IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 559 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 519 OF 2016

ABSOTHERM FACILITY MANAGEMENT PRIVATE LIMITED

………… Petitioner

AND

COMPANY SCHEME PETITION NO. 560 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 520 OF 2016

CANNON HYGIENE (INDIA) PRIVATE LIMITED ………… Petitioner

AND

COMPANY SCHEME PETITION NO. 561 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 521 OF 2016

OCS GROUP (INDIA) PRIVATE LIMITED ………… Petitioner

In the matter of the Companies Act, 1956 (1 of 1956) (and the rules made thereunder or any other Section for the time being in force);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other applicable provisions of Companies Act 1956 or Companies Act, 2013;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement

BETWEEN Absotherm Facility Management Private Limited ("Transferor Company 1") AND Cannon Hygiene (India) Private Limited ("Transferor Company 2") AND OCS Group (India) Private Limited (" Transferee Company ") AND their respective Shareholders and Creditors

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners.
Mr.Atul S Singh i/b Mr. Pankaj Kapoor for Regional Director.
Mr. Vinod Sharma Official Liquidator, present in Company Scheme Petition No. 559 and 560 of 2016.

CORAM: S.C. Gupte, J.
DATE: 22nd November, 2016

1. Heard the learned counsel for the Petitioner Companies. 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 read with Sections 100 to 103 of the Companies Act, 1956, to the Composite Scheme of Amalgamation and Arrangement between Absotherm Facility Management Private Limited and Cannon Hygiene (India) Private Limited and OCS Group (India) Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 559 of 2016 is business of providing maintenance services to hotels and other types of industrial establishments, Petitioner in Company Scheme Petition No. 560 of 2016 is engaged in the business of providing hygiene services, healthcare, pest control and confidential waste related services,

Petitioner in Company Scheme Petition No. 561 of 2016 is presently engaged in the business of engineering consultancy services.

4. Leaned advocate for the Petitioner Companies states that OCS group is an international facilities services group which operates in India primarily through its entities viz; Absotherm Facility Management Private Limited, Cannon Hygiene (India) Private Limited and OCS Group (India) Private Limited. Now, as a part of overall group restructuring the group intends to reorganise the share capital of the Transferee Company and subsequently consolidate entities engaged in various business verticals of facility management services with a view to provide a complete array of products and seamless services to customers under a single entity. Thus, by this Scheme of Amalgamation it is proposed to merge the Transferor Company 1 and Transferor Company 2 with the Transferee Company for the purposes of inter alia, achieving the benefits of improved synergies, better, efficient and economical management, control and running of their businesses, further development and growth of their businesses, to avoid and eliminate unnecessary duplication of costs of administration, and to achieve administrative convenience.

5. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. Learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. Learned Advocate for the Petitioners further states that the Petitioner Companies 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 there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit dated 17th November, 2016 stating therein that save and except as stated in paragraph 6 (i), 6(ii), 6(iii), 6(iv), 6(v) and 6(vi) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6 (i), 6(ii), 6(iii), 6(iv), 6(v) and 6(vi) of the said affidavit it is stated that:

i. *In addition to 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 Standards such as AS-5 etc.*

ii. *The Deponent further prays that the clause 4.2 to 4.4 of this scheme should read as follows: The surplus arising on reduction and re-organisation of issued, subscribed and paid-up share capital of the Transferee Company pursuant to clause 4.2 to 4.4 of this Scheme shall be adjusted against balance lying in its Profit and Loss Account /Capital Reserve.*

