IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 365 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 189 OF 2016.

EVERGREEN ENGINEERING CO PRIVATE LIMITED

....Petitioner/ the Demerged Company

AND

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ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 366 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 190 OF 2016.

EVERGREEN ELECTRICALS PRIVATE LIMITED

....Petitioner/ the Resulting 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 Arrangement between EVERGREEN ENGINEERING CO PRIVATE LIMITED (the Demerged Company) and EVERGREEN ELECTRICALS PRIVATE LIMITED (the Resulting Company)

Called for hearing

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

Ms. Nilesh Kalantri i/b Mr. A.A. Ansari for Regional Director.

CORAM: S. C. Gupte, J.

DATE: 2nd December, 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 Scheme of Arrangement between EVERGREEN ENGINEERING CO PRIVATE LIMITED (the Demerged Company) and EVERGREEN ELECTRICALS PRIVATE LIMITED (the Resulting Company), under Sections 391 to 394 and other relevant provision of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor/ Demerged Company has been *inter alia* carrying business of development Electricians, Electrical contractors, manufactures, constructors suppliers of and dealers in electrical, electronics and other appliances, cables, wire-lines, dry cells, accumulators and lamps, generators and the Transferee/ Resulting Company and has been engaged in business of manufacturers, constructors, traders, suppliers, of and dealers in electrical electronics, mechanical parts assembly products and components required for domestic and industrial purposes. The proposed scheme of Arrangement will have the benefit that the Works 4 Unit located at Ahmednagar Division Undertaking of EECPL has significant potential for growth and the nature of risk, permissions and competition involved in this undertaking is distinct from other undertakings or businesses of EECPL and consequently Works 4 Unit located at Ahmednagar Division Undertaking is capable of attracting different sets of investors, strategic partners, lenders and other stakeholders and in order to achieve a distinct focus of the investors to invest in some of the key businesses and to lend greater focus to the operation of Works 4 Unit located at Ahmednagar Division Undertaking EECPL proposes to re-organize and segregate by way of demerger, its Works 4 Unit located at Ahmednagar Division Undertaking and that the proposed Scheme is in the interest of all the parties to the Scheme and their respective shareholders and

creditors and will in the long term, be in the interest and welfare of the employees and that the Works 4 Unit located at Ahmednagar Division Undertaking has tremendous growth and profitability potential and is at a stage where it requires focused leadership and management attention and it is believed that the proposed segregation will create enhanced value for shareholders and allow a focused strategy in operations, which would be in the best interest of EECPL, its shareholders, creditors and all persons connected with EECPL and that the demerger proposed by this Scheme of Arrangement will enable investors to separately hold various electrical businesses with different electrical characteristics thereby enabling them to select investments which best suit their electrical strategies and risk profiles and that the demerger will also provide scope for independent collaboration and expansion without committing the existing organization in its entirety and that the Board of Directors of the Demerged Company is of the opinion that the demerger would benefit the shareholders, employees and other stakeholders of the Demerged Company and that the proposed scheme is not prejudiced to the interest of the creditors or the employees of the Demerged Company.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation and 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:-

(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) ROC Report interalia has mentioned in the observations that with reference to the Scheme, Divisional (undertaking wise) Financials of

the Demerged Company including the details of assets and liabilities/Contingent liabilities of the demerged undertaking and remaining undertaking are not provided along with scheme documents so as to verify the details of its assets/ liabilities proposed to be demerged into resulting company.

In this regard Deponent to state that as per definition of undertaking given in Sections 180(1)(a) of the Companies Act, 2013 Undertaking shall mean an undertaking in which the investment of the company exceeds 20% of its networth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20% of the total income of the company during the previous financial year. Hence it is observed mentioned that in the absence of the documents mentioned above it is not ascertained whether the demerged undertaking meets the criteria as defined under Explanation below Section 180(1)(a) of the Companies Act, 2013.

(iii) Petitioner in clause 5.1 of the scheme inter alia has mentioned that No fractional share shall be issued by the Demerged 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 such order in the intervent of the Shareholders.

(iv) Petitioner in clause 6 and 7 inter alia has mentioned about accounting treatment to be followed by both petitioner companies. However the same are not correct and clear.

Deponent prays that the Hon'ble Court may direct the company to file revised scheme.

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 as per the definition of 'undertaking' given in Sections 180(1)(a) of the Companies Act, 2013 this undertaking shall mean an undertaking in which the investment of the company exceeds 20% of its networth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20% of the total income of the company during the previous financial year and the said undertaking is not applicable to the said as it is a Private Limited Company as defined under Explanation below Section 180(1)(a) of the Companies Act, 2013.

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 in clause 5.1 of the scheme has mentioned that no fractional share shall be issued by the Demerged 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 and the same is already approved by the shareholders of both the companies.

11. So far as the observation in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner

Companies submits that the following amendment will be carried out in clause 6 and 7 in the Scheme of Arrangement:

“6. **ACCOUNTING TREATMENT IN THE BOOKS OF DEMERED COMPANY, M/S.EVERGREEN EINGINEERING COMPANY PRIVATE LIMITED (EECPL).**

6.1 Upon the coming into the effect of this Scheme and with effect from the Appointed Date, the **Demerged Company, EECPL** shall account the transfer of the Ahmednagar Unit 4 Undertaking based on following method of accounting as more particularly specified in clauses 6.2 to 6.4.

6.2 Upon the coming into the effect of this Scheme and with effect from the Appointed Date, the Assets of Ahmednagar Unit 4 Undertaking, reflecting in its books of accounts, shall be deducted at the book values of these Assets in the books of EECPL.

6.3 Upon the coming into the effect of this Scheme and with effect from the Appointed Date, the Liabilities of Ahmednagar Unit 4 Undertaking, reflecting in its books of accounts, shall be reduced at the book values of these Liabilities in the books of EECPL.

6.4 The Excess/Deficit, if any remaining after recording the aforesaid entries, shall be credited/debited to EECPL Capital Reserve and Surplus .

7. ACCOUNTING TREATMENT IN THE BOOKS OF RESULTING COMPANY, M/S. EVERGREEN ELECTRICALS PRIVATE LIMITED (EEPL).

7.1 Upon the coming into the effect of this Scheme and with effect from the Appointed Date, the **Resulting Company, EEPL** shall account the Addition of the Ahmednagar Unit 4 Undertaking based on following method of accounting as more particularly specified in clauses 7.2 to 7.4

7.2 Upon the coming into the effect of this Scheme and with effect from the Appointed Date, the Assets of Ahmednagar Unit Undertaking, shall be added to

Assets in the books of account of the Resulting Company, EEPL at the book values of these Assets.

7.3 Upon the coming into the effect of this Scheme and with effect from the Appointed Date, the Liabilities of the Ahmednagar Unit 4 Undertaking, shall be accounted for,in the books of accounts of Resulting Company, EEPL at the book values.

7.4 The Excess/Deficit, if any remaining after recording the aforesaid entries, shall be credited /debited to EEPL Capital Reserve and Surplus.

Leave to amend in the Scheme is granted. Accordingly, the amendment is to be carried out within a period of three weeks

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. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 365 of 2015 are made absolute in terms of prayers clause (a) to (c) and 366 of 2015 is made absolute in terms of prayer clauses (a) to (c).

15. 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.

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

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the Order.

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

19. 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.

(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, Stenographer.