IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 693 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 333 OF 2015

SIDDHI MARKETING PRIVATE LIMITED … PETITIONER COMPANY (TRANSFEROR COMPANY)

AND

COMPANY SCHEME PETITION NO. 694 OF 2015

CONNECTED WITH

COMPANY SCHEME PETITION NO. 334 OF 2015

INTERNATIONAL TRANSMISSION LTD… PETITIONER COMPANY (TRANSFEREE COMPANY)

CALLED FOR HEARING

Mr. A.P Kothari, Advocate for the Petitioner Companies in both the Petitions.

Mr. V. Sharma Official Liquidator, in the Petition No. 693/2015.

Mr. N.D. Sharma instructed by Mr. A.A. Ansari for Regional Director in both the Petitions.

CORAM:B.P.COLABAWALLA, J.

DATE : 1ST April, 2016

P.C:-

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

2. The sanction of this Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Siddhi Marketing Pvt.Ltd with International Transmission Ltd.

3. The learned Counsel for the Petitioner Companies states that the Transferor Company is engaged in the business as buyers, sellers, traders, merchants, marketing, mediators etc and Transferee Company is engaged in the business as manufacturer, processor, importers, exporters in all kinds of energy transmission products etc.

4. The benefit of the proposed Scheme of Amalgamation are that both the Companies are promoted by Mr.S.M.Shah and his relatives who hold substantial interest in each of the Company and Amalgamation would provide better synergy of business, and avail of financial resources as well as managerial, technical, distribution and marketing resources of each other in the interest of maximizing shareholders and stakeholders' value.

5. The shareholders of the Transferor Company and the Transferee Company have approved the scheme and given their consent for dispensation of the meeting of shareholders. The Board of Directors of both the companies have also passed resolution approving the scheme.

6. Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the Orders passed in the said Company Summons for Direction.

7. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all the requirements as per directions of this Court and have filed necessary Affidavits of compliance in Court. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or the Companies Act, 2013 and the Rules made there under, whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his Report on 17th March 2016 in Company Scheme Petition No. 693/2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved subject to placing of records the strict proof of receipt of Rs.82,28,000/- by Ashwamedh Builders Developers Private Limited. The Transferor Company undertakes to place the proof of receipt of Rs. 82,28,000/- in this Hon'ble Court.

9.The Regional Director has filed an Affidavit on 9th March 2016 stating therein that save and except as stated in para 6(a) to (d) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Para 6 of the said Affidavit, it is stated that:

"6. That the Deponent further submits that:

(a) Clause 4.1.15(h) of the scheme provides for adjustment for differences in accounting policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to compliance of Accounting Standard -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.

(b) Clause No.12 of the scheme provides for amendment to the object clause of the Memorandum of Associations of Transferee Company. In this regard Transferee Company shall comply with the provisions of section 13 r.w. 15 of the Companies Act, 2013.

(c) It has been observed that in clause 4.1.15, separate accounting treatment is provided for Transferee Company, under the head "Accounting Treatment in the Books of Transferee Company". In sub clause (a) thereof, it has been stated that the assets and liabilities comprised in the undertaking vested in the Transferee Company will be at the value determined pursuant to the valuation report prepared by the valuer. This clearly shows that the Transferee

Company intends to record the assets and liabilities on fair value basis. Whereas in the preceding sub clause (d) of clause 4.1.15, it has been stated that Transferee Company shall record the assets and liabilities of the Transferor Company at their book value as appearing in the books of the Transferor Company. It is therefore suggested that the petitioner Company may be directed to provide the exact Accounting Treatment which the Transferee Company is intending to follow.

Similarly, sub-clause (b) under the head "Accounting Treatment in the books of the Transferee Company" is running contrary to what has been stated in sub-clause (f) of 4.1.15. The surplus arising due to transfer of Capital assets has to be transferred to capital reserve account only, accordingly it has been rightly discussed in sub-clause (f) of clause 4.1.15. Whereas in sub-clause (b) under the head "Accounting Treatment in the Books of Transferee Company" it has been stated that the surplus will be adjusted against the securities premium account. It is therefore suggested that the word "Securities Premium" appearing in the sub-clause be substituted by the word "Capital Reserve". The Petitioner Company may be directed to correct the same suitably in the scheme/petition.

d) In this regard, it is respectfully submit that the tax issue if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company after giving effect to the Amalgamation. The decision of the Income Tax Authority is binding on the petitioner Company.

10. With respect to Para 6(a) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Company states that the Transferee Company undertakes that they shall pass

such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards such AS-5.

11. With respect to Para 6(b) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Company states that the Transferee Company undertakes to comply with provisions of Section 13 r.w 15 of the Companies Act, 2013.

12. With respect to Para 6(c) of the Affidavit of the Regional Director, the Learned Counsel for the Transferee Company states that the Transferee Company shall record the assets and liabilities of the Transferor Company as per book value of the Transferor Company. The Petitioner Companies agrees to substitute the word "Capital Reserve" in place of "Securities Premium" and the Petitioners may be permitted to carry out the corrections forthwith in the Scheme of Amalgamation as well as in the Company Scheme Petitions.

13. With respect to Para 6(d) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Petitioner companies are bound to comply with all the provisions of Income Tax and all tax issues arising out of the scheme will made and answered in accordance with the law.

14. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal 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 Advocate for the Petitioner Companies. The undertakings given on behalf of the Petitioner Companies are accepted.

15. 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.

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

17. The Petitioner Companies 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 sixty days from the date of the Order.

18. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21/ INC 28 in addition to the physical copy, as per relevant provision of the Companies Act, 1956 or Companies Act, 2013, whichever is applicable.

19. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 693 of 2015.

20. 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 alongwith Scheme, duly authenticated by the Company Resgistrar, High Court (O.S.).

(B.P. COLABAWALLA.J)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer.