

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 106 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 811 OF 2015.
SOFTCELL NETWORK PRIVATE LIMITED
....Petitioner/ the First Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 107 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 812 OF 2015.
IT SECURE SOFTWARE PRIVATE LIMITED
....Petitioner/ the Second Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 108 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 813 OF 2015
SOFTCELL TECHNOLOGIES LIMITED
....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provision of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of SOFTCELL NETWORK PRIVATE LIMITED, the First Transferor Company and IT SECURE SOFTWARE PRIVATE LIMITED, the Second Transferor Company with SOFTCELL TECHNOLOGIES LIMITED, the Transferee Company

Called for hearing

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

Ms. Vijay Killedar i/b Mr. A.A. Ansari for the Regional Director.

Mr. Vinod Sharma, the Official Liquidator present.

CORAM: S. C. Gupte, J.

DATE: 29th April, 2016

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 Amalgamation of SOFTCELL NETWORK PRIVATE LIMITED, the First Transferor Company and IT SECURE SOFTWARE PRIVATE LIMITED, the Second Transferor Company with SOFTCELL TECHNOLOGIES LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.
3. The Learned Counsel for the Petitioners states that the First Transferor Company at present carrying on in India or elsewhere the business to provide Internet related solutions & services including Internet access, data center, email services and Second Transferor Company at present is carrying on business of Refurbish manufacture, develop, improve, maintain, service, buy, sell, import, export, distribute, resell and otherwise deal in all kinds of computer software & solutions and the Transferee Company is carrying on the business in India or elsewhere with or without foreign collaboration in the business of information technology as Consultants, advisors, consulting engineers, system analysts, system engineers. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management that all the Companies are under same management and it would be advantageous to combine the activities and operations in a single Company and The amalgamation will enable the Transferee Company to consolidate the businesses and lead to

synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company and the Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and the Scheme of Amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation 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 Official Liquidator has filed his report on 25th day of April, 2016 in Company Scheme Petition Nos. 106 and 107 of 2016 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
8. The Regional Director has filed an Affidavit on 7th day of April, 2016 stating therein, save and except as stated in paragraph 6, 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 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 this 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. So far as the observation in paragraph 6 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 are 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 Nos. 106 and 107 of 2016 are made absolute in terms of prayers clause (a) to (d) and 108 of 2015 is made absolute in terms of prayer clauses (a) to (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. The 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 and the Petitioner in the Company Scheme Petition Nos. 106 and 107 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost 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. C. Gupte, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by : Shankar Gawde, Stenographer.