IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 490 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 319 OF 2016

Sahastra Properties Private Limited …Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 491 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 320 OF 2016

Enn Enn Corp Limited, …Petitioner/Transferee Company

In the matter of the Companies Act, 1956/2013

AND

In the matter of Petition under sections 391 to Section 394 read with Section 100 to 104 of the Companies Act, 1956

AND

In the matter of Scheme Of Amalgamation of Sahastra Properties Private Limited

With

Enn Enn Corp Limited

Called for Hearing

Mr. NaserAli Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

Mr. P.S. Gujar i/b. Mr. Pankaj Kapoor for Regional Director in the Petition.

Mr. Vinod Sharma for the Official Liquidator

CORAM: S.C. Gupte, J.

DATE: 9th December, 2016

PC:

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to an arrangement embodied in the Scheme of Amalgamation Scheme of Amalgamation of Sahastra Properties Private Limited i.e. the Transferor Company with Enn Enn Corp Limited, the Transferee Company.

3. The learned Advocate for the Petitioner Company states that the Transferor Company is primarily engaged in generation and sale of conventional/non- conventional energy sources and other related activities and also earns rental income from renting out its properties. The Transferee Company is primarily engaged in business of export of cut, rough and polished diamonds/cereal & pulses along with real estate and constructional activities and also engaged in generation and sale of conventional/non- conventional energy sources and other related activities.

4. The Learned Advocate for the Petitioner Company further states that the Scheme of Amalgamation would enable to achieve integration of the business operations, strategic flexibility and a scale to pursue growth opportunities. Further the combined entity will be able to showcase strength and there will also be synergy benefits through combined

operations and it will also result in cost efficiencies leading to more efficient and economical control and conduct of the affairs.

5. Both the Transferor and Transferee Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the Company Scheme Petition.

6. The Learned Advocate for the Petitioner Company in Company Scheme Petition No. 491 of 2016 states that upon the scheme getting sanction there shall be consequent reduction of Equity share Capital of the Transferee Company in pursuance of Clause 10 of the Scheme of Amalgamation, which shall be effected as an integral part of the Scheme and that the proposed reduction neither involves diminution of liability in respect of unpaid share capital of the Petitioner Company nor payment to any shareholder of any paid-up capital nor is any call being waived and that rights of the creditors of the Petitioner Company are not adversely affected and further upon an undertaking being given by the Petitioner Company to pass a Special Resolution under sections 100 to 104 of Companies Act, 1965, the procedure prescribe under Section 101 of Companies Act, 1965 was dispensed with. Accordingly, the Petitioner Company has passed a Special Resolution dated 30th May 2016 which is annexed at Exhibit-'O' to the Company Scheme Petition No.491 of 2016, and has complied with undertaking given in the order dated 22nd July 2016 passed in Company Summons for Direction No.320 of 2016.

7. The Learned Advocate for the Petitioners states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons

for Direction and seeks sanction to the said proposed Scheme of Amalgamation.

8. The Learned Advocate 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 Affidavits of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.

9. The Regional Director has filed his Affidavit on 23rd November 2016, *inter alia,* stating therein that save and except as stated in paragraphs 6 (i) to (iv) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In the paragraphs of the said Affidavit, the Regional Director has stated that :

"6. That the Deponent further submits 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) Petitioner in Clause No.10 of the Scheme inter alia has mentioned that upon the Scheme becoming effective shares held by the I

transferor Company or its nominee in the Transferee Company shall be cancelled and extinguished. Further, it is Inter and mentioned that upon the scheme being effective and after giving effect to Clause 10.1, there will be consequent reduction of Equity Share Capital of the Transferee Company as shares held by transferor Company in Transferee Company will get cancelled. Further no shares will be issued to the Shareholders of the Transferor Company, since the shares held by Transferor Company are in excess of shares to be issued by the transferee company to the shareholders of Transferor Company.

Deponent to state that the petitioner company has not mentioned about share exchange ratio in the scheme. Only auditors has mentioned about the ratio and therefore, prays the Hon'ble Court to direct the petitioner company to modify the scheme to include the share exchange ratio and the details of shares to be allotted and cancelled.

(iii) Petitioner in Clause No. 11 of the Scheme inter alia has mentioned that the difference in the value of the net assets of the Transferor Company as on Appointed Date and the consideration value determined pursuant to this Scheme and after giving effect of clause 11.1 and 11.2, shall be accounted for in the books of the Transferee Company Reserves, as Reserves, as per the pooling Method prescribed in Accounting Standard-14 and/or any other applicable accounting standards or accounting policy prescribed or issued by the Institute of Chartered Accountants of India.

