IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 113 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 61 OF 2015

BUTEO INVESTMENT PRIVATE LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 114 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 62 OF 2015

GLINT INFRAPROJECTS 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

In the matter of Scheme of Amalgamation

of

Buteo Investment Private Limited ("the Transferor Company")

WITH

Glint Infraprojects Private Limited ("the Transferee Company")

AND

Their Respective Shareholders

Called for Hearing

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

Mr. S. Ramakantha, Official Liquidator present in Company Scheme Petition No. 113 of 2015.

Ms. N. Valani i/b Mr. A. A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S. C. Gupte, J.

DATE: 3rd July, 2015

PC:

1. Heard 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 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 Buteo Investment Private Limited ("the Transferor Company") with Glint Infraprojects Private Limited ("the Transferee Company") and their respective shareholders.

3. The Learned advocate for the Petitioners states that the Transferor Company is engaged in the business of consultancy and advisory services, and the Transferee Company is engaged in the business of real estate development. Learned advocate for the Petitioner further states that the Scheme would benefit the stakeholders by way of simplification of group structure, rationalization of administrative overheads and greater administrative efficiency.

4. The Transferor Company and the Transferee Company approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The learned Advocate 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 Directions.

6. The learned counsel appearing on behalf of the Petitioners has stated 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 Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under, whichever applicable. The said undertaking is accepted.

7. The Regional Director has filed an affidavit on 12th June, 2015 stating therein that save and except as stated in paragraph 6(a), (b) and (c) 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:

"(a) Clause 5 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 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 has been observed from Clause 5 of the Scheme that for every 372 preference shares of Rs. 10/- each, the transferee company will allot 1 preference share of Rs. 10 each. In this regard, it is submitted that the transferee company has to redeem the preference shares issued by transferee company as per the originally terms and conditions. In this case, the transferee company proposes to issue 1 preference shares for every 372 shares issued by the transferor company and hence the transferee company is getting undue benefit of the value of full redemption amount. It is therefore suggested that the transferee company has to allot equal number of preference shares of the transferor company on enquiry with the petitioner company, vide its letter dated 28/05/2015 which is annexed hereto and marked as Annexure D has clarified that, "The Preference shares would be redeemed by the Transferee Company at Rs. 3,72,00,000, the value of preference shares in the books of the Transferor Company"/ this clarification is acceptable to the Deponent. In view of the above, it is submitted that the transferee company shall take appropriate steps to amend the scheme suitably and petitioner company shall ensure the payment of Income Tax as may be arising at the time of redemption of preference shares.

(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 effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company

8. As far as observation made in paragraph 6(a) of the Affidavit of the Regional Director, the Petitioner Companies through their counsel undertakes to follow the accounting treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.

9. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director, the Transferee Company agrees that the redemption value of the preference shares issued pursuant to giving effect to the Scheme would be the value appearing in the books of the Transferor Company.

10. In so far as observations made in paragraph 6(c) of the Affidavit of the Regional Director, the Petitioner Companies 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. Chandanamuthu, 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 advocate of the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

12. The Official Liquidator has filed his report on 7th April,2015 in the Company Scheme Petition No. 113 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and

that the Transferor Companies may be ordered to be dissolved by this Court.

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, the Company Scheme Petition No.113 of 2015 is made absolute in terms of prayers (a), (c) and (d) and Company Scheme Petition No.114 of 2015 is made absolute in terms of prayer clauses (a) and (c).

15. The Petitioner Companies to lodge 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. Petitioner is 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 physical copy as per the relevant provisions of the Companies Act 1956/2013.

17. The Petitioner Companies to pay cost of Rs.10,000/- to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No.113 of 2015 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.

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. C. Gupte, J)