IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 397 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 268 OF 2016

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and any corresponding provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of IDFC Finance Limited ('the Transferor Company') WITH IDFC Projects Limited ('the Transferee Company') AND Their Respective Shareholders

IDFC Finance Limited………Petitioner

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.
Mr. Atul S Singh , i/b Pankaj Kapoor for Regional Director.
Mr. Vinod Sharma, Official Liquidator, present.

CORAM: S.C. GUPTE, J.
DATE: 18th NOVEMBER 2016

1. Heard the learned counsel for the Petitioner. 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 the Companies Act, 1956, to the Scheme of Amalgamation of IDFC Finance Limited with IDFC Projects Limited and their Respective Shareholders.
3. Learned Advocate for the Petitioner submits that since the Petitioner Company is wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by IDFC Projects Limited, the Transferee

Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also 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 IDFC Projects Limited, the Transferee Company was dispensed with, in pursuance of order dated 22nd April 2016 passed in CSD No. 268 of 2016.

4. The Petitioner Company was a Non-deposit taking Non- banking financial Company (NBFC-ND). The Transferee Company is engaged in the business of conceiving, developing, owning, managing, executing and operating infrastructure projects.
5. The rational for the Scheme is that Transferor Company is a wholly-owned subsidiary of Transferee Company. Consolidation of Transferor Company into the Transferee Company pursuant to this Scheme would result in streamlining the existing structure. The consolidation will reduce the number of entities to be administered and also help realize operational synergies which would result in simplification of structure and operations. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:
   (a) Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximising overall shareholder value.
   (b) Greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities, to maximize shareholder value.
   (c) Cost savings are expected to flow from more focused operational efforts, rationalization, standardisation and simplification of business processes and the elimination of duplication, and rationalization of

administrative expenses.

6. The Petitioner Company and Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.

7. The learned counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company Summons for Direction.

8. Counsel appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, Petitioner Company undertakes 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 given by the Petitioner Company is accepted.

9. The Regional Director has filed an Affidavit on 24th October 2016, stating therein, save and except as stated in paragraph 6(i), 6(ii), 6(iii) & 6(iv), it appears according to R.D. that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6(i) to 6(iv), of the said affidavit it is 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 the 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) *That the Petitioner Company had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies not mentioned the Accounting Standard that would be adopted for*

difference in accounting policy of Transferor Company and Transferee Company.

(iii) *Petitioner in clause 9.1.1 of the Scheme inter alia has mentioned that all the permanent employees of the Transferor Company who are in its employment as on Effective Date shall became the permanent employees of the Transferee Company.*

Deponent prays that the Hon'ble Court may pass such orders as deemed fit.

(iv) *Petitioner has mentioned appointed date as 01.04.2016, Roc has observed that the company has not filed balance sheet as at 31.3.2016 not submitted financial statements as at 31.3.2016 for verification.*

Deponent prays that this Hon'ble Court may pass such orders as deem fit.

10. As far as observations made in paragraph 6(i) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and tax implication, if any arising out of the Scheme of Amalgamation will be met and answered in accordance with law. .

11. As far as observations made in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Petitioner through their counsel clarifies that in case of any difference in accounting policy between the Transferee Company and the Transferor Company, Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards such as AS-5.

12. In so far as observations made in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner submits that as per clause 9.1.1 of the Scheme employees, if any of the Transferor Company as on the effect date will become the employees of the Transferee Company.

13. In so far as observations made in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner submits that the Petitioner Company has

annexed as Exhibit-B2 to the Petition unaudited provisional financial statement as on March 31, 2016. Further during the passage of time the audited balance sheets on behalf of Transferor and Transferee Companies have been filed with Registrar of Companies within due date.

14. In view of undertakings and clarifications given by the Petitioner company, the Counsel for the Regional Director on instructions of Mrs. P. Sheela, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Company. The said undertakings given by the Petitioner are accepted.

15. The Official Liquidator has filed his report on 19th September 2016 stating that the affairs of the Petitioner Company have been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the petition.

18. Petitioner is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.

19. The Petitioner Company 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 receipt of the Order.

20. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.

21. Costs to be paid within four weeks from today.

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

23. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, 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