IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 581 OF 2016.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 237 OF 2016.

IL&FS TOWNSHIP & URBAN ASSETS LIMITED
....Petitioner/ the Transferee 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 Amalgamation of IIDC LIMITED, the Transferor Company with IL&FS TOWNSHIP & URBAN ASSETS LIMITED, the Transferee Company

Called for hearing

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

Anand O Singh i/b Mr. Pankaj Kapoor for the Regional Director.

Vinod Sharma, the Official Liquidator.

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 a Scheme of Amalgamation of IIDC LIMITED, the Transferor Company WITH IL&FS TOWNSHIP & URBAN ASSETS LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that Transferor Company is presently carrying on business of Project/Programme Management Consultancy, Project Development, Bid Process Management, Policy Advisory/Evaluation, IIDC's focus in infrastructure in Managed Assets, Surface Transport and Transportation Systems, Tourism and Aviation, Urban and Municipal Services, Social Infrastructure – Sports, Education and Healthcare, Township, Housing, Real Estate, Industrial Corridors, Industrial Parks, Special Economic Zones, Agri Logistics and Warehousing, Rural Development, Ports, Free Trade Warehousing Zones, Hydroelectric Power and Transferee Company at present is carrying on business to undertake the development and implementation of projects in the area of urban infrastructure, smart cities, real estate and industrial parks, Affordable housing, Other urban infrastructure such as sports facilities, healthcare facilities, education infrastructure, government buildings on PPP formats, Industrial parks. The proposed scheme of Amalgamation will have the benefit that the

Transferor Company and the Petitioner Company are under the same management and the shareholding owned and controlled by same promoters and the management is of the opinion that the merger arrangement will lead to synergies of operations and more particularly the following benefits that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that the amalgamation will result in economies of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources and that the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which are expected to result in stability of operations, cost savings and profitability for the Amalgamated Company

4. Learned Counsel for the Petitioner further state that the Board of Director of the Petitioner Company has approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner further state that Petitioner Company has complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.

6. The Learned Counsel appearing on behalf of the Petitioner 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 7th day of November, 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:-

"6. . That the Deponent further submits that,

(i) Petitioner in clause 8(a) of the scheme inter alia has mentioned as follows:

Upon this scheme coming into the effect and upon the amalgamation becoming operative, as on the Appointed date, the Transferee Company shall record the assets and liabilities comprised in the Transferor Company transferred to and vested in it pursuant to this scheme, as per the prevailing and applicable accounting standards as issued by the Institute of Chartered Accountants of India.

Therefore, Deponent prays that the Clause 8(a) is vague in nature. The Petitioner may be directed to clearly explain about the Accounting Standards the Petitioner will be following. The Petitioner should clarify that in case of AS-14, they will be following Purchase Method or Pooling of Interest Method and its effects thereof.

(ii) The Petitioner Companies may be asked to pass accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS – 5, etc. in terms of Sec 134 of the Companies Act, 2013.

(iii) 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 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

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 submits that the Petitioner Company has filed his affidavit in reply to Regional Director dated 22nd November, 2016. The Petitioner Company submits that upon this scheme coming into the effect and upon the amalgamation becoming operative, as on the Appointed date, the Transferee Company will record the assets and liabilities comprised in the Transferor Company transferred to and vested in it pursuant to this scheme by following the Pooling of Interest Method and its effects thereof. The statement is accepted

9. So far as the observation in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submit that the Petitioner Company has filed his affidavit in reply to Regional Director dated 22nd November, 2016. The Petitioner Company submits that upon this scheme coming into the effect and upon the amalgamation becoming operative, petitioner companies will pass accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS – 5 issued by the Institute of Chartered Accountants of India in terms of section 134 of the Companies Act, 2013. The statements are accepted

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 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.

11. The Learned Counsel for Regional Director on instructions of Mr. Dalmiya, 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.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 581 of 2016 are made absolute in terms of prayers clause (a) to (c), subject to approval of the Delhi High Court.

14. 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.

15. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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.

16. 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.

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

18. 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