IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.338 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTIONS NO.317 OF 2016

M/S. S N BHOBE AND ASSOCIATES PRIVATE LIMITED.
......Petitioner/the Demerged Company.

AND

COMPANY SCHEME PETITION NO.337 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.316 OF 2016

M/S. TPF ENGINEERING PRIVATE LIMITED
......Petitioner/Resulting Company.

In the matter of the Companies Act 1 of 1956;

AND

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

AND

In the matter of Scheme of Arrangement of M/s. S N Bhobe and Associates Private Limited

AND

M/s. TPF Engineering Private Limited

AND

Their respective Shareholders and Creditors

<u>Called for Hearing</u>

Mr. Rahul D. Oak, Advocate for the Petitioner in both the Petition.

Mr. Rahul Tiwari i/b Shri. A. A. Ansari for Regional Director in both the Petition.

CORAM: S. C. GUPTE, J.

DATE: 2nd DECEMBER, 2016

PC:

1. Heard learned counsel for parties. None appears to oppose the Scheme nor has any party 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 of S N Bhobe and Associates Private Limited (SNBAPL) with TPF Engineering Private Limited (TPFEPL) and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Demerged Company is carrying on the business of architecture and structural engineering business and the Resulting Company is carrying on structural engineering business. The proposed scheme of Arrangement will have the benefit that for achieving better focus and management over the businesses as part of Group restructuring exercise and, for consolidation of the business across India and to achieve the objective of expansion in Asia, SNBAPL proposes to hive off the SNBAPL PAN INDIA Business undertaking (as more particularly defined in the Scheme) to a separate entity. To achieve this end, it is proposed to demerge the SNBAPL PAN INDIA Business

Undertaking from SNBAPL ("Demerged Company") to TPFEPL ("Resulting Company").

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

5. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

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 Affidavits 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 his Affidavit on 25th October, 2016 stating therein save and except as stated in paragraphs 6(a)

and (b) it appears according to Regional Director 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 :

a) *Regarding Part – I (1.2) Definition of the Scheme it is submitted that the appointed date is 13th October, 2015. In this regards it is submitted that since the financial Statements available before this Hon'ble Court is upto 31.03.2015. Further, the Resulting Company M/s.* TPF Engineering Private Limited *(TPFEPL) was incorporated on 13.10.2015 and is not due to file* Statutory *Returns with ROC. Hence, this Hon'ble Court may kindly fix the appointed dare as 1st April, 2015.*

a) *The tax implication 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.*

8. So far as observation of Regional Director is made in paragraph 6(a) of the report, the petitioner company through it's learned counsel submits that, the Resulting Company i.e TPF

Engineering Private Limited was incorporated on 13/10/2015, which is the appointed date, wherein all the assets and liabilities of the Demerged undertaking (as more particularly defined in the Scheme) shall be transferred to Resulting Company. It is hereby clarified that on 01/04/2015, the Resulting Company was not in existence and hence the appointed date cannot be as 01/04/2015 and that the appointed date as stated in the Scheme as 13/10/2015 should be retained. The Resulting Company has disclosed it's financial position in the company summons for directions and petition stage as well. The resulting company shall file its statutory returns with ROC as and when it is due to file.

9. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioners are 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.

10. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakantha, Joint Director Inspection, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that subject to the above they are satisfied with the submissions and undertakings made by the Petitioner Companies through Learned Counsel. In view thereof, the said undertakings are accepted.

11. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.

12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.337 of 2016 and Company Scheme Petition No.338 of 2016 are made absolute in terms of prayer clauses (a) to (c).

13. 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.

14. 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.

15. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

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

17. 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.

(S.C. GUPTE, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stographer.