IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 473 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 307 OF 2016

Fortune Financial Services (India) Limited………… Petitioner Company

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

And

In the matter of Section 391 & 394 of the Companies Act, 1956; (to the extent applicable provisions of the Companies Act, 2013)

And

In the matter of Scheme of Amalgamation of ITI Wealth Management Private Limited with Fortune Financial Services (India) Limited and their respective shareholders and creditors

Called for Hearing

Mr. Hemant Sethi and Mr. Ajit Singh Tawar i/b Hemant Sethi & Co., Advocates for the Petitioners.
Mr. Ashish Mehta, i/b Mr. Pankaj Kapoor, for the Regional Director.

CORAM: A. K. MENON, J.

DATE: 20th OCTOBER 2016

1. Heard Counsel for the parties. No objector has come before the Court to oppose the Scheme and neither party has contravened any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 and any other relevant provisions of the Companies Act, 1956 and Companies Act, 2013, to the extent notified and applicable, to the Scheme of Amalgamation of ITI Wealth Management Private Limited

with Fortune Financial Services (India) Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner states that the Petitioner Company is presently engaged in the business of stock broking, underwriting, portfolio management, corporate advisory services, financial advisory, asset management, fund mobilization, lease financing and other financial services and the Transferor Company is presently engaged in the business of strategic investment and finance.

4. Learned counsel for the Petitioner states that the amalgamation would result into many benefits including Synergies in administration and marketing and business operations, Pooling of the human talents, strengthen the financial position of the merged entity and its capacity to borrow funds for business purposes, eliminate duplication of work, administrative services, and will result in cost savings and reflect the consolidated net worth of these companies in one balance sheet.

5. Both the Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. The learned Counsel for the Petitioner further states that, 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 respective Summons for Direction.

7. The learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner has complied with all requirements as per directions of this Court and has 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. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 17th October, 2016 stating therein that save and except as stated in para 6 (i) to 6 (vi) it appears according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In para 6 (i) to 6 (vi) of the said Affidavit, it is stated as under:

(a) *That the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, Deponent prays that the Hon 'ble Court may pass such orders as deem fit.*

(b) *That the Deponent prays that the excess of, or deficit, in the value of the assets over the value of the liabilities of the Transferor Company vested in the Transferee Company pursuant to the scheme as recorded in the books of account of the Transferee Company shall be treated as Capital Reserve and in the case of deficit, it should be treated as Goodwill as per Clause No. 8.6 of the scheme.*

(c) *The shares of the Transferor Company and Transferee Company are held by foreign body/NRI corporate as its shareholders. Hence for allotment of new shares to the shareholder of Transferor Company at the record date, the Transferee Company may be directed to comply with FEMA/RBI regulations, etc. as applicable in this regard.*

(d) *The Petitioner Companies in the Clause No. 17 inter alia has mentioned that upon the scheme becoming effective, without any further act or deed, the Transferee Company shall be re-named as "The Investment Trust of India".*

Therefore, Deponent prays that the Hon'ble Court may pass orders that this change may be allowed only subject to the compliance of the provisions of the section 4, 13 and other applicable provisions of the Companies Act, 2013 and rules and guidelines made thereunder.

(e) *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.*

(f) *That the Registered Office of the Transferor Company is situated in the State of Tamil Nadu- Chennai. It is informed that the Transferor*

Company has file similar petition before the Hon'ble High Court of Tamil Nadu-Chennai for approving the said scheme

9. So far as the observation in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that in addition to compliance of Accounting Standard-14, the Petitioner Company shall pass such accounting entries which are necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

10. So far as the observation in paragraph 6(ii) of Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that surplus if any arising out of the Scheme shall be credited to Capital Reserve Account of the Petitioner Company and deficit will be debited to Goodwill Account of the Petitioner Company.

11. So far as the observation in paragraph 6(iii) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes to comply with the relevant provisions of FEMA / RBI regulations as may be applicable with regard to allotment of new shares to the foreign shareholder, if any.

12. So far as the observation in paragraph 6(iv) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel clarifies that the change of name of the Transferee Company to "The Investment Trust of India Limited" and proposed amendment to Memorandum of Association as per Paragraph 17 of the Scheme is already approved by the Shareholders of the Petitioner Company and further it undertakes to comply with the Section 4 & 13 of the Companies Act, 2013 with regard to filing of relevant E-form and the amended copy of the Memorandum of Association with the Registrar of Companies.

13. So far as the observation in paragraph 6(v) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel states that it is bound to comply with all applicable provisions of the Income Tax Act, 1961 read with Income Tax Rules, 1962 issued in that behalf.

14. So far as the observation in paragraph 6(vi) of the Affidavit of the Regional Director is concerned, the Petitioner Company through its counsel submit that the Transferor Company has filed a similar petition before High Court

of Madras for approval of the Scheme bearing CP/297/2016 and the same is pending for approval.

15. The Counsel for the Regional Director on instructions from Mr. R. K. Dalmia, Deputy Director in the office of Regional Director states that they are satisfied with the undertakings and submission given by the Petitioner Company. The said undertakings & submission given by the Petitioner Company are accepted.

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 filed by the Petitioner Company is made absolute in terms of prayer (a) of the Company Scheme Petition.

18. The Petitioner Company 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 receipt of the Order from the Madras High Court in respect of Petition filed by the Transferor Company.

19. The Petitioner Company are directed to file a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court (O.S.), Bombay with the concerned Registrar of Companies, electronically, along with INC – 28 in addition to physical copy as per the relevant provisions of the Companies Act, 2013/1956.

20. The Petitioner Company to pay costs of INR 10,000/- to the Regional Director, Western Region, Mumbai. 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 a copy of this order along with 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