IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 592 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 634 OF 2016.

RUPA INFOTECH AND INFRASTRUCTURE PRIVATE LIMITED
....Petitioner/ the Demerged Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 593 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 635 OF 2016
RUPA RENAISSANCE LIMITED
....Petitioner/ the Resulting Company

In the matter of the Companies Act, 1 of 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between RUPA INFOTECH AND INFRASTRUCTURE PRIVATE LIMITED, the Demerged Company and RUPA RENAISSANCE LIMITED, the Resulting Company.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. Pranil K. Sonawane i/b Mr. Pankaj Kapoor for the Regional Director.

CORAM: S.C. GUPTE, J.
DATE: 14th 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 Arrangement between RUPA INFOTECH AND INFRASTRUCTURE PRIVATE LIMITED, the Demerged Company and RUPA RENAISSANCE LIMITED, the Resulting Company,

under Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Demerged Company and the Resulting Company are engaged in the business of developing, operating, maintaining, constructing, building, or otherwise owning Information Technology (IT) Parks in India and further that the Demerged Company has executed and established two distinct IT Park projects namely Rupa Solitaire and Platinum Technopark at Navi Mumbai, Maharashtra and is now establishing a new IT Park Project at Plot No. D-33, Trans Thane Creek Industrial area, Thane, Maharashtra ("Transferred Undertaking"). The Learned Counsel for the Petitioners further states that the Proposed Scheme of Arrangement envisages the transfer and vesting of the entire business and the new IT Park project under implementation of the Transferred Undertaking of the Demerged Company into the Resulting Company, which in the opinion of the management will result in benefit of management focus, greater transparency and visibility of performance of individual businesses and ascertainment of appropriate risk to different businesses and ease in determining relevant valuation for the same.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners 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 17th 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) *That the Petitioner Companies should pass accounting entries as mentioned in AS-5 and other Accounting Standards as applicable. Therefore, Deponent prays that the Hon'ble Court may pass such orders as deem fit. .*

(ii) *This Demerger involves transfer of land known as Plot No. D-33, lying in the Trans Thane Creek Industrial Area, Village Bonsari, Taluka and Registration Sub-District Thane and Registration District Thane containing by admeasurement 18,969 sq.mtrs. The Deponent prays that the matter may be referred to the Stamp Duty for adjudication.*

(iii) *Petitioner in clause 7.4 of the Scheme inter alia mentioned that:*

a. Upon coming into effect of the scheme, the existing clause V of the Memorandum of Association of the Resulting Company shall stand deleted and instead substituted with new clause V as under:

> *"V. The Authorised Share Capital of the Company is Rs. 18,00,00,000/- (Rupees Eighteen Crore only), divided into 1,80,00,000 (One Crore Eighty Lakhs only) equity shares of Rs.10/- (Ten) each.''.*

b. The Resulting Company will pay necessary stamp duty in respect of the increase in authorized capital in terms of sub-clause (a) above and will file the necessary forms and pay the filing fees with Registrar of Companies.

Therefore, the Deponent prays that the Hon'ble High Court may direct the company to make compliance of the provisions of Companies Act, 2013 read with rules etc.

(iv) 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 Demerger. 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 Petitioner Company through its counsel submitted that the Petitioner Company will comply with provisions of Accounting Standard-5 and other Accounting Standards as applicable.

9. So far as the observation in paragraph 6(ii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submitted that transfer of leasehold rights in the land belonging to the Demerged Company to the Resulting Company is being done pursuant to and as a part of the Scheme of Arrangement and Article 25 (da) of Schedule I of Maharashtra Stamp Act would apply. A certified copy of the order passed sanctioning the Scheme will be filed with the Superintendent of Stamps, Mumbai for adjudication of stamp duty payable on the order sanctioning the Scheme. The requisite duty as prescribed by Article 25 (da)

of Schedule I of Maharashtra Stamp Act would be paid by the Petitioners. The said explanation is found to be satisfactory.

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 submits that the Resulting Company has already in para 7.4 (b) of the Scheme stated that it will pay necessary stamp duty, file the requisite forms and pay the filing fees for increase in its Authorised Share Capital. It will also comply with the provisions of the Companies Act, 2013 read with the rules in respect of increase of Authorised Share Capital.

11. So far as the observation in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits 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.

12. The Learned Counsel for Regional Director on instructions of Deputy Director 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.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 592 of 2016 is made absolute in terms of prayers clause (a) to (c) and 593 of 2016 is made absolute in terms of prayer clauses (a) to (c).

15. 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.

16. The Petitioners are directed to file a certified copy of 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.

17. 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.

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

19. All concerned regulatory authorities to act on an authenticated copy of this order along with Scheme.

(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.