IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 771 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 684 OF 2015

Checkmate Consultancy (Bombay) Private Limited....Petitioner Company

AND

COMPANY SCHEME PETITION NO. 772 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 685 OF 2015

Talisman Consultants Private Limited ....Petitioner Company

In the matter of the Companies Act, 1956;

And

In the matter of Section 391 & 394 of Companies Act, 1956;

And

In the matter of Scheme of Amalgamation of Checkmate Consultancy (Bombay) Private Limited and Talisman Consultants Private Limited with TechProcess Payment Services Limited and their Respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Mr. Dushyant Kumar i/b Mr. A.A. Ansari for Regional Director.
Mr. Vinod Sharma, Official Liquidator Present

CORAM: B. P. Colabawalla, J.

DATE: 1st APRIL, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation 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 of the Companies Act, 1956, to the Scheme of Amalgamation of Checkmate Consultancy (Bombay) Private Limited and Talisman Consultants Private Limited with TechProcess Payment Services Limited and their Respective Shareholders.

3. The Learned Counsel for the Petitioner states that both the Petitioner Companies are principally engaged in back office processing Services.

4. The Learned Counsel for the Petitioner states that the Scheme will result into following benefits namely that the amalgamation will enable consolidation of the Group's Operations into one entity and provide impetus for the growth of the Transferee Company, the consolidation by way of amalgamation will lead to stronger and wider

capital and financial base for future growth/expansion, the amalgamation will lead to better leverage of facilities and infrastructure for better administration, the amalgamation will result in economy of scale and reduction in administrative, managerial and other expenditure, operational rationalization and optimal utilization of various resources, Duplication of administrative functions will be eliminated resulting in reduced expenditure, the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferor Companies and Transferee Company, there will be improvement in financial structure and management of the Transferee Company and the consolidation of all the businesses would increase the long term value for shareholders and investors.

5. The Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Companies and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petition.

6. The Learned Counsel for the Petitioner further states that since the Transferor Companies are wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Companies are presently held by the Transferee Company, TechProcess Payment

Services Limited and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Companies by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by TechProcess Payment Services Limited, the Transferee Company was dispensed with, by orders dated 14th August, 2015 passed in CSD NO. 684 of 2015 & CSD NO. 685 of 2015.

7. The Learned Counsel for the Petitioner further states that the Petitioner Companies has complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company Summons for Direction.

8. The Learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Companies has complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes 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.

9. The Official Liquidator has filed his report on 25th January, 2016 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved by this Court.

10. The Regional Director has filed an Affidavit on 29th February, 2016 stating therein, save and except as stated in paragraph 6(a) & (b) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) & (b) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) Clause 12 of the scheme provides for merging of the authorized capital of Transferor Company with that of Transferee Company. In the table provided in the said clause the issued , subscribed and paid up share capital has been shown as 2,97,64,297 equity shares of Rs 10/- each fully paid up amounting to Rs 29,76,42,970/-. Whereas the paid up capital of the Transferee Company is only Rs 297,004,970 represented by 2,97,00,497 equity share of Rs 10/- each. In as much as no shares will be issued by the Transferee Company for amalgamation of the Transferor Company there would be no increase in the paid up capital of Transferee Company, Hence, the petitioner company shall carry out suitable corrections in the scheme/petition.

(b) *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 company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.*

11. As far as the observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that as there is no issue of shares to the members of the Petitioner / Transferor Companies, therefore the reference of the Issued, Subscribed and Paid up Share Capital in the said paragraph needs to be deleted. The Petitioner Companies therefore seeks leave of this Court to modify the Scheme by deleting reference of the Issued, Subscribed and Paid up Share Capital under the table mentioned in Clause 12 of the Scheme.

12. In view of above, leave to amend Scheme by deleting reference of the Issued, Subscribed and Paid up Share Capital under the table mentioned in Clause 12 of the Scheme and all consequential amendments are allowed. Amendment to be carried out within a period of three weeks.

13. So far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company undertakes that the Transferee Company is 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.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Petitioner Companies and agrees with the amendment sought by the Petitioner Companies. The said undertakings given by the Petitioner Company 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, the Company Scheme Petition No. 771 of 2015 and Company Scheme Petition No. 772 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petition.

17. The Petitioner Companies are directed to file a copy of this order and the amended 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.

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

19. The Petitioner Companies to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

21. All concerned regulatory authorities to act on a copy of this order along with amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B. P. Colabawalla, J.)

CERTIFICATE

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

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