IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 142 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 6 OF 2016.

HIND MUNDRA TERMINALS PRIVATE LIMITED
.... the Petitioner Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 143 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 7 OF 2016.

HIND TERMINALS PRIVATE LIMITED
.... the Petitioner 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 provision of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of HIND MUNDRA TERMINALS PRIVATE LIMITED, the Transferor Company with HIND TERMINALS PRIVATE LIMITED, the Transferee Company

Called for hearing

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

Mr. Neelesh V Kalantrai i/b Mr. Pankaj Kapoor for Regional Director.

CORAM: B. P. Colabawalla, J.
DATE: 1st July, 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 HIND MUNDRA TERMINALS PRIVATE LIMITED, the Transferor Company with HIND TERMINALS PRIVATE LIMITED, the Transferee Company and their respective Shareholders and Creditors, under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioner states that the Transferor Company has been carrying business on the business of cargo handling services, warehousing, transportation of containerized cargo, movement of goods to and from the port to various locations in container and the Transferee Company and has been engaged in business of cargo handling services, warehousing and transportation of containerized cargo, and the movement of goods to and from the port to various locations in containers by rail. The Transferor Company and the Transferee Company are under the same management. The management of the Companies are of the opinion that the merger will lead to synergies of operations and both the

Companies are under the 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 both companies into a single Company for synergistic linkages as both the Companies are engaged in the same type of business activities and thus there will be benefit of combined financial resources and that the amalgamated Company will immensely benefit from several back end processes such as supply chain and logistics alignment, benefit from the increased scale of operations, saving in various fixed cost, reduced administrative cost as there will be no duplication of various activities in running two companies with similar business and this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity which will result in savings of cost and improvement in the revenues and margins of the Amalgamated Company, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of the Transferor Company 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 both the companies and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other's core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company, thus it will immensely benefit the shareholders of both the companies.

4. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company have approved the said Scheme of Amalgamation and by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner further states that, Petitioner Company 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 Petitioner have stated that the Petitioner Company 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 Company 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 15th day of June, 2016 in Company Scheme Petition No. 142 of 2016 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

8. The Regional Director has filed an Affidavit on 15th day of June, 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,

(a) Clause 6.6 of the scheme provides for adjustment for differences in accounting policies between 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.

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Companies through its counsel 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.

10. So far as the observation in paragraph 6(b) 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.

11. 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 Petitioner. The above undertakings are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 142 of 2016 are made absolute in terms of prayers clause (a) to (d) and Company Scheme Petition No. 143 of 2016 is made absolute in terms of prayer clauses (a) to (c).

14. 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.

15. The Petitioner Companies are directed to file a 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.

16. 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 No. 142 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.

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

18. 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.

(B. P. Colabawalla, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.