IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.272 OF 2015
IN
COMPANY SUMMONS FOR DIRECTION NO.681 OF 2014
Sedum Investments & Finance Pvt. Ltd.
(CIN No.U65990MH1994PTCO78514) ….Petitioner
WITH
COMPANY SCHEME PETITION NO.273 OF 2015
IN
COMPANY SUMMONS FOR DIRECTION NO.682 OF 2014
Subhkam Stocks & Shares Pvt. Ltd. ….Petitioner
WITH
COMPANY SCHEME PETITION NO.274 OF 2015
IN
COMPANY SUMMONS FOR DIRECTION NO.683 OF 2014
Subhkam Securities Pvt. Ltd. ….Petitioner
WITH
COMPANY SCHEME PETITION NO.275 OF 2015
IN
COMPANY SUMMONS FOR DIRECTION NO.684 OF 2014
Vilars Estates Pvt. Ltd. ….Petitioner
WITH
COMPANY SCHEME PETITION NO.276 OF 2015
IN
COMPANY SUMMONS FOR DIRECTION NO.685 OF 2014
Khazana Tradelinks Pvt. Ltd. ….Petitioner

In the Matter of Companies Act, 1956;

AND

In The Matter of the Sections 391 To 394 of the Companies Act, 1956;

AND

In Matter of Scheme of Amalgamation between Sedum Investments & Finance Private Limited and Subhkam Stocks and

Shares Private Limited and Subhkam Securities Private Limited and Vilars Estates Private Limited and Khaza Tradelinks Private Limited and their Respective Shareholders and Creditors

Called for Hearing

Mr. Birendra Saraf Counsel a/w K. H. Halai, Ajit Shinde i/b. Halai & Co. Advocates for all the petitioner in all the Petition.

Mr. M.S. Bhardwaj i/b A. A. Ansari for the Regional Director in all the Petitions.

Mr. Vinod Sharma Official Liquidator Present in CSP No. 272 to 275 of 2015.

CORAM: K.R. SHRIRAM, J
DATE: 26th FEBRUARY 2016

1. Heard the Learned Counsels for the Petitioner Companies. No objector has come before the Court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Sedum Investments & Finance Private Limited and Subhkam Stocks and Shares Private Limited and Subhkam Securities Private Limited and Vilars Estates Private Limited and Khaza Tradelinks Private Limited and their Respective Shareholders and Creditors.

3. Counsel for the Petitioner Companies states that Sedum Investments & Finance Private Limited is engaged in to investing money on personal security shares, securities stock, merchandise and other property and assets and to deal in shares and to act as sub broker. Subhkam Stocks and Shares Private Limited is primarily engaged in stock broking activities. Subhkam Securities Private Limited is primarily engaged in the business of stock broking activities. Vilars Estates Private Limited is engaged in the business of builders, engineers and contractors and also to carry on the business of constructing building and selling buildings on cash or otherwise or on ownership or co-operative basis, on hire purchase basis or any other basis or system. Khaza Tradelinks Private Limited is engaged business of investors, guarantors, and to finance, lend or advance money or give loans to such person or firm or body corporate with the object of financing industrial enterprises, either with or without interest or security or any such terms as may be determined and to receive money on deposit or loan upon such terms and conditions as the company may approve. Further, the Transferee Company is inter alia authorised to carry on the business of investment company & to purchase, acquire, hold and dispose of or otherwise invest in shares, debentures, stocks, bonds obligations and securities, issued or guaranteed by any company constituted or carrying business in India or elsewhere and debentures, bonds, stocks, obligations and securities issued or guaranteed by any government, state dominion, sovereigns ruler, commissioner, public body or authority, supreme, municipal, local or otherwise whether in India or elsewhere.

4. The Rational for the Scheme is that the Transferor Companies and the Transferee Company are closely held companies. The proposed amalgamation of the Transferor Companies with the Transferee Company in accordance with this Scheme would therefore enable the Companies to avail of the financial resources as well as the managerial, technical, distribution and marketing resources of each other in the interest of maximising stakeholder value and would be in interest of general public at large.

5. 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 state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Hon'ble High Court and they have filed necessary Affidavits of compliance with the Hon'ble High 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 undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 23rd July, 2015 stating therein that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit it is stated that:

6. That the Deponent further submits that:-

(a) *Clause 14.3 of the scheme provides for adjustment for differences in Accounting between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the 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 Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*

(c) The Transferee Company is a Non Deposit taking NBFC Company Registered with the Reserve Bank of India, Transferee Company may be directed to file a copy of the Scheme along with the Copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provision of RBI Act.

9. With respect to Para 6 (a) of the Affidavit of the Regional Director, the Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes to follow the accounting treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel submits that approval of the scheme by this Court will not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner companies after giving effect to the Arrangement and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. With respect to Para 6 (c) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Companies undertakes to file a copy of the Scheme along with the Copy of this

Hon'ble court's order with the RBI within 30 days and shall also comply with the other applicable provision of RBI Act.

12. The Counsel for the Regional Director on instructions of Mr. Chandana Muthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking by the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.

13. The Official Liquidator has filed an affidavit in reply on 19th November, 2015 opposing the scheme. According to the Official Liquidator two of the Transferor Companies, viz., Subhkam Stocks & Shares Pvt. Ltd. and Subhkam Securities Pvt. Ltd. have given donation to a Trust in which the directors of these two companies were also Trustees when these two companies had made loss in a particular financial year. According to the Official Liquidator it is not known whether the charity was done only on paper or really done and it amounts to evasion of tax and loss to exchequer. And further submitted that scheme be rejected and company Scheme petition be dismissed.

14. The Counsel for the Petitioner states that the aforesaid objection is over ruled by order dated 18th December 2015 of this Hon'ble Court.

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. 272 to 276 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

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 60 days from the date of the receipt of the Order.

18. Petitioner Companies 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 INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

19. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to py sum of Rs. 10,000/- each to the

Official Liquidator, High Court, Bombay in Company Scheme Petition Nos. 272 to 276 of 2015, 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 Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K.R. SHRIRAM, J.)

CERTIFICATE

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

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