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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 327 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 119 OF 2017
EDELWEISS FINANCE & INVESTMENTS LTD
....Petitioner/ the Demerged Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 317 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 120 OF 2017
EDELWEISS FINVEST PRIVATE LTD
....Petitioner/ the First Resulting Company

AND
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 328 OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 121 OF 2017
EDEL LAND LTD

....Petitioner/ the Second Resulting Company
In the matter of the Companies Act, 1956 and
other relevant provisions of the Companies Act,
2013;

AND

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

AND

In the matter of Sections 230 to 232 of the

Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956

AND

In the matter of Scheme of Arrangement between EDELWEISS FINANCE & INVESTMENTS LTD (the Demerged Company) and EDELWEISS FINVEST PRIVATE LTD (the First Resulting Company) and EDEL LAND LTD (the Second Resulting Company).

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,
Advocate for the Petitioner.

Coram: SH. B.S.V. Prakash Kumar Hon'ble Member (J) and SH. V. Nallasenapathy Hon'ble Member (T)

Date: 5th July, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement between EDELWEISS FINANCE & INVESTMENTS LTD (the Demerged Company) and EDELWEISS FINVEST PRIVATE LTD (the First Resulting Company) and EDEL LAND LTD (the Second Resulting Company).
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Arrangement between EDELWEISS FINANCE & INVESTMENTS LTD (the Demerged Company) and EDELWEISS FINVEST PRIVATE LTD (the First Resulting Company) and EDEL LAND LTD (the Second Resulting Company).

3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application Nos. 119 to 121 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Demerged Company has been carrying on the business of investment company and investing in shares, bonds, stocks, debentures, government securities, euro-convertibles and bonds and all other securities issued or guaranteed by any company, Government or Public body constituted in India or elsewhere and the First Resulting Company has been carrying on the business of financing, money lending, bill discounting, factoring and the Second Resulting Company has been carrying inter alia the real estate activities and commodities trading. The management of Demerged Company and Resulting Companies believes that the Scheme of Arrangement would benefit the respective companies and other stake holders of respective companies on account of the following reasons which are that the Lending and Investment Business of the Demerged Company

will be demerged into EW Finvest i.e. the First Resulting Company, which is another NBFC engaged in the lending business and that the Training Centre Business will be demerged into ELL i.e. the First Resulting Company which real estate activities and to leave the Demerged Company with the G-Secs and fixed income securities Business and to operate as a primary dealer and that once approved as a Primary Dealer by the RBI, the Demerged Company will undertake dealing and underwriting in G-Secs and corporate/PSU/FI bonds and debentures; dealing in interest rate derivatives; providing broking services in G-Secs; lending in call/notice/term/ repo/ CBLO market; investment in securities commercial papers, certificate of deposits, security receipts, debt mutual funds and non-convertible debentures; dealing in credit default swaps And other permissible activities as notified by the RBI in due course.

7. The Regional Director has filed a Report on 17th day of May, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- 1. 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 Tribunal 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 Company.*
- 2. Certificate by the Company’s Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

In this regard it is requested that Petitioner may be asked to submit the certificate to comply with the provisions of Section 232(3) proviso of the Companies Act, 2013.

3. It may be submitted that the Petitioner Companies have submitted the proof of serving notice dated 06.03.2017 upon the Income Tax Authorities for comments, The Directorate has issued reminder letter to the Income Tax Department dated 16.05.2017.

In this regard, it is submitted that the petitioner company undertake to provide acknowledgement copy of notice served to Income Tax Authorities all documents/ information as mentioned there in.

4. Petitioner companies in their reply interalia has mentioned that there is no share exchange ratio prescribed for the demerger and have not provided recommendation by the Chartered Accountant/ auditor regarding share exchange ratio.

In this regard, it is submitted that the Petitioner company undertake to provide auditor recommendation for the consideration arrived at as per the scheme.

5. Petitioner Companies have not submitted minutes of order of the Hon'ble NCLT with regard to affidavit for summons filed by the companies' petitioner companies seeking directions for convening meetings of shareholders, secured and unsecured creditors.

6. Petitioner companies in their reply point no.1(xi) mentioned that they have accepted public deposits, but details have not been provided

In this regard it is requested that Petitioner may be asked to submit the details of deposits accordance with the provisions of section 2(31) and section 73 of the Companies Act, 2013.

7. Petitioner in clause 14 and 15 has inter alia has mentioned that any question that may arise as to whether any staff, workman or employee belongs to or does not belong to the first Demerged Undertaking, shall be decided mutually by Board of Directors of the Demerged Company and the First Resulting Company.

In this regard petitioner companies undertake to protect the interest of the employees of the Demerged Companies

8. Demerged company and the First Resulting Companies are NBFC companies and registered with RBI but no notice has been served to

them as required to be done under the provisions of section 230(5) of the Act, 2013.

In this regard petitioner companies undertake to produce the letter served to the RBI and comments if any received from them.

8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law
9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted to this Hon'ble Tribunal the Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013
10. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have served upon the Income Tax on 06.03.2017. The Learned Counsel further submits that they have also filed an Affidavit of Service in the National Company Law Tribunal for the same.
11. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies they have submitted the valuation report of the Chartered Accountant by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal for the same.

12. So far as the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies they have submitted the Minutes of the Order of the Hon'ble NCLT by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal for the same.
13. So far as the observation in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have clearly stated that in their reply point no.1(xi) that they have not accepted any public deposits. The same is submitted by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal regarding the same.
14. So far as the observation in paragraph IV (7) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertake to protect the interest of the employees of the Demerged Company. The undertaking has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal regarding the same.
15. So far as the observation in paragraph IV (8) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies that the Petitioner Companies have submitted the notice to RBI they have submitted the same by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.

17. 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.
18. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 327, 317 and 328 of 2017 is made absolute in terms of prayers clause (a) to (c).
19. Petitioners are directed to 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.
20. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the order..
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of the receipt of the Order.
22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member(T)

Sd/-

B.S.V. Prakash Kumar, Member (J)