Deponent to state that the petitioner company not mentioned about the consideration value in the clause as mentioned above and the Hon'ble Court may direct the company modify the clause accordingly.

(iv) In addition to the compliance of AS -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 and to ensure that the transferee company would not impair the true and fair view of the fair view of the financial statement of the transferee company post-merger."

10. With reference to observations contained in Clause 6(i) of the affidavit of Regional Director, the Petitioner Company and Transferee Company shall be bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

11. With reference to observations contained in Clause 6(ii) & (iii) of the affidavit of Regional Director, the Learned Advocate for the Petitioner states that Valuation Report of auditor M/s. SNK & Company provides for swap ratio as follows:-

"27 (Twenty Seven) Equity Shares of Rs.10/- each credited as fully Paid up of Enn Enn Corp Limited shall be issued and allotted at par against 12 (Twelve) Equity Shares of Rs.10/- each to the Equity Shareholders of Sahastra Properties Private Limited."

It is submitted that upon the said amalgamation being made effective, net assets of Rs. 21,92,98,019/- of Sahastra Properties is being transferred to Enn Enn Corp and Sahastra Properties have been holding 1,99,10,000 Equity Shares of Enn Enn Corp which shall on the scheme being effective, get cancelled and result into reduction of equity share capital of Enn Enn Corp which is detailed out as under :

Particulars	No. of Shares
Net Assets of Sahastra Properties Pvt. Ltd to be taken over	Rs. 21,92,98,019/-
Exchange ratio of shares to be issued by Enn Enn Corp Ltd. to the shareholders of Sahastra Properties	27 Equity shares (of Rs. 10/- each) for every 12 Equity shares (of Rs.10 each) held
No of shares to be issued as per swap ratio	1,80,00,000
Less : Equity Shares held by Sahastra Properties Pvt Ltd. in Enn Enn Corp Ltd to be cancelled (only to the extent of new shares required to be issued)	1,80,00,000
Net Effect: Net shares to be issued by Enn Enn Corp Ltd to shareholders of Sahastra Properties Pvt. Ltd.	NIL
Further cancellation by way of reduction as per clause 10 of the Scheme i.e. reduction of balance of 1,99,10,000-1,80,00,000 Equity Shares.	19,10,000

12. The Learned Advocates states on behalf the Petitioner Companies that Clause 10 of the Scheme provides that Transferee Company will not be required to issue any shares to the shareholders of Transferor Company towards the purchase of net assets of Transferor Company. Further the

details of the reductions and cancellation of shares to be effected are specified in Form of Minutes to be registered under Section 103(1) of Companies Act 1956 annexed at Exhibit-“Q” to the Company Scheme Petition No. 491 of 2016 and all the shareholder of the Petitioner Companies have given their consent to the such composite Scheme of Amalgamation and consequential reduction and accordingly confirmation such reduction of Court is sought by Transferee Company. Thus it is submitted that the mentioning of the swap ratio would be only academic and notional as no shares are to be eventually issued as consideration due to the consequential reduction by way of cancellation held by Transferor Company in Transferee Company in manner aforesaid. In the view of the above submission, no amendment to the Scheme is necessary and the observation of the Regional Director is addressed and dealt accordingly.

13. As far as the objection of the Regional Director in paragraph 6(iv) of his affidavit is concerned, the Transferee Company through its Advocate undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme and to comply with Accounting Standard -14 and other applicable Accounting Standard such as AS – 5 etc.

14. The Learned Counsel for Regional Director on instructions of Ms. Sheela Joint Director, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

15. The Official Liquidator has filed his report on 24th October 2016 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor 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, the Company Scheme Petition No.490of 2016 filed by the Demerged Company is made absolute in terms of prayer clauses (a) & (b) and Company Scheme Petition No.491 of 2016 filed by the Resulting Company is made absolute in terms of prayer clauses (a) to (c).

18. The Petitioner Companies to lodge an authenticated copy of this order along with the Scheme along with Form of Minutes (Exhibit-'Q' to Company Scheme Petition No.491 of 2016) 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.

19. Petitioners are directed to file/lodge an authenticated copy of this order along with the Scheme along with Form of Minutes (Exhibit-'Q' to Company Scheme Petition No.491 of 2016), 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.

20. The Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition Nos.490 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

22. All concerned regulatory authorities to act on an authenticated copy of this order along with the Scheme and Form of Minutes.

(S.C. Gupte, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.
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