IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 237 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 837 OF 2015

ALONG WITH

COMPANY APPLICATION NO 372 OF 2016

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of the Scheme of Amalgamation of AD2C Holdings Private Limited and AD2C (India) Private Limited and Appstudioz Technologies Private Limited with Affle (India) Private Limited and their Respective Shareholders

Affle (India) Private Limited…………Petitioner

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. Chirag Shah, i/b Mr. Pankaj Kapoor for Regional Director

CORAM: B.P. Colabawalla, J.

DATE: 5th August 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petition.

2. The Counsel for the Petitioner states that the Petitioner Company has taken out Company Application for amendment of clause 12.1 of the Scheme. The draft amendment is annexed as Schedule to the Company Application. The Counsel for the Petitioner submits that the proposed amendment to the Scheme has been approved by the Board of Directors in their meeting held on 11th March 2016.

3. Leave to amend the Scheme granted as per schedule annexed to the Company Application. Amendment to be carried out within 4 weeks from today.

4. The sanction of the Court is sought under Sections 391 to 394 to the Scheme of Amalgamation of AD2C Holdings Private Limited and AD2C (India) Private Limited and Appstudioz Technologies Private Limited with Affle (India) Private Limited and their Respective Shareholders.

5. The Counsel for the Petitioner submits that the Petitioner Company is engaged in the business of delivery of Mobile Information Solutions to Mobile Phone Subscribers across different Mobile Phone Operators and to sell advertising space delivered through Mobile phones.

6. The Scheme of Amalgamation has been envisaged to consolidate the operations of Affle group in India. All the four companies i.e. AD2C Holdings, AD2C India, ATPL and Affle India are subsidiaries of the

same Singapore parent. Therefore the parent has decided to merge its Indian operations to create a single robust entity which would carry on businesses that are integrated and complimentary in nature. Amalgamation of AD2C India, AD2C Holdings and ATPL with Affle India would result in strengthened balance sheet for the Indian operations. The amalgamation would help the management to achieve greater integration and better financial strength. It would have greater efficiency in cash management, unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities. Benefit of the operational synergies to the combined entity in various operational areas can be put to the best advantage of all the stakeholders. Also significant cost savings are expected to flow from more focused operational efforts, rationalization and standardization and simplification of the business processes, productivity and improvements, improved procurement, elimination of duplication and rationalization of administrative expenses.

7. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company has approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.

8. The Learned Counsel for the Petitioner further states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme

Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

9. The Learned Counsel appearing on behalf of the Petitioner Company has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Company is accepted.

10. The Regional Director has filed an Affidavit on 16th June, 2016 stating therein, save and except as stated in paragraphs 6 (a), 6 (b),6(c), and (d) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), 6 (b), 6(c) and 6(d) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that:-

(a) The registered office of the 1st and 3rd Transferor Companies are situated in the National Capital of Delhi. Hence the present Scheme of amalgamation between the Transferor Companies and Transferee Company will be subject to the condition of obtaining similar approval from Hon'ble High Court of Delhi in respect of 1st and 3rd Transferor company.

(b) The Registered office of the 2nd Transferor Company is situated in the State of Haryana. Hence the 2nd Transferor Company has to file similar petition before the Hon'ble High Court of Punjab and Haryana for approving the said Scheme.

(c) *The equity shares of both the Transferor Companies are held by foreign body corporate as its shareholders. Hence for allotment of new shares by the Transferee Company to the shareholders of the Transferor Companies, the Transferee Company may be directed to comply with FEMA/RBI Regulation as applicable in this regard.*

(d) *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 the Hon'ble 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.*

11. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner submits that 1st and 3rd Transferor Companies have filed Petitions before the Delhi high Court and the same are still pending and clarifies that the approval of the Scheme by this Court will be subject to condition of obtaining similar approval from Delhi High Court in respect of 1st and 3rd Transferor Company.

12. As far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner submits that 2nd Transferor Company has filed Petition before Punjab and Haryana High Court and the same are still pending and clarifies that the approval of the Scheme by this Court will be subject to the condition of obtaining similar approval from Punjab and Haryana High Court in respect of 2nd Transferor Company.

13. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Petitioner through their Counsel undertakes that for issue and allotment of new shares by the Transferee Company to the shareholders of the Transferor Companies, the Transferee Company will comply with relevant FEMA/RBI Regulation as applicable.

14. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and tax implication, if any arising out of the Scheme of Amalgamation will be subject to the decision of the Income Tax Authority.

15. The Learned Counsel appearing for the Regional Director on instructions of Joint Director in the office of the Regional Director states that they are satisfied with the undertakings given by the advocate on behalf of the Petitioner Companies. The above undertakings are accepted.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition is made absolute in terms of the prayer clause (a) of the Petition.

18. The Petitioner Company is directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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 the order or sanctioning of the Scheme by Delhi, Punjab and Haryana high Court whichever is later .

19. Petitioner is 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, whichever is applicable.

20. The Petitioner to pay cost of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from today.

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

22. All concerned regulatory authorities to act on a copy of this order along with the 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