IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.213 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.163 OF 2016

HB Esmech Private Limited ......Petitioner/the Demerged Company.

AND

COMPANY SCHEME PETITION NO.214 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.164 OF 2016

Esmech Rolling Machinery Private Limited ...Petitioner/the Resulting Company.

In the matter of the Companies Act I of 1956.

AND

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

AND

In the matter of the Scheme of Arrangement between:

HB Esmech Private Limited.

AND

Esmech Rolling Machinery Private Limited.

AND

their Respective Shareholders.

Called for Hearing

Mr. Chandrakant Mhadeshwar, Advocate for the Petitioner in both the Petition.

Mr.Pranial Sonwane i/b Shri. Pankaj Kapoor for Regional Director in both the Petitions.

CORAM: B.P.COLABAWALLA, J

DATE: 01st JULY, 2016

PC:

1. Heard learned counsel for parties. None appears 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, to a Scheme of Arrangement between HB Esmech Private Limited and Esmech Rolling Machinery Private Limited and their respective shareholders for demerger of Investment and Trading Division.

3. The Learned Counsel for the Petitioner Companies states that the Demerged Company mainly carries on the activities of trading in shares and securities through PMS and is deriving income from renting of premises and investment activities holding investments in group Companies and in Mutual Funds and other instruments and lending intercorporate deposits and the Resulting Company is carrying on activities of earning rental income and investments in shares and securities mainly holding investments in group companies and in Mututal Funds.

4. The Learned Counsel for the Petitioner Companies further states that the Resulting Company will take over the "Investment and Trading Division" on going concern basis from the Demerged Company. Demerger of "Investment and Trading Division" would facilitate to pursue inorganic and organic growth opportunities by

the respective management. Provide complete freedom to its shareholders to invest their funds in the manner they best think fit Focused management attention to the respective business. Enhance values of all stake holders in the long run.

5. The Learned Counsel for the further states that the Board of Director of the Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.

6. 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.

7. 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.

8. The Regional Director has filed his Affidavit on 15th June,2016 stating therein, save and except as stated in paragraphs 6 it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits that:-

a) *Clause 14.3 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Compfany. 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. As far as the objection of the Regional Director, Western Region, Mumbai in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its counsel undertakes that in addition to accounting treatment given in the scheme the Transferee/Resulting Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

10. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit that the Petitioner is bound to comply with all applicable provisions of the 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. Chandanamuthu, 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.

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, the Company Scheme Petition No.213 of 2016 filed by the Demerged Company are made absolute in terms of prayer clause (a) & (b) and Company Scheme Petition No.214 of 2016 filed by the Transferee Company are made absolute in terms of prayer clause (a) & (b)

14. The Petitioner Companies to lodge a copy of this order and the 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 this order.

15. The Petitioners are directed to file/lodge a copy of this order along with a copy of the Scheme of Arrangement 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 Petitioners Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs 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.