IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 31 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 867 OF 2015

**BF Infrastructure Ventures Limited**

**....Petitioner/Transferor Company**

**AND**

COMPANY SCHEME PETITION NO 32 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 868 OF 2015

**BF Infrastructure 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 between BF Infrastructure Ventures Limited (the transferor company) and BF Infrastructure Limited (the transferee company) and their respective shareholders and creditors

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both the Company Scheme Petitions
Mr. Udyan Shah, i/b Mr. Pankaj Kapoor for Regional Director in both the Company Scheme Petitions
Mr. Vinod Sharma, Official Liquidator present.

CORAM: B. P. Colabawalla, J.

DATE: 8th July , 2016

1. Heard the learned counsel for the Petitioner Companies. No objecton 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 this Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of BF Infrastructure Ventures Limited (the Transferor Company) with BF Infrastructure Limited (the Transferee Company) and their respective shareholders and creditors .

3. The Counsel for Petitioners states that the Transferor and the Transferee Companies are engaged in the business of Engineering, Procurement and Construction contractors, civil contractors, manufacturing, assembling, installing, repairing, buying, selling, exchanging, altering, importing, exporting, hiring for infrastructure projects inter alia in energy, power, oil and gas.

4. The Counsel for Petitioners states that amalgamation of the Transferor Company into the Transferee Company through this Scheme would

enable the Transferee Company to consolidate its business operations and provide significant impetus to its growth given that both the Transferor Company and the Transferee Company have similar business objects. The consolidation by way of an amalgamation will lead to synergies of operation, cost saving and stronger and wider capital and financial base for future growth/expansion more specifically the following advantages such as (i) improvement in the financial health of the Transferee Company as more business activities will be brought into the Transferee Company (ii) Greater integration, effective utilisation of resources and greater financial strength and flexibility for the Transferee Company (iii) which will result in optimising overall shareholder value, and will improve the competitive position of the combined entity (iv)achievement of synergies in the operations and considerable savings would result in improvement in the future profitability and debt servicing capacity of the Transferee Company (v) The Transferee Company will have the ability to leverage on its improved net worth to enhance the stake holders' value (vi) The amalgamation will result in economy of scale and reduction in overheads, administrative and other expenditure, operational rationalisation, organisational rationalisation, efficiency and optimal utilisation of various resources (vii) The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by both the Transferee and the Transferor Company. (viii) The increased asset base of the Transferee Company and greater revenue inflow would be to the benefit of all the creditors. The Transferee Company would have better financial viability and clearer focus which would be in the interest of all the creditors (ix) The synergies arising out of the consolidation of business would benefit the shareholders, creditors and all other stakeholders.

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

6. The 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 Counsel for the Petitioners further states that the Petitioner Companies 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 is accepted.

8. The Regional Director has filed an Affidavit on $28^{th}$ June, 2016 stating therein that save and except as stated in paragraph 6(a) to 6(e) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) to 6(e), of the said affidavit it is stated that:

(a) *Clause 2.14.8 of the Scheme provides for adjustment for differences in Accounting Policies 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-5 etc.*

(b) *The Scheme of amalgamationis silent with respect to safeguarding the interest of the employees/workers of the Transferor company. Hence the Petitioner/Transferee Company may be directed to provide specific clause in the scheme .*

(c) *Clause 3.4 of the Scheme provides for amendment of object clause of the Memorandum of Association of the Transferee Company . In this connection, the Transferee company may be directed to comply with provisions of section 13(1), (6) and 15 of the companies Act, 2013 and to file amended copy of Memorandum and Articles of Association alongwith form No.21 with the Registrar of Companies.*

(d) *It has been observed that clause 2.14.5 of the Scheme is running contrary to what has been stated in clause 2.14.7 . In this regard M/s Hemant Sethi & co. the Advocates for the Petitioner vide their letter dated 18/06/2016 has clarified that while giving effect to the scheme, the petitioner undertake that they will give effect only to clause 2.14.7 of the scheme and will not give effect to clause 2.14.5. they further state that statement to that effect will be made to the Hon'ble Court at the time when the matter is being taken up for hearing. Copy of the said letter dated is annexed hereto and marked as 'Exhibit-D'.*

(e) *That the deponent further submits the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authorities and the approval of the Scheme by this Hon'ble 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 as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel clarifies and undertake that upon the Scheme becoming effective, all staff and employees of the Transferor Company in service on such date (if any) shall be deemed to have become staff and employees of the Transferee Company 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 the Transferor Company on the Effective Date and the existing provident fund, gratuity fund, superannuation fund and/or other such schemes and trusts, including employee's welfare trust, if any, created by the Transferor Company for its employees shall be transferred to the Transferee Company and all obligations of the Transferor Company with regard to the said fund or funds as defined in the respective trust deeds and rules shall be taken over by the Transferee Company from

the Effective Date, to the end and intent that all rights, duties, powers and obligations of the Transferor Company in relation to such fund or funds shall become those of the Transferee Company and all the rights, duties and benefits of the employees employed with the Transferor Company under such funds and trusts shall be fully protected, subject to the provisions of applicable laws for the time being in force. It is clarified that the services of the staff, workmen and employees of the Transferor Company (if any) will be treated as having been continuous for the purpose of the said fund or funds.

11. As far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Transferee Company through their counsel undertakes to comply with provisions of section 13(1), (6) and 15 of the companies Act, 2013 and will file amended copy of Memorandum and Articles of Association alongwith form No.21 with the Registrar of Companies.

12. As far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners submits that contentions raised in paragraph 6(d) of the affidavit of Regional Director has been clarified in letter dated 18/06/2016 and further confirms that the Transferee Company shall give effect only to clause 2.14.7 of the scheme.

13. As far as observations made in paragraph 6(e) 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, 1961 and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

14. The Counsel for the Regional Director on instructions from Joint Director 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 Companies is accepted.

15. The Official Liquidator has filed his report on 18th April 2016 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

18. Petitioners 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 the physical copy within 30 days from the date of receipt of the order by the Registry.

19. The Petitioner Companies to lodge a copy of this order and the Scheme, 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 60 days from the date of receipt of the Order.

20. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner in Company Scheme Petition No. 31 of 2016 to pay to the Official Liquidator, High Court, Bombay sum of Rs. 10,000/-.

21. Costs to be paid within four weeks from today.

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

23. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay.

**(B.P. Colabawalla, J)**

CERTIFICATE

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

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