IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 172 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 9 OF 2016

RED ROCKET ENTERTAINMENT PRIVATE LIMITED

.... Petitioner / the Transferor 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 other relevant provisions of the Companies Act 2013;

AND

In the matter of Scheme of Amalgamation of Red Rocket Entertainment Private Limited ("the Transferor Company") WITH Antarctica Trading Company Private Limited ("the Transferee Company") AND their respective Shareholders

Called for Hearing

Mr. Hemant Sethi with Mr. Ajit Singh Tawar i/b Hemant Sethi & Co., Advocates for Petitioner

Mr. P.S Gujjar , i/b Mr. Pankaj Kapoor, for Regional Director

Mr. Vinod Sharma Official Liquidator present

Coram: A. K. Menon, J.

Date: September 8, 2016

1. Heard the learned advocate 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 and other applicable provisions of the Companies Act, 1956 / Companies Act, 2013 to the Scheme of Amalgamation of Red Rocket Entertainment Private Limited with Antarctica Trading Company Private Limited and their respective Shareholders.

3. Learned Advocate for the Petitioners states that the Petitioner in Company Scheme Petition No. 172 of 2016 is presently engaged in the business of real estate.

4. The rationale for the merger is that the amalgamation of the Petitioner Company with the Transferee Company will benefit the company and its stake holders on account of simplification of group structure, rationalisation of administrative overheads and greater administration efficiency.

5. Learned Advocate for the Petitioner Company states that the Petitioner Company is wholly owned subsidiary of the Transferee Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and in view of the judgement of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition by Antarctica Trading Company Private Limited, the Transferee Company was dispensed with, by order dated 8th January, 2016 passed in CSD No. 9 of 2016.

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

7. The Counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the order passed in respective Company Summons for Direction.

8. The Counsel for the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the 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 undertaking is accepted.

9. The Regional Director has filed its Affidavit on 7th September, 2016 stating therein that save and except as stated in paragraph 6 (a) 6 (b) and 6(c) of the said affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6 (a); 6 (b) and 6(c), of the said affidavit it is stated that:

   a) *In addition to 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) *The Surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Transferee Company*

   c) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax*

Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.

10. As far as observations made in paragraph 6 (a) and (b) of Affidavit of the Regional Director is concerned, the Petitioner/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 and treatment of reserves and goodwill as the case may be.

11. As far as observations made in paragraph 6 (c) of Affidavit of the Regional Director is concerned, the Petitioner / Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

12. The Learned Counsel for the Regional Director on instructions of Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submission given by the Petitioner Companies. The said undertaking given by the Petitioner Company is accepted i.e. Transferee Company is accepted.

13. The Official Liquidator has filed his report on 9th August, 2016 in the Company Scheme Petition No.172 of 2016 stating therein that the affairs of the Transferor Company have been conducted in a proper

manner and that the Transferor may be ordered to be dissolved by this Court.

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, the Company Scheme Petition No. 172 of 2016 filed by the Petitioner /Transferor Company are made absolute in terms of prayer clause (a).

16. The Petitioner Companies 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 Order.

17. The Petitioner/Transferee Companies 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 INC 28 in addition to physical copy as per the relevant provisions of the Companies Act 1956 / 2013.

18. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. 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.

(A. K. Menon, J.)

CERTIFICATE

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

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