

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 285 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 312 OF 2016
ESSEL LANDMARK PRIVATE LIMITED

..... Petitioner / the Transferor Company 1

AND

COMPANY SCHEME PETITION NO 286 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 313 OF 2016
ELCOM DEVELOPERS PRIVATE LIMITED

..... Petitioner / the Transferor Company 2

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 and other relevant provisions of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of Essel Landmark Private Limited and Elcom Developers Private Limited with Sprit Textiles Private Limited and their respective shareholders

Called for Hearing

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

Mr. Vinod Sharma, Official Liquidator, present in the Company Scheme Petition No. 285 of 2016 and 286 of 2016.

Mr. Ashish Mehta, i/b Mr. Pankaj Kapoor for Regional Director in both the Company Scheme Petitions.

CORAM: A. K. Menon, J.

DATE: 22nd September 2016

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme and nor has any party contravened any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 and other relevant provisions of the Companies Act, 1956, to the Scheme of Amalgamation of Essel Landmark Private Limited and Elcom Developers Private Limited with Sprit Textiles Private Limited and their respective shareholders.
3. Learned advocate for the Petitioner states that the Transferee Company is engaged in the business of trading of goods. The Transferor Company 1 is engaged in the business of dealing in moveable and immoveable properties. The Transferor Company 2 is engaged in the business of dealing of moveable and immoveable properties and construction related activities.
4. The rational for scheme inter-alia is simplification of the group structure, consolidation and synergies in business operations, and reducing managerial overlaps.
5. Both the Petitioner Companies and the Transferee Company have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petitions.
6. The learned counsel for the Petitioner states that the Transferor Company 1 is step down wholly owned subsidiary of the Transferee Company and all shares of the Transferor Company 1 are held by Prime Publishing Private Limited, a wholly owned subsidiary of the Transferee Company. The learned counsel for the Petitioner further states that the Transferor Company 2 is a wholly owned subsidiary of the Transferee Company and all shares of the Transferor Company 2 are held by the Transferee Company. No new shares are required to be issued to the members of the Transferor Company 1 and the Transferor Company 2 by the Transferee Company. The learned counsel appearing on behalf of the Petitioner Companies submits that by an order passed in the court on

22nd April, 2016 in Company Summons for Direction No, 312 and 313 of 2016, the filing of separate Summons for Direction and Company Scheme Petition in related to the proposed Scheme by the Transferee Company, Sprit Textiles Private Limited was dispensed with in view of the Judgement passed by this court in *Mahaamba Investment's Limited Versus IDI Limited (2001) 105 Company Cases (pages 16 to 18)*.

7. The learned Advocate for the Petitioners further states that, Petitioner companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.
8. The learned counsel appearing on behalf of the Petitioners has 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, Petitioner Companies undertake 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 undertaking is accepted.
9. The Regional Director has filed an affidavit on 28th June, 2016 stating therein that save and except as stated in para 6(a) to 6(d), it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public.
10. In para 6(a) to 6(d) of the said Affidavit, it is stated as under:

That the Deponent further submits that,

- a) *Clause 2.4 of the Scheme provides for addition of a new object clauses in the Memorandum of Association of the Transferee company. In this regard, the Transferee company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act, 1956 and to file amended copy of Memorandum of Association with necessary form with Registrar of Companies.*

- b) *Clause 2.4 of the Scheme has been repeated in the Scheme against the clause viz. "Business and Property in Trust for the Transferee Company" The repeated Clause No. 2.4. shall be substituted with suitable manner. In this regard, the Petitioner Companies may be directed to correct the same and consequentially renumber clauses from Clause No. 2.4 to Clause No. 3.5.*
- c) *Clause 2.3.3 of the Scheme provides for adjustments for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to 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.*
- d) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return files by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company."*

11. So far as the observation in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Transferee Company through its counsel undertakes to comply with the relevant sections of the Companies Act, 2013 and to file the amended copy of the Memorandum of Association with the Registrar of Companies.
12. So far as the observation made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company seeks leave of this Court to amend scheme by renumbering the existing clauses 2.4 (*being Business and Property in trust for the Transferee Company*)

beginning from internal page 12 of the Scheme and all subsequent clauses appearing thereafter. Leave to amend Scheme and all consequential amendments are granted. Amendment to be carried out within 4 weeks from today.

13. So far as the observation in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Transferee Company through its counsel undertakes that it shall comply with the requirements of AS-14 and also pass such accounting entries which are necessary in connection with the Scheme to comply with any other applicable Accounting Standards such as AS-5 etc.
14. So far as the observation in paragraph 6(d) of the Affidavit of the Regional Director is concerned, the Transferee Company through its counsel undertake that it is bound to comply with all applicable provisions of the Income-tax Act, 1961 and all issues arising out of the Scheme will be met and answered in accordance with law.
15. The Counsel for the Regional Director on instructions of Mr. S. Ramakantha, Joint Director in the office of Regional Director stated that they are satisfied with the undertaking given by the Advocate on the behalf of the Petitioner Companies and / or the Transferee Company. The said undertaking given by the Petitioner Companies and / or the Transferee Company are accepted.
16. The Official Liquidator has filed his report on 20th September, 2016 in the Company Scheme Petition No. 285 of 2016 and 286 of 2016 stating therein that the affairs of the Transferor Company 1 and the Transferor Company 2 have been conducted in a proper manner and that the Transferor Company 1 and Transferor Company 2 may be ordered to be dissolved by this Court.
17. 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. None of the parties concerned has come forward to oppose the Scheme.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 285 of 2016 filed by the Transferor

Company 1 are made absolute in terms of prayer (a) and the Company Scheme Petition No. 286 of 2016 filed by the Transferor Company 2 are made absolute in terms of prayer (a).

19. The Petitioner Companies to lodge 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.
20. The Petitioner Companies are directed to file a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with I.N.C. – 28 in addition to physical copy as per the relevant provisions of the Companies Act.
21. The Petitioner Companies in both the Company Scheme Petitions to pay costs of INR 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 134 of 2016 to pay cost of INR 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
22. Filing and issuance of the drawn up order is dispensed with.
23. All concerned 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