

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 236 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 183 OF 2016

Agilyst Consulting Private Limited...Petitioner

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

In the matter of Scheme of Amalgamation of Agilyst Consulting Private Limited (“the Amalgamating Company”) with eClerx Services Limited (“the Amalgamated Company”) and their respective shareholders

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Mr. Prashant Jadhav, i/b Pankaj Kapoor for Regional Director in the Petitions.

Mr. Vinod Sharma, Official Liquidator, High Court, Bombay, a/w Ms. Yogini Chauhan, Deputy Official Liquidator, present.

CORAM: B.P. Colabawalla, J.

DATE: 1<sup>st</sup> July 2016

1. Heard the learned counsel for the Petitioner. 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, to the Scheme of Amalgamation of Agilyst Consulting Private Limited with eClerx Services Limited and their respective shareholders.
3. The Petitioner Company is engaged in the business of providing Information Technology Enabled Services. The Amalgamated Company is engaged in providing Knowledge Process Outsourcing services to global companies. It provides data analytics and customized process solutions to a host of global clients through a network of multiple locations in India.
4. The rational for the scheme is that the Petitioner Company is an indirect wholly owned subsidiary of the Amalgamated Company. The amalgamation will result into consolidation of the Petitioner Company's business with the Amalgamated Company and would have the following benefits, Rationalization of administrative and operative costs, Simplification of the group structure, lesser regulatory / procedural compliance and efficient management control and systems.
5. The Petitioner Company and Amalgamated Company had approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. Learned Advocate for the petitioner further states that since the Petitioner Company is an indirect wholly owned subsidiary of the Amalgamated Company and all the shares of the Petitioner Company are presently held by Agilyst Inc., in which 100 percent of the share capital is held by eClerx Investments Limited,

which in turn, is wholly owned subsidiary of the Amalgamated Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Amalgamated Company and there would be no reorganization of the Share Capital in the Amalgamated Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by eClerx Services Limited, the Amalgamated Company was dispensed with, by order dated April 1, 2016 passed in CSD NO. 183 of 2016.

7. The learned 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 orders passed in Company Summons for Direction.
8. Counsel appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit 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 whichever is applicable. The said undertakings given by the Petitioner Company is accepted.
9. The Official Liquidator has filed his report on 23<sup>rd</sup> June 2016 stating that the affairs of the Petitioner Company have been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on June 2016, stating therein, save and except as stated in paragraph 6(a) and 6(b), it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6(a) and 6(b), of the said affidavit it is stated that:-

*(a) Clause 13.3 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 the 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 Income Tax Authority is binding on the petitioner company.*

11. 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 advocate undertakes that in addition to accounting treatment given in the Scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

12. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Company submits 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.
13. The Learned Counsel for the Regional Director on instructions of Mr. S Ramakantha, Joint Director in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by Petitioner Company are accepted.
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, Company Scheme Petition filed by the Petitioner/Amalgamating Company is made absolute in terms of prayer clause (a).
16. Petitioners 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
17. 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 the Order.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
19. Costs to be paid within four weeks from today.
20. Filing and issuance of the drawn up order is dispensed with.
21. All concerned regulatory authorities to act on a copy of this order along with the Scheme and the form of minutes duly authenticated by the Company Registrar, High Court, Bombay.

**(B.P. Colabawalla, J)**

CERTIFICATE

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

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