IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.25 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 845 OF 2014.

S&H SERVICES PRIVATE LIMITED

....Petitioner/ First Transferor Company

AND

COMPANY SCHEME PETITION NO.26 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 846 OF 2014.

MANOR CONSTRUCTIONS PRIVATE LIMITED

....Petitioner/ Second Transferor Company

AND

COMPANY SCHEME PETITION NO.27 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 847 OF 2014.

COVENTRY ESTATES PRIVATE LIMITED

....Petitioner/ Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provision of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation of S&H SERVICES PRIVATE LIMITED, the First Transferor Company

AND

MANOR CONSTRUCTIONS PRIVATE LIMITED, the Second Transferor Company

WITH

COVENTRY ESTATES PRIVATE LIMITED, the Transferee Company

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners in all Petitions.

Mr. C. J. Joy i/b Mr. A. A. Ansari for Regional Director in all Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP Nos. 25 and 26 of 2015.

CORAM: S. J. Kathawalla, J.

DATE : 18th April, 2015

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought to the Scheme of Amalgamation of S&H SERVICES PRIVATE LIMITED, the First Transferor Company and MANOR CONSTRUCTIONS PRIVATE LIMITED, the Second Transferor Company with COVENTRY ESTATES PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 of the Companies Act, 1956.

3. The Learned Counsel for the Petitioners states that the First Transferor Company is carrying on business of providing the business of inter alia business support services and works relating to project & contracts and the Second Transferor Company is caring on business inter-alia of real estate development etc and the Transferee Company is caring on business inter-alia of real estate. The proposed scheme of Amalgamation will have the benefit that all the companies are owned by same group of shareholders and it would be advantageous to combine the activities and operations in a single Company. The amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and the amalgamation will result in economy of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources.

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

5. The Learned Counsel for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners state 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 Companies 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 Official Liquidator has filed his report on 15th day of April, 2015 in Company Scheme Petition Nos. 25 and 26 of 2015 stating 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

8. The Regional Director has filed an Affidavit on 6th day of April, 2015 stating therein, save and except as stated in paragraph 6, it appears that 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. That the Deponents further submits that,

(a) Clause 13.4 of the scheme provides for adjustment for differences in Accounting Policies between Transferor Companies 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 in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(b) It is respectfully submitted that 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.

(c) Clause 11 of the Scheme provides for issue of shares upon scheme becoming effective. The authorized share capital of Transferee company may not be sufficient to issue shares as per said clause. In this regard, increase its Authorised share Capital to facilitate issue and allotment of Shares under this Scheme. In this connection, the Transferee company may be directed to comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

9. 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 the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

10. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that 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.

11. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies undertakes that the Petitioner Companies will comply with provisions of section 61/64 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

12. 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 undertakings given by the Petitioners. The undertaking given by the Petitioner Companies are accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 25 and 26 of 2015 are made absolute in terms of prayers clause (a), (b) and (d) and Company Scheme Petition No. 27 of 2015 is made absolute in terms of prayer clauses (a) and (d).

15. 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.

16. Petitioners 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.

17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition Nos. 25 and 26 of 2015 to pay costs of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

19. 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.

(S. J. Kathawalla, J.)