

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 680 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 569 OF 2015

Halcyon Finance & Capital Advisors Private Limited....Petitioner

AND

COMPANY SCHEME PETITION NO 681 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 570 OF 2015

Neo Legno Products Private Limited.....Petitioner

AND

COMPANY SCHEME PETITION NO 682 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 571 OF 2015

Radiant Life Care Private Limited.....Petitioner

In the matter of Companies Act, 1956;

AND

In the matter of Sections 391 to 394 read with
Sections 100 to 103 of the Companies Act, 1956
and Section 52 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between
Halcyon Finance & Capital Advisors Private Limited
and Neo Legno Products Private Limited and
Radiant Life Care Private Limited and their
Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners.

Mr. Vinod Sharma, Official Liquidator, present in the Company Scheme
Petition No. 680 of 2015.

Mr. N.D. Sharma, i/b Mr. Pankaj Kapoor, Regional Director in all the Company Scheme Petitions.

CORAM: S.C. GUPTE, J.

DATE: 9TH DECEMBER 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 Arrangement between Halcyon Finance & Capital Advisors Private Limited, Neo Legno Products Private Limited and Radiant Life Care Private Limited and their Respective Shareholders
3. Halcyon Finance & Capital Advisors Private Limited is, inter alia, engaged in rendering financial consultancy and business advisory services, particularly in the hospitality, real estate and mining sectors (collectively referred to as 'non-health care businesses) and the health care sector, either directly or indirectly through subsidiaries and associates. Neo Legno Products Private Limited is presently engaged in hospitality and real estate business and also offers advisory services in the hospitality, mining and real estate sectors. Radiant Life Care Private Limited is primarily engaged in the business of managing and operating hospitals.
4. Learned counsel for the Petitioners states that the arrangement would help rationalize and simplify the shareholding / ownership structure of all the companies and align the interests of all shareholders in health care and non-health care businesses (as more particularly identified in the Scheme), in a manner that is compliant with all the regulatory requirements.
5. All the Petitioner Companies have approved the said Scheme by

passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Counsel for the Petitioners further states that, Petitioner companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.
7. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioners 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 on 11th January, 2016 stating therein that save and except as stated in paragraph 6 it appears according to R.D. that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, it is stated as under:

That the Deponent further submits that,

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 Company

9. So far as the observation in paragraph 6 of the Affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel state 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.

10. The Counsel for the Regional Director on instructions from Mr. R. Ramakantha, Joint Director in the office of Regional Director stated that they are satisfied with the undertaking and clarification given by the Petitioner Companies. The said undertaking & clarification given by the Petitioner Companies are accepted.
11. The Official Liquidator has filed his report on 9th June, 2016 in the Company Scheme Petition No. 680 of 2015 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.
12. The Counsel for the Petitioners tenders affidavit dated 29th November 2016 filed by the Transferor Companies and the Transferee Company and has placed on record that the board of directors resolved for deletion of Part-C of the Scheme relating to amalgamation of the Remaining Business of Halcyon Finance & Capital Advisors Private Limited into Radiant Life Care Private Limited, therefore exclusion/deletion of Radiant Life Care Private Limited from the Scheme.
13. The reasons for modification is stated in paragraph 5 of the Additional Affidavit dated 29th November 2016. The Counsel for the Petitioners further submit that the proposed modification to the Scheme has been approved by all the shareholders of the Petitioner Companies. The draft amendment to the Scheme is annexed as Exhibit-A to the additional Affidavits and the modified Scheme is annexed as Exhibit-C to the additional Affidavits.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 680 of 2015 and Company Scheme

Petition No 681 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer (a) of the respective Company Scheme Petition. The Petitioner in Company Scheme Petition No. 682 of 2015 (i.e. Radiant Life Care Private Limited) is allowed to withdraw the Petition and the same is dismissed for want of prosecution. The modifications to the proposed Scheme are allowed and the modified Scheme as annexed at Exhibit-D to the additional Affidavits of Halcyon Finance & Capital Advisors Private Limited and Neo Legno Products Private Limited dated 29th November 2016 (Scheme Petition No. 680 of 2016 and 681 of 2016) is approved and made absolute by this Court.

16. The Petitioner Companies to lodge a authenticated copy of this order and the modified Scheme, 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.
17. The Petitioner Companies are directed to file authenticated copy of this order and the modified Scheme, 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.
18. The Petitioner Companies in all the Company Scheme Petitions to pay costs of INR 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 680 of 2015 to pay cost of INR 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned authorities to act on a authenticated copy of this order along with modified Scheme annexed as Exhibit-D to the Additional affidavits dated 29th November 2016 filed by Petitioners in Company

Scheme Petition No. 680 of 2016 and Company Scheme Petition No. 681 of 2016 .

(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