IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.301 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.287 OF 2016

Daiwa Trustee Company (India) Private Limited
.... Petitioner Company / Transferor Company

AND

COMPANY SCHEME PETITION NO.302 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.288 OF 2016

Daiwa Portfolio Advisory (India) Private Limited
.... Petitioner Company / Transferee Company

In the matter of the Companies Act,1956 (1 of 1956) and Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and provisions of Companies Act,2013 (to the extent notified and applicable);

AND

In the matter of Scheme of Amalgamation of Daiwa Trustee Company (India) Private Limited with Daiwa Portfolio Advisory (India) Private Limited and their respective shareholders and creditors.

Called for hearing

Mr. Chandrakant Mhadeshwar, Advocate for the Petitioner Companies.

Mr. Vinod Sharma, Official Liquidator present in CSP No.301 of 2016.

Ms.Priya v. Sankpal i/b Pankaj Kapoor Regional Director in both the Petitions.

CORAM: A. K. Menon J.

DATE: 1st September, 2016

PC:

1. Heard Learned Counsel for the Petitioner Company. 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 Companies Act, 1956 and provisions of Companies Act, 2013 (to the extent notified and applicable) to the Scheme of Amalgamation of Daiwa Trustee Company (India) Private Limited ('the Transferor Company') with Daiwa Portfolio Advisory (India) Private Limited ('the Transferee Company') (hereinafter referred together as 'Petitioner Companies') and their respective shareholders and creditors ('the Scheme').

3. Learned Counsel appearing on behalf of the Petitioner Companies has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Companies also undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956 / 2013, and the rules made here under. The said undertaking is accepted.

4. Learned Counsel for the Petitioner Companies stated that Daiwa Trustee Company (India) Private Limited acted as the trustee to Daiwa Mutual Fund whereas Daiwa Portfolio Advisory (India) Private Limited provides portfolio management service mainly to its parent company. Pursuant to the Scheme Transfer Agreement dated the 17th day of

May, 2013, the management and administration, trusteeship and sponsorship of all existing schemes of Daiwa Mutual Fund have been transferred to SBI Mutual Fund. Subsequently, at the request of the Transferor Company and the Transferee Company, SEBI vide letter dated the 29th day of November, 2013, has withdrawn the approval granted to DTCL and DPAL to carry out any activity as a Trustee Company and Investment Manager, respectively to Daiwa Mutual Fund.

5. Pursuant to the Scheme Transfer Agreement as referred to in point 4 above whereby all existing schemes of Daiwa Mutual Fund have been transferred to SBI Mutual Fund, the Transferor Company is not carrying on any significant operations. It is therefore considered appropriate to consolidate the two entities and re-align India operations. The Scheme is proposed accordingly and will have beneficial results for the Transferor Company, the Transferee Company, their respective shareholders, employees and all concerned. The proposed arrangement will reduce managerial overlaps, which are necessarily involved in the running of multiple entities.

6. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

7. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by this Court in Company Summons for Directions and that the

Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions and seeks sanction to the said proposed Scheme of Amalgamation.

8. The Regional Director has filed an Affidavit on August 31, 2016 stating therein that save and except as stated in para 6(a) to 6(c), it appears that the Scheme is not prejudicial to the interest of the shareholders and the public.

In para 6(a) to 6(c), regional Director has stated as follows:

"That the Deponent further submits that:

(a) In addition to 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 etc.

(b) Regarding clause l3.5 of the scheme, the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of Transferee Company'

(c) 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. So far as the observations made in paragraph 6 (a) of the affidavit of Regional Director is concerned, the Transferee Company through its Learned Counsel undertakes that in addition to compliance of AS-14, it will pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards.

10. So far as the observations made in paragraph 6 (b) of the affidavit of Regional Director is concerned, the Transferee Company through its Learned Counsel undertakes to credit surplus arising out of the scheme to Capital Reserve and debit deficit if any to Goodwill Account.

11. So far as the observations made in paragraph 6(c) of the affidavit of Regional Director is concerned, the Transferee Company through its Learned Counsel undertakes 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.

12. The Official Liquidator has filed report in Company Scheme Petition No. 301 of 2016 on 9 August 2016 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without being wound up.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 301 and Company Scheme Petition No.

302 are made absolute in terms of the prayer made under clauses (a) to (c).

14. The Transferee Company to lodge a copy of this order and the Scheme of Amalgamation 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 receipt of the final order.

15. The Petitioner Companies are directed to file a copy of the final order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, through INC-28 pursuant to the Companies Act, 2013, in addition to physical copy as per the provisions of the Companies Act, 1956.

16. The Petitioner Companies to pay costs of Rs. 20,000/-, to the Regional Director, Western Region, Mumbai and Petitioner Company in the Company Scheme Petition No. 301 of 2016 to pay cost of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. 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 authorities concerned 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.