

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 75 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.899 OF 2015.

In the matter of Section 391 to 394 of the Companies
Act, 1956;

And

In the matter of Scheme of Amalgamation of:

1. Asian Seaway Private Limited

(The First Transferor Company),

2. Credence Shipping Agencies Pvt. Ltd.

(The Second Transferor Company), &

3. Fairwind Shipping Agency Private Limited

(The Third Transferor Company)

With

Poseidon Shipping Agency Private Limited

(Transferee Company)

Asian Seaways Private Limited.Petitioner/The Transferor Company.

WITH

COMPANY SCHEME PETITION NO. 76 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.900 OF 2015

Credence Shipping Agencies private Limited.Petitioner/The Transferor Company.

WITH

COMPANY SCHEME PETITION NO. 77 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.901 OF 2015

Fairwind Shipping Agency Private Limited.Petitioner/The Transferor Company.

WITH

COMPANY SCHEME PETITION NO. 78 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.902 OF 2015

Poseidon Shipping Agency Private Limited.Petitioner/The Transferee Company.

Called for Hearing.

Mr. Kedar B. Dighe, Advocate for the Petitioner.

Mr. Yogini Chauhan, Official Liquidator present.

Mr. Anand Singh, for Regional Director.

Coram:- S. C. Gupte, J.

Date:- 25th November, 2016.

MINUTES OF THE ORDER.

PC:

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 under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Asian Seaways

Private Limited and Credence Shipping Agencies Private Limited and Fairwind Shipping Agency Private Limited with Poseidon Shipping Agency Private Limited (Transferee Company.) and their respective shareholders.

3. Learned Counsel for the Petitioner states that the Petitioner Companies / Transferor & Transferee Companies are presently engaged in business of shipping agents, stevedores, tally contractors, cargo superintendents, ship and chartering brokers, ship owners, clearing and forwarding agent, custom carriers, hirers and charters of all means of transport, tugs launch operators, lighterage and ship to ship transfer operators. Learned counsel for the petitioner further states that the scheme would consolidate the operations and will have the benefits of simplified group structure and rationalisation of administrative, operative and marketing cost of the Transferee companies w.e.f. the appointed date i.e. 1st April, 2015, as per Board Resolution dated 16-12-2015 passed by the Petitioner companies which are annexed to the Company Scheme Petitions.
4. The Petitioner Companies approved the said scheme by passing Board Resolutions dated 31st March, 2015 which are annexed to the Company Scheme Petitions.
5. Learned Advocate for the Petitioner/ Transferee companies further state that said Scheme does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of the Petitioner Companies and also does not envisage any compromise or arrangement with any of the creditors of the Petitioner companies and as per the undertaking give by the

Petitioner / Transferee companies they do not have any secured/ unsecured creditors and hence meeting was dispensed with vide order dated 4th December ,2015 passed in Company Summons for Directions filed by the Petitioner Companies.

6. The Learned Counsel appearing for the Petitioner further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.
7. The Learned Counsel appearing for the Petitioner further states that, the petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company also undertakes to comply with all statutory requirements, if any, as required under The Companies Act, 1956/2013 and Rules made there under. The undertaking is accepted.
8. The Regional Director has filed his Affidavit on 07-09-2016 stating therein, that, save and except as stated in para 6 (i) , (ii) 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:

Clause. 6. (i) In addition to Compliance of AS-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.

(ii) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax authority is binding on the Petitioner Companies.

9. As far as observations made in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submit that it undertakes to follow the accounting treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.

10. As far as observations made in paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Petitioner / Transferee Companies through their Counsel submit that they are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of Amalgamation will be dealt with in accordance with law.

11. The Official Liquidator has filed report on 16/11/2016 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner 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, the Company Scheme Petitions (a) 75 of 2016, (b) 76 of 2016, (c) 77 of 2016 & (d) 78 of 2016 filed by the Petitioner Company are made absolute in terms of prayer (a).
14. The Petitioner Company to lodge a copy of this order along with the Scheme and form of minutes, 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. Petitioner is directed to file a copy of this order along with a copy of the amended Scheme and form of Minutes 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.
16. All the Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No.75 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 authorities to act on a copy of this order along with Scheme and form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)

Certificate

I Certify that this order is a true and correct copy of original order uploaded.

Mr. S. Gawde

Stenographer.