IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.79 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.941 OF 2015

SHIVKRIPA ENTERPRISE PRIVATE LIMITED.

.....Petitioner/the First Transferor Company.

AND

COMPANY SCHEME PETITION NO.80 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.942 OF 2015

NISHA SECURITIES PRIVATE LIMITED.

.....Petitioner/the Second Transferor Company.

WITH

COMPANY SCHEME PETITION NO.81 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.943 OF 2015

MADHUSUDAN ENTERPRISES PRIVATE LIMITED.

.....Petitioner/the Transferee Company.

In the matter of the Companies Act, 1956 (1 of 1956) ;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Shivkripa Enterprise Private Limited, the First Transferor Company

AND

Nisha Securities Private Limited, the Second Transferor Company

WITH

Madhusudan Enterprises Private Limited, the Transferee Company

Called for Hearing

Mr. Chandrakant Mhadeshwar Advocate for Petitioner Company.

Mr. Jaidip Deo i/b Shri. Pankaj Kapoor for Regional Director in all the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P Nos. 79 and 80 of 2016.

Coram : B. P. Colabawalla, J.

Date: 17th June, 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 Petition.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to a Scheme of Amalgamation of Shivkripa Enterprise Private Limited, the First Transferor Company and Nisha Securities Private Limited, the Second Transferor Company with Madhusudan Enterprises Private Limited, the Transferee Company.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

5. The Learned Advocate 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 thereunder whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 27th May, 2016 in Company Scheme Petition No. 79 of 2016 and 80 of 2016, inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

7. The Regional Director has filed his Affidavit on 13th June, 2016 inter alia, stating therein that save and except as stated in paragraphs 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

> "6. That the Deponent further submits that:-
>
> *(a) Clause 14.5 of the scheme provides for adjustment for difference in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard -14,the Transferee Company shall pass such accounting entries which are necessary I connection with the scheme to comply with other applicable Accounting Standard such as AS-5etc.*
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> *(b) It has been observed from the material papers submitted by the Transferor Companies that 1st Transferor company holds 19,55,000 equity share of Rs 10/- each and 2nd Transferor Company is holding 25,80,500/- equity shares of 10/- each in the*

capital of Transferee Company .One amalgamation ,as per clause 11.4 of the scheme, upon the scheme becoming effective the equity shares held by Transferor Companies stands cancelled. However ,the scheme is silent with respect to compliance of section 100 of the companies act 1956 corresponding to section 66 of the CompaniesAct,2013.Hence the petitioner company shall amend the scheme suitably to reflect such reduction of the capital as an integral part of the scheme.

(c) *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 to the amalgamation The decision of the Income Tax Authority is binding on the petitioner company."*

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company through its counsel undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

9. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the counsel of the Petitioner Company states that the Clause 11.7 provides for the reduction of share capital. Therefore there is no need to amend the proposed Scheme.

10. So far as the objection of the Regional Director, Western Region, Mumbai, as stated in paragraph 6(c) of his Affidavit is concerned, the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandana Muthu, Joint Director Legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given and amendment sought by the Advocate for the Petitioner Company. The said undertaking is accepted.

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 Nos.79 of 2016 to 81 of 2016 are made absolute in terms of prayer clauses (a) & (b)

14. 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 this order.

15. Petitioner is 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.

16. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No. 79 of 2016 and 80 of 2016 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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 the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B. P. Colabawalla, J.)

C E R T I F I C A T E

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

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