IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 876 Of 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 567 Of 2015

RUSHMI LOGISTICS PRIVATE LIMITED

.... Demerged / Petitioner Company

AND

COMPANY SCHEME PETITION NO. 877 Of 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 568 Of 2015

DIVYA SHIPPING AND CLEARING SERVICES PRIVATE LIMITED

.... Resulting / Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956)

AND

In the matter of Sections 391 to 394 read with section 100 to 104 the Companies Act, 1956

AND

In the matter of Scheme of Arrangement between Rushmi Logistics Private Limited and Divya Shipping And Clearing Services Private Limited and their respective shareholders.

<u>Called for hearing</u>

Mr. Chandrakant Mhadeshwar, Advocate for the Petitioner Company

Mr. Dushayant Kumar i/b Pankaj Kapoor Regional Director for the Petitioner Company

CORAM: A. K. Menon, J.

DATE: 29th September, 2016

PC:

1. Heard Learned Counsel for the Petitioner Company. 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 this Court is sought under Sections 391 to 394 read with Sections 100 to 104 of the Companies Act, 1956 to the Scheme of Arrangement between Rushmi Logistics Private Limited and Divya Shipping And Clearing Services Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner 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 Company Scheme Petitions of the respective companies.

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

5. The Learned Counsel appearing on behalf of the Petitioner Companies has 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.

6. The Regional Director has filed an Affidavit on 23rd August, 2016 stating therein that save and except as stated in para 6(a) to 6(e), it appears, according to Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In para 6(a) to 6(e) of the said Affidavit, the Regional Director has stated as follows:-

> *"6. That the Deponent further submits that,*
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> *(a) Petitioner in clause No. 36 of the scheme inter alia has mentioned that, the Resulting company will issue and allot 250 fully paid up equity shares of Rs 10/- each for every 1 fully paid up equity share of Rs 10/- each held in Rushmi Logistics Private Limited, Demerged Company. Petitioner in such Clause No. 36A of the scheme inter alia has mentioned that upon effectiveness of the scheme, pursuant to the demerger the issued subscribed and paid up equity share capital of the Demerged Company shall be the share capital of Rushmi Logistics Private Limited herein Transferor is henceforth Rs 2,00,000 divided into 2,00,000 equity shares of Rs. 1/- each fully paid up reduced herein from Rs 1,00,00,000/- divided into 10,00,000 equity shares of Rs 10/- each fully paid up. The order of the Court sanctioning the scheme shall be deemed to be an order under section 102 of the Companies Act, 1956 and other applicable provisions of the relevant act confirming the reduction without imposing a condition on RLPL to add to its name and reduced. Where as in the scheme Authorized Share Capital is mentioned as Rs 1,00,00,000/-*
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> *(b) Petitioner below clause 36 of the scheme by way of pasting added clause 36 A regarding reduction of capital and cancellation of shares of Transferor Company stating that this clause is ridor amended as per order dated 07/05/2016. Copy of the order was not served to the deponent. Therefore, it is not clear whether the modification of the scheme has the approval of Hon'ble High Court. Petitioner may be asked to serve the revised scheme as per orders of the Hon'ble Court.*
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> *(c) The petitioner company submitted letter dated 23/03/2015 which is marked as Exhibit 'D' from M/s Shapaaria Mehta & Associates LLP Chartered Accountants regarding determination of Swap Ratio of equity shares for the proposed Merger of Multi Modal Transport*

Operator and Non Vessel Owner Cargo Carrier Business carried by Rushmi LogisticsPrivate Limited & clearing & forwarding CHA, letting out of trailer on hire etc, business of Divya Shipping and Clearing Services Private Limited wherein it is interalia mentioned that for this merger Divya Shipping and Clearing Services Private Limited, Resulting Company will issue and allot 1 (one) fully paid up equity shares of Rs 10/- each for every 13 (thirteen) fully paid up equity shares of Rs 10/- held in Rushmi Logistics Private Limited which is contradictory to what is stated above, Deponent prays that the petitioner company may be asked to clarify for the different swap ratio and asked to file revised scheme.

(d) Petitioner in Clause No. 38 of the Scheme inter alia has mentioned that Accounting Treatment. However, not undertaken to make compliance of Accounting Standards- 14. Deponent prays that the Hon'ble Court may direct the company to ensure compliance of applicable accounting standards including AS-14, further to what is stand in clause 38 of the scheme.

(e) 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."

7. So far as the observations made in paragraph 6 (a) of the affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioners states that this Court, had vide its order dated 6th day of May, 2016 passed in Company Application No. 285 of 2016 dispensed with the requirement of following the procedure prescribed under 101 (2) of the Companies Act, 1956. In view of the fact that the reduction of the capital and utilization of the Share Premium Account does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital and is not prejudicial to the interest of the shareholders and / or creditors. There is no requirement of filing a separate application.

8. So far as the observations made in paragraph 6 (b) of the affidavit of the Regional Director is concerned, counsel for the Petitioner Companies submits that the Petitioner Companies had filed Company Application No. 285 of 2016 and 286 of 2016 for amendment in the Scheme. Learned Counsel further states that this Court, had vide its order dated 6th day of May, 2016 allowed the amendments in the Scheme as per Schedule A annexed to the said application and the Petitioner had carried out the amendments to the Scheme as per order dated 6th day of may, 2016.

9. So far as observation made in paragraph 6 (c) of the Affidavit of the Regional Director is concerned, the Counsel for the Petitioner Companies submit that as per order dated 22nd day of September, 2016 the necessary amendments has been carried out in Clause 36 of the Scheme.

10. So far as the observation in paragraph 6 (d) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

11. So far as the observation made by the Regional Director in paragraph 6 (e) of the affidavit of the Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Petitioner is bound to comply with all the applicable provisions of the 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 the Regional Director on the instructions of Ms. P. Sheela, Joint Director 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 Advocate for the Petitioner Company. The said undertakings given by the Petitioner Companies 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. None of the parties concerned have come forward to oppose the Scheme in the court.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 876 of 2015 is made absolute in terms of the prayer clauses (a) to (d) and Company Scheme Petition No. 877 of 2015 is made absolute in terms of the prayer clauses (a) to (c).

15. The Petitioner Company to file a copy of this order and 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 final Order.

16. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies,

electronically, along with concerned E-Form INC 28 pursuant to the Companies Act, 2013 in addition to physical copy as per provisions of the Companies Act 1956 / 2013.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs 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 a copy of this order along with the Scheme and the form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(A. K. Menon, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.