IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 158 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 86 OF 2015

Wagholi Properties Private Limited….Petitioner/Transferor 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 the Scheme of Amalgamation of Wagholi Properties Private Limited with Panchshil Infrastructure Holdings Private