IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 467 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 378 OF 2016

OUT-OF-HOME MEDIA (INDIA) PRIVATE LIMITED
.....Petitioner/Demerged Company

AND

COMPANY SCHEME PETITION NO. 468 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 379 OF 2016

BVG INDIA LIMITED .....Petitioner/Resulting Company

In the matter of Companies Act, 1956 and Companies Act, 2013

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956

AND

In the matter of the Scheme of Arrangement
between
Out-of-Home Media (India) Private Limited (Demerged Company)
and
BVG India Limited (Resulting Company)
And
Their respective Shareholders and Creditors

**Called for Hearing**

Mr. Kunal Mehta i/b M/s Crawford & Co, Advocate for Petitioner Companies .

Mr. Anurag Gokhale i/b Shri. A. A. Ansari for Regional Director in both the Petitions.

CORAM: A. K. MENON, J

DATE: 29th SEPTEMBER, 2016

PC:

1. Heard learned counsel for parties. None appears 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 a Scheme of Arrangement ("Scheme") between Out-of-Home Media (India) Private Limited and BVG India Limited and their respective shareholders and creditors.

3. The learned Advocate for the Petitioner Companies states that the Demerged Company is currently engaged in business of owning, purchasing, selling and leasing advertising time slots and space over focused media formats. The Resulting Company is currently engaged in the business of industrial utility services, conservancy services, consultancy services and job work for various industrial products and transportation services.

4. The learned Advocate for the Petitioner Companies further states that the Scheme of Arrangement will have the benefit of enabling a dedicated management focus and accelerate the growth of both the businesses and would give an access to varied sources of funds for the rapid growth of both the businesses.

5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which is annexed to the respective Company Scheme Petitions.

6. The Learned Advocate appearing on behalf of the Petitioners 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 undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

7. The Regional Director has filed his Affidavit on 20th September, 2016, *inter alia,* stating therein that save and except as stated in paragraphs 6 (a) to (c) of the said Affidavit, it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

*"6. That the Deponent further submits that:-*

*a) With reference to clause 7.1 and 7.2 of the Scheme, it is submitted that the surplus if any arising out of the Scheme shall be credited to the Capital Reserve Account of the Petitioner Companies.*

*b) 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 scheme of arrangement. The decision of the Income Tax Authority is binding on the Petitioner Company."*

*c) That the Deponent further submits that, ROC Pune vide report/letter No ROC/STA/391/394/20164881 dated*

*02/08/2016 at point 28 has mentioned that, "in point no. 10 of the Scheme that with effect from the appointed date to enable the Resulting Company to carry on the business of the Demerged Undertaking of the Demerged Company the Memorandum of Association of the Resulting Company shall stand altered and amended by insertion of the lines to the existing clause (B) 2 of its MOA. This change may be allowed only after complying with provisions of Section 13 of the Companies Act, 2013 and rules made thereunder."*

8. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Petitioner Companies through its advocate undertakes that the surplus value if any, arising out of the scheme shall be credited to Capital Reserve Account.

9. So far as the objection of the Regional Director as stated in paragraph 6(b) of his Affidavit is concerned, the Petitioner Companies submit 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.

10. So far as the objection of the Regional Director as stated in paragraph 6 (c) of his Affidavit is concerned, the Petitioner Companies through its advocate undertakes to comply with the provisions of Section 13 of the Companies Act, 2013 and the rules made thereunder.

11. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakanth, 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 Petitioner Companies through their advocate. In view thereof, the said 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, the Company Scheme Petition No. 378 of 2016 and 379 of 2016 are made absolute in terms of prayer clauses (a) and (b).

14. 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 this order.

15. Petitioner is directed to lodge a copy of this 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.

16. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from today.

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 the 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.