IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 261 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 255 OF 2016

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

AND

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

AND

In the matter of Scheme of Amalgamation

of

Reliance Concrete Private Limited

with

Reliance Infrastructure Limited

and

their respective shareholders

Reliance Concrete Private Limited ....Petitioner/ the Transferor Company

<u>Called for hearing</u>

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

Mr. P Khosla i/b Pankaj Kapoor, for Regional Director.

Mr. Vinod Sharma, Official Liquidator, present.

CORAM: A. K. Menon, J.

DATE: 8th September, 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 Petition.

2. The sanction of the Court is sought under Sections 391 to 394 and other relevant provision of the Companies Act, 1956, to the Scheme of Amalgamation of Reliance Concrete Private Limited, the Petitioner Company/Transferor Company with Reliance Infrastructure Limited, the Transferee Company and their respective shareholders ("the Scheme").

3. The Learned Counsel for the Petitioner states that the Transferor Company was incorporated to engage in the business of manufacturing and dealing in all types and kinds of cement and related products. The Transferee Company is one of the largest infrastructure companies. The rationale for the Scheme is to reduce managerial overlaps, which are necessarily involved in

running multiple entities, to reduce administrative cost and to achieve operational and management efficiency.

4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and the Transferee Company have approved the said Scheme by passing Board Resolutions, which were annexed to the Company Scheme Petition.

5. Learned Counsel for the Petitioner further states as on the Appointed Date, the Petitioner Company is a step - down wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are held by Reliance Cement Company Private Limited, a wholly owned subsidiary of the Transferee Company. No new shares are required to be issued to the members of the Petitioner Company by the Transferee Company after the Scheme is being sanctioned. 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 the Transferee Company was dispensed with vide order dated 15th day of April, 2016 passed in CSD No. 255 of 2016.

6. The Learned Counsel for the Petitioner further states that, Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Court and it has filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and Rules made there under whichever are applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 26th day of August, 2016 in Company Scheme Petition stating that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved without winding up.

9. The Regional Director has filed an Affidavit on 23rd day of August, 2016, inter alia, stating , save and except as stated in paragraph 6 (a) to (c), it appears according to Regional Director, 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) In addition to the compliance of AS – 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.

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.*

c) *As per Part A- Definitions, Interpretations and share capital. At 1.4 the term "Capital Reserve" is defined as A reserve not being a free reserve and not available for dividend; However, available for issue of bonus shares. In this regard, it is submitted that the capital reserve is meant for specific purpose and it should not be made available for issue of bonus shares. (As the said reserve is not available for declaration of dividend)."*

10. As far as the observation in paragraph 6(a) of the affidavit of Regional Director is concerned, the Transferee Company through its Counsel undertakes that it shall pass necessary accounting entries in connection with the Scheme to comply with the applicable Accounting Standards including 'Accounting Standard-14'.

11. As far as the observation in paragraph 6(b) of the affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company is 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.

12. As far as the observation in paragraph 6(c) of the affidavit of Regional Director is concerned, the Transferee Company through its Counsel undertakes that the Transferee Company will not utilize the capital reserves arising out of the present Scheme, if any, for issue of bonus shares.

13. The Learned Counsel for Regional Director on instructions of Mr. S Ramakantha, Joint Director 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 and/or Transferee. The above undertakings 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, the Company Scheme Petition is made absolute in terms of prayer clauses (a), (c) and (d).

16. The Petitioner Company 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 this Order.

17. The Petitioners are directed to file a certified copy of 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.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of this 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.