IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 204 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 96 OF 2015.

ANILINE REAL ESTATE DEVELOPERS
PRIVATE LIMITED

....Petitioner/ First Transferor Company

AND

COMPANY SCHEME PETITION NO. 205 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 97 OF 2015.

SPAN CONSTRUCTION COMPANY
PRIVATE LIMITED

....Petitioner/ Second Transferor Company

COMPANY SCHEME PETITION NO.206 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 98 OF 2015.

ANILINE CONSTRUCTION COMPANY
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 ANILINE REAL ESTATE DEVELOPERS PRIVATE LIMITED, the First Transferor Company

AND

SPAN CONSTRUCTION COMPANY PRIVATE LIMITED, the Second Transferor Company

WITH

ANILINE CONSTRUCTION COMPANY PRIVATE LIMITED, the Transferee Company

Called for hearing

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

Mr. A. B. Verma i/b Mr. A.A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No. 204 and 205 of 2015.

CORAM: S. C. Gupte, J.

DATE: 3rd July, 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 a Scheme of Amalgamation of ANILINE REAL ESTATE DEVELOPERS PRIVATE LIMITED, the First Transferor Company and SPAN CONSTRUCTION COMPANY PRIVATE LIMITED, the Second Transferor Company with ANILINE CONSTRUCTION COMPANY PRIVATE LIMITED, 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 carrying on business of develop, improve, build, sell, lease, manage, commercially exploit and otherwise deal in real estate, properties of all nature and description or any rights therein including land, buildings and other estate and realty including shopping malls and the Second Transferor has been carrying on business of builders, engineers and contractors in all branches of construction and Transferee Company on the business of builders, engineers and contractors in all branches of construction and commercial premises on cash or otherwise or on any ownership or co-operative basis or on higher purchase basis or any other basis or system and to purchase, take on lease or in exchange or otherwise acquire, trade or deal in any lands, real estate. The proposed scheme of Amalgamation will have the benefit that all the Companies are under same

Management 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 that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that the amalgamation will result in economy of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources and that the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each others core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

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 have stated 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 15^{th} day of June, 2015 in Company Scheme Petition Nos. 204 and 205 of 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved

8. The Regional Director has filed an Affidavit on 12^{th} day of June, 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 Deponent further submits that,*
>
> (a) *"The Income Tax department videits letter no. ITO-12(1)(2)/ Misc/ Aniline Real Est. Dev. P. Ltd/ 2015-16 dated 05/05/2015, annexed hereto*

as Exhibit-D, has informed the deponent herein, that the First Transferor company is having an outstanding incometax dues of an amount of Rs. 9,31,33,331/- for the Assessment Year 2012-13. After merger, the demand outstanding shall be merged with those of Transferee company viz. M/s Aniline Construction Company Pvt. Ltd. And it would be detrimental to the interest of revenue. In this regard, 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 returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Companies and Transferee Company.

(b) 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.

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 submitted that the Petitioner company is disputing the demand Notice issued by the Income tax Officer for the sum of Rs. 9,31,33,331/-

(Rupees Nine Crore Thirty One Lakh Thirty Three Thousand Three Hundred and Thirty Only) and that the Petitioner Company further states that an Appeal has been filed before the Income Tax Commissioner on 22nd April, 2015 and the same is pending. The Petitioner Company submits that as the appeal filed by the Petitioner company and is pending before the Appellant Authority, the matter is subjudice and it cannot be constructed at this stage that the Petitioner company has defaulted in payment of tax demanded by the Income tax Authority. The Petitioner Company through its Counsel further submits that whatever future liability arising due to this demand will be binding on the Transferee Company and the Petitioner further through their undertakes that in the event of appeal being decided against the Petitioner Company, they will remit the demand made by authority subject to other legal recourse available to them.

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. 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 above undertakings 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. 204 and 205 of 2015 is made absolute in terms of prayers clause (a), (b) and (d) and 206 of 2015 is made absolute in terms of prayer clauses (a) and (c).

14. 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.

15. 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.

16. 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. 204 and 205 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.

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

(S. C. Gupte, J.)