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

iv. *Petitioner in clause no. 13.5 of the Scheme has inter alia mentioned that in case of any differences in accounting policy between the Transferor Companies and the Transferee Company, the accounting policies followed by the Transferee Company will prevail and the differences till the Appointed Date will be quantified and adjusted in the Capital Reserve/Goodwill Account to ensure that the financial statements of the Transferee Company reflect the* *financial position on the basis of consistent accounting policy. The Deponent submits that the differences as suggested above till the appointed date should be quantified and adjusted in the Profit and Loss Account/Reserves in compliance with AS-14 (para 34) read with AS-5.*

v. ROC-Mumbai has observed in its letter no. ROC/JTA(AK)262738/391/394/521 dated 15.09.2016 that the Transferee Company in its Balance Sheet as at 31.03.2015 has shown 'amount received against payment made on behalf of director'. The company has made payment on behalf of the director but has not shown the details in the Balance Sheet, thus violation of Section 134 of the Companies Act, 2013. Therefore, the Deponent submits that Hon'ble Court may direct the Petitioner Companies to make the default good in accordance with provisions of the Companies Act, 2013.

vi. 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.

9. As far as observations made in paragraph 6(i) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company undertakes that in addition to compliance of AS-14 and AS-5, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

10. Learned Advocate for Petitioner Companies submits that as per observation raised by the Regional Director in paragraph 6(ii) of his Affidavit, Clause 4.8 of the Scheme is required to be amended and seeks leave of this Court to amend the same and accordingly, in Clause 4.8 the words "**<u>if any</u>**" after the word "The surplus" will be deleted.

The amended Clause 4.8 shall be read as under:

"4.8 The surplus arising on reduction and re-organisation of issued, subscribed and paid-up share capital of the Transferee Company pursuant to clause 4.2 to 4.4 of this Scheme shall be adjusted against balance lying in its Capital Reserve."

In view of above, leave to amend is granted. Amendments to be carried out within four weeks from today.

11. As far as observations made in paragraph 6(iii) of the Affidavit of the Regional Director is concerned, the Transferee Company undertakes that while issuing new shares by the Transferee Company to the shareholders of the Transferor Companies, the Transferee Company will comply with FEMA/RBI regulations as applicable in this regard.

12. Learned Advocate for Petitioner Companies submits that as per observation raised by the Regional Director in paragraph 6(iv) of his Affidavit, Clause 13.5 of the Scheme is required to be amended. Accordingly, in Clause 13.5 the words "**Capital Reserve/Goodwill Account**" after the word "quantified and adjusted in the" in Clause 13.5 of the Scheme shall be replaced with **"Profit and Loss Account/Reserves.**

The amended Clause 13.5 shall be read as under:

13.5 In case of any differences in accounting policy between the Transferor Companies and the Transferee Company, the accounting policies followed by the Transferee Company will prevail and the differences till the Appointed Date will be quantified and adjusted in the Profit and Loss Account/Reserves to ensure that the financial statements of the Transferee Company reflect the financial position on the basis of consistent accounting policy."

In view of above, leave to amend is granted. Amendments to be carried out within four weeks from today.

13. As far as observations made in paragraph 6(v) of the Affidavit of the Regional Director is concerned, the Transferee Company states that if there is any consequence of the stated violation, the Transferee Company undertakes to follow the necessary corrective measures to rectify the violation as per the provisions of Companies Act, 2013.

14. As far as observations made in paragraph 6(vi) of Affidavit of the Regional Director is concerned, the Petitioner / Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

15. The Counsel for the Regional Director on instructions of Mr. R K Dalmia Deputy Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submissions given by the Petitioner Companies. The said undertaking given by the Petitioner Companies are accepted.

16. The Official Liquidator has filed his report on 24th October, 2016 in the Company Scheme Petition No 559 and 560 of 2016 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved without being wound up.

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, all the Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (d)

19. The Petitioner Companies to lodge a copy of this order and amended Scheme along with Form of Minutes 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 issuance of Order.

20. Petitioner Companies are directed to file a copy of this order and amended Scheme along with Form of Minutes with the concerned Registrar of Companies, electronically, along with E-Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

21. All the Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in Company Scheme Petition No. 559 to 560 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.

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 and amended Scheme along with Form of Minutes 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.

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