. I have perused the scheme filed in the company petitions and find it beneficial to the working of the transferee company and is in the interests of the transferor company. There is no objectionable feature in the scheme of amalgamation detrimental either to the employees of the transferor company or to the transferee company. The said scheme is not violative of any statutory provisions. The scheme is fair, just, sound and is not against any public policy or pubic interest. No proceedings are pending under the Companies Act, 1956 or 2013. All the statutory provisions are complied with.

10. Consequently, there shall be an order approving the scheme of amalgamation of the transferor company M/s.Polaris Banyan Holding Private Limited, petitioner in C.P.No.299 of 2015 with the transferee company M/s.AAUM Holding (India) Private Limited, petitioner in C.P.No.300 of 2015, as provided in Annexure - 8 in these Company Petitions, with effect from 01.04.2014, as the procedure laid down under Sections 391 to 394 of the Companies Act are duly complied with. The petitions are allowed.

11. Taking note of the report by the Chartered Accountant as enclosed by the Official Liquidator, in terms of the order passed by this Court, the transferor company shall stand dissolved without winding up.

12. The learned Central Government Counsel is entitled to a fee of Rs.10,000/- from the transferee company.

13.10.2015

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PUSHPA SATHYANARAYANA,J.

Mra

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