IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 863 OF 2015

WITH

COMPANY SUMMONS FOR DIRECTION NO. 283 OF 2015

Advent Securities Private Limited…Petitioner/the Transferor Company

COMPANY SCHEME PETITION NO. 864 OF 2015

WITH

COMPANY SUMMONS FOR DIRECTION NO. 284 OF 2015

Shree Krishna Agro Industrial Services Private Limited… Petitioner/the Transferee Company

In the matter of the Companies Act of 1956

AND

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

AND

In the matter of the Scheme of Amalgamation of:

Advent Securities Private Limited.

WITH

Shree Krishna Agro Industrial Services Private Limited

AND

their respective shareholders and creditors

Called for Hearing

Mr. Ashish Parwani, i/b Rajani Singhania & Partners, Advocate for the Petitioner Company

Mr. D. R. Mishra, i/b A.A Ansari for Regional Director

Mr. Vinod Sharma, Official Liquidator Present

CORAM: B.P.Colabawalla, J

DATE: 01st April, 2016

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Advent Securities Private Limited (Petitioner/Transferor Company) with Shree Krishna Agro Industrial Services Private Limited (Petitioner/ Transferee Company).

3. The learned Advocate for the Petitioner Companies states that the Transferor Company mainly carries on the business as investment consultants, and the Transferee Company is also engaged in the business as investment consultants.

4. The learned Advocate for Petitioner Companies states that the entire business and undertaking of the Transferor Company shall stand transferred to and vested in, as a going concern, in the Transferee Company. The proposed amalgamation would *inter-alia* streamline and consolidate the Petitioner Companies and would result in value creation for the shareholders of the Petitioner Companies. It would result in consolidation of the activities of both the Petitioner Companies, thus facilitating effective management of investments with benefits of synergy.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies have respectively complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

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

8. The Regional Director has filed his affidavit stating therein that save and except as stated in paragraphs 6 (a) and (b) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) and (b) of the said Affidavit, the Regional Director has stated that

"6 That the Deponent further submits that,

(a) There is no specific clause in the scheme in respect of protecting the interest of employees of Transferor Company by the Transferee Company. Hence, Petitioner Company may be directed to safeguard the interest of employees of Transferor Company.

(b) It has been observed from the shareholders list of Transferor Company and Transferee Company that the equity shareholders of Transferor Company are not forming part of equity shareholders of Transferee Company. The scheme provides for issue of preference

shares in exchange of equity shares held by the shareholders in the Transferor Company. Hence, the shareholders of the Transferor Company may not continue to be the shareholders of Transferee Company on redemption and hence the allotment of shares is not in consonance with the provisions of Income Tax Act. Section 2(1B) of the Income Tax requires that at least 75% of shareholders of Transferor Company shall become the shareholders of Transferee Company. If , equity shares are issued then only they will have the rights and privileges attached to equity share capital of the Transferee Company also. If the preference shares are allotted then it would amount to transfer of ownership fro Transferor Company to Transferee Company. In this regard, it is respectfully submit 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. So far as the observation made by the Regional Director, Western Region, Mumbai in paragraph No. 6(a) of his Affidavit with respect to protecting the interest of the employees of the Transferor Company is concerned, the learned advocate for the Petitioner Companies states that there

are no employee(s) in the Transferor Company. Nonetheless, the employees of the Transferor Company have been included in the definition of the 'Transferor Undertaking' under clause 4.1.10.3 of the Scheme and the Transferee Company further undertakes that all the staff, workmen and employees of the Transferor Company, if in service as on the Effective Date, shall be deemed to have become staff, workmen and employees of the Transferee Company with effect from the Effective Date without any break in their service and on the basis of continuity of service and the terms and conditions of their employment with the Transferee Company shall not be less favourable than those applicable to them with reference to Transferor Company on the Effective Date. The Transferee Company also undertakes that all rights, duties, powers and obligations of the Transferor Company, in relation to Provident Fund, Gratuity Fund or any other Special Fund created or existing for the benefit of the staff, workmen and employees of the Transferor Company shall become those of Transferee Company. The undertaking is accepted.

10. So far as the observations made by the Regional Director, Western Region, Mumbai in paragraph No. 6(b) of his Affidavit in relation to issue of preference shares by the Transferee Company in exchange of the equity shares held by the shareholders of the Transferor Company is concerned, the learned advocate for the Petitioner Companies submits that Section 2(IB)(iii) of the Income Tax Act, 1961, provides for "*shareholders holding not less than three fourth in value of the*

shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,… " and therefore, the Income Tax Act, 1961 does not distinguish between the equity shareholders and preference shareholders, for the purpose of aforesaid Section 2(IB)(iii) and the requirements of the said Section 2(IB)(iii) shall stand satisfied if post sanctioning of the Scheme, at-least three-fourth shareholders (being equity shareholder or preference shareholder) of the amalgamating company should become the shareholders of the amalgamated company (being equity shareholder or preference shareholder).

11. The learned advocate for the Petitioner Companies also submits that the Transferee Company undertakes that the Scheme shall be subject to final decision of Income Tax Authority and the approval of the same by this Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the arrangement. However, the Transferee Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Transferee Company is not satisfied with the order/adjudication done by the Income Tax Authority(ies) in the aforesaid matter.

12. The Official Liquidator has filed his affidavit on 23rd March, 2016 wherein he has stated that the affairs of the Petitioner/ Transferor Company have been conducted in a proper manner. Therefore, the Petitioner/ Transferor Company may kindly be ordered to be dissolved by this Hon'ble Court.

13. The Learned Counsel for 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 and submissions made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.863 of 2015 filed by the Transferor Company are made absolute in terms of prayer clauses (a) to (h) and the Company Scheme Petition No.864 of 2015 filed by the Transferee Company are made absolute in terms of prayer clauses (a) to (g).

16. The Petitioner Companies to lodge a copy of this order and the Scheme of Amalgamation duly authenticated by the Company Registrar, High Court, Bombay, with the concerned

Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60days from the date of this Order.

17. The Petitioner Companies are directed to file/lodge 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 INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioners in both Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner/Transferor Company to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(B.P.Collabawalla, J.)

CERTIFICATE

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

Uploaded by: S. Gawde
Stenographer