IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 16 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 865 OF 2015

KSH DISTRIPARKS PRIVATE LIMITED

………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO 17 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 866 OF 2015

KSH INFRA PRIVATE LIMITED

………… Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013 and Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangementbetween KSH Distriparks Private Limited and KSH Infra Private Limited andtheir Respective Shareholders

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners in all the Petitions.

Mr. Arun Kumar Roy, Panel Counsel for Regional Director in both the Company Scheme Petitions.

CORAM: **B. P. Colabawalla**, J.

DATE: 22^{nd} 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 under Sections 391 to 394 of the Companies Act, 1956 read with Section 52 of Companies Act, 2013 and Sections 100 to 103 of Companies Act, 1956, to the Scheme of Arrangement between KSH Distriparks Private Limited and KSH Infra Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that the Petitioners in Company Scheme Petition No. 16 of 2016is engaged in the business of container freight station and port services, transportation, warehousing services as well as infrastructure business carried on therein as well as infrastructure business carried out through investments in KSH Infra Private Limited. The Petitioner in Scheme Petition No. 17 of 2016 is presently engaged in the business of Infra business.

4. The rationale for the Scheme is that both the Petitioner Companies under this Scheme of Arrangement are part of PromoterGroup ('the Group'). The Group believes that the restructuring would benefit the companies and its stakeholders on account of Operational rationalization, organizational efficiency and optimal utilization of various resources,simplification of group structure, segregation of core and non-core business of the Demerged Company,reduction of overall administrative costs, and greater administrative efficiency.

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

6. Learned Advocate for the Petitioner in Company Scheme Petition No. 16 of 2016, states that the Scheme includes reduction of capital of the Demerged Company which 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 the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 20th November, 2015 passed in CSD No. 865 of 2015. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'E' to the Petition filed by the Petitioner Company.

7. Learned Advocate for the Petitioner in Company Scheme Petition No. 17 of 2016, states that the Scheme includes reduction of equity share capital of the Resulting Company on account of cancellation of equity shares held by KSH Distriparks in the Resulting Company shall be effected as an integral part of the Scheme of Arrangement and the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up shareand the procedure prescribed under Section 101 of the Companies Act, 1956 was also dispensed with as per order dated 20thNovember, 2015 passed in CSD No. 866 of 2016. The Special Resolution for the said Reduction of Capital is annexed as Exhibit 'I' to the Petition filed by the Petitioner Company.

8. The learned Advocate for the Petitioners states 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.

9. Counsel appearing on behalf of the Petitioners 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, 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.

10. The Regional Director has filed an Affidavit dated 1st April, 2016 stating therein that save and except as stated in paragraph 6 (a) to 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

    That the Deponent further submits that:

    a) Clause 7 of the scheme provides for increase in authorized share capital of Transferee Company. However, this clause is silent as to the details of the proposed increase in the authorized share capital. In this regard Transferee Company may be directed to clarify the same and further directed to comply with the provisions of section 94/97 of the Companies Act, 1956 corresponding to section 6l/64 of the Companies Act, 2013, in respect of filing of necessary forms with the Registrar ofCompanies after payment of necessary filing fee and stamp duty as applicable in the said forms.

    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 observation in paragraph 6(a) of the affidavit of the Regional Director is concerned, the Petitioner Companies through

its Counsel undertake to Clause 7 of the Scheme shall be amended and shall read as under:

7. INCREASE IN AUTHORISED CAPITAL OF RESULTING COMPANY

7.1. The provisions of this Clause shall operate notwithstanding anything to the contrary in any other instrument, deed or writing.

7.2. It is clarified that no special resolution under Section 61 of the Companies Act, 2013 shall be required to be passed by the Resulting Company separately in a general meeting for issue and allotment of equity shares to the shareholders of the Demerged Company pursuant to the Scheme. The word and figure in Clause V of the Memorandum of Association of the Resulting Company shall be substituted to read as follows:

"V. (a) The Authorised Share Capital of the company is Rs.1,50,00,000/- (Rupees One Crore Fifty Lacs only) divided into 15,00,000 (Fifteen Lacs) Equity Shares of Rs. 10/- (Rupees Ten only) each.

(b) The paid up capital of the Company shall be minimum of Rs. 1,00,000/- (Rupees One Lac only).

Hence, the Learned Counsel for the Petitioner Companies prays for amendment and to replace the Clause 7 of the Scheme as above.

12. As far as the observation in paragraph 6(b) of the affidavit of the Regional Director is concerned, thePetitioner Companies submit that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.

13. The Counsel for the Regional Director on instructions ofMr. 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 undertakings given by the Petitioner Companiesare accepted.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 16 of 2016filed by the Petitioner Company are made absolute in terms of prayer clauses (a) to (c) and the Company Scheme Petition No. 17 of 2016 filed by the Petitioner Company are made absolute in terms of prayer clauses (a) to (c).

16. 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 issuance of Order.

17. 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. The Petitioner Companies in all the Company Scheme Petitions 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.

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

20. 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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