IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 842 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 615 OF 2015

Vigil Stocks and Shares Private Limited

…………Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 843 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 615 OF 2015

Smit Capital Services Private Limited

……..Petitioner/Transferee Company

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Vigil Stocks and Shares Private Limited with Smit Capital Services Private Limited and their Respective Shareholders

Called for Hearing

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

Ms. Purnima Awasthi , i/b Mr. A. A. Ansari for Regional Director.

Mr. Vinod Sharma, Official Liquidator, High Court, Bombay

CORAM: B.P. Colabawalla, J.

DATE: 7th April , 2016

1. Heard the learned counsel for the Petitioner Companies. 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 the Court is sought to the Scheme of Amalgamation of Vigil Stocks and Shares Private Limited with Smit Capital Services Private Limited and their Respective Shareholders.

3. The Transferor Company is presently engaged in the business of buying and selling of shares, commission agent for insurance. The Transferee Company is engaged in the business of buying and selling of shares, commission agent for insurance.

4. The rational for the Scheme is that with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Vigil Stocks and Shares Private Limited into Smit Capital Services Private Limited. The amalgamation of the undertakings of the Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. The Petitioner Companies have approved the Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Counsel for the Petitioners further states that the Petitioners have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Counsel for the Petitioners further states that the Petitioners have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioners through their Counsel undertakes to comply

with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 27th January , 2016 stating therein that save and except as stated in paragraph 6 (a) and (b) of the said Affidavit, 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:

The Deponent further submits that:

(a) *Clause 8.5 of the scheme provides for adjustment for differences in Accounting Polices 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) 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.

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Transferee Company undertakes 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 of Amalgamation to comply with any other applicable accounting standards.

10. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

11. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Companies. The said undertaking given by the Petitioner is accepted.

12. The Official Liquidator has filed his report dated 30th March , 2016 in Company Scheme Petition No. 842 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 without winding up.

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 has come forward to oppose the Scheme.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 842 of 2015 and 843 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) of the respective Petitions.

15. The Petitioner Company 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 60 days from the date of receipt of Order.

16. Petitioner Company are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E - Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.

17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in company Scheme Petition No. 842 of 2015 to pay to the Official Liquidator, High Court, Bombay cost of Rs.10,000/-. 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 authorities to act on a copy of this order along with 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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