

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 342 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 137 OF 2016.

FIRST ALTUS RESOURCES & NETWORKS PRIVATE LIMITED

....Petitioner/ the Transferor Company

WITH

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 343 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 138 OF 2016

BUSINESS INTEGRATION SYSTEMS

(INDIA) PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of

1956 and other relevant provisions of the

Companies Act, 2013;

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
FIRST ALTUS RESOURCES & NETWORKS
PRIVATE LIMITED, the Transferor Company
with BUSINESS INTEGRATION SYSTEMS
(INDIA) PRIVATE LIMITED, the Transferee
Company

Called for hearing

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

Ashwini Singh i/b Mr. A. A. Ansari for the Regional Director.

Vinod Sharma, the Official Liquidator.

CORAM: A. K. Menon, J.

DATE: 27th October, 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 FIRST ALTUS RESOURCES & NETWORKS PRIVATE LIMITED, the Transferor Company with BUSINESS INTEGRATION SYSTEMS (INDIA) PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.
3. The Learned Counsel for the Petitioners states that Transferor Company has been carrying on the business to undertake the

designing and development of systems and applications software either for its own use or for sale in India or for export outside India and that the Transferee Company has been carrying on the business of designing, developing or setting up for association of persons, individuals, firms and corporate or non-corporate, State Government or Central Government. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management, that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that it would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages and the benefit of combined resources.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. 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.

6. 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.

7. The Regional Director has filed an Affidavit on 25th day of October, 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,

(i) 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 companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner companies.

(ii) Petitioner in Clause 11.2 of the scheme inter alia has mentioned that No fractional Shares shall be issued by the Transferee Company in respect of the fractional share entitlement, if any, arising out of such allotment which shall be rounded off to the nearest complete share. Deponent prays that the Hon’ble Court may pass the order to modify the name of the Transferee Company in clause 3.7 of Part A of the scheme.

(iii) Petitioner in clause 3.7 of the Part A of the scheme inter alia has mentioned company name as “Weizmann International Limited” instead of “Business Integration Systems (India) Private Limited”.

Deponent prays that the Hon’ble Court may pass the order to modify the name of the Transferee Company in clause 3.7 of Part A of the Scheme.

(iv) That the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, Deponent prays that the Hon’ble Court may pass such order as deem fit.

8. So far as the observation in paragraph 6(i) 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.
9. So far as the observation in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that no fractional share shall be issued by the Transferee Company in respect of the fractional share entitlement if any, arising out of such allotment which shall be rounded off to the nearest complete share the Petitioner Company submits that the scheme have been approved by all the shareholders and hence, it is binding.
10. So far as the observation in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner

Companies submits that it is a typographical error and the Petitioner Companies will carry out the amendment in clause 3.7 of the Part A of the Scheme substituting “Weizmann International Limited” with “Business Integration Systems (India) Private Limited” within three weeks from the date of the order. Accordingly leave to amend granted.

11. So far as the observation in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also pass accounting entries as mentioned in AS-5 of the Accounting Standards.
12. The Learned Counsel for Regional Director on instructions of Mrs. P Sheela, 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.
13. The Official Liquidator has filed his report on 7th day of October, 2016 in Company Scheme Petition Nos. 342 and 343 of 2016 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

14. From the material on record, the Scheme appears to be fair and reasonable and is not violate 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 No. 342 of 2016 are made absolute in terms of prayers clause (a) to (d) and 343 of 2016 is made absolute in terms of prayer clauses (a) to (c).
16. 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.
17. The Petitioners are directed to file a certified 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.
18. 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. 342 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.
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.

Uploaded by : Shankar Gawde, Stenographer.