

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 46 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 833 OF 2015
AND
COMPANY SCHEME PETITION NO. 47 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 834 OF 2015

In the matter of the Companies Act, 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
Teknomics Systems Private Limited, (the
Transferor Company)

With

Delphianlogic Technologies Private Limited
("Transferee Company") and their respective
Shareholders

Called for Company Scheme Petition for hearing

Mr. Suhas Joshi i/b Legallogic Consulting., Advocate for the Petitioner.

Mr. A.R. Singh, Advocate for Regional Director

Ms. Yogini Chauhan, Advocate for Official Liquidator.

CORAM: A.K. Menon, J.

DATE: 8th September, 2016

MINUTES OF THE ORDER

1. Heard Learned Counsel for the parties. No objection 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 a Scheme of Amalgamation of Teknomics Systems Private Limited, the Transferor Company with Delphianlogic Technologies Private Limited, the Transferee Company and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. Learned Counsel for the Petitioner states that, Transferor Company is engaged in the business of information technology enabled services and Transferee Company is engaged in the business of providing consultancy in computer or electronic hardware, software devices and information technology and further states that, since both the Companies are in similar

business and also the Scheme is commercially and economically viable, feasible and in the interest of the Transferor and Transferee Companies and their respective shareholders.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioners Company have approved the said Scheme of Amalgamation by passing Board Resolution which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioner Company further states that, 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 order passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioner Companies have 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 Company 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.

7. The Regional Director has filed an Affidavit on 13th day of June, 2016 stating therein, save and except as stated in paragraph 6, it appears that according to Regional Director, the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

“6 (a) With reference to clause D-2 (c) of the scheme, it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

(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”.

8. As far as the observation of the Regional Director, Western Region, Mumbai in paragraph 6 (a) of his Affidavit is concerned, the Transferee Company through its advocate undertakes that the difference between the net assets (assets less liabilities) and reserves of the Transferor Company transferred to the Transferee Company shall be adjusted after making adjustments as mentioned in clause D (2) (c) of

the Scheme and in accordance with the Accounting Standard – 14. The surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any arising shall be debited to goodwill account of Transferee Company.

9. As far as the observation of the Regional Director, Western Region, Mumbai in paragraph 6 (b) of the Affidavit is concerned, the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

10. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakantha, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the submissions/undertakings given by the Petitioner Companies. The above undertakings are accepted.

11. The Official Liquidator has filed his report on 26th August, 2016 in this Company Scheme Petition No. 46 of 2016 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved by this Court.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 46 of 2016 and Company Scheme Petition No. 47 of 2016 are made absolute in terms of prayer clause (a).

14. The Petitioner Companies to file 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 Order.

15. The Petitioner Companies are directed to file a certified copy of 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.

16. The Petitioner Company to pay cost of Rs. 10,000/- to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 46 of 2016 to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

18. 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.

(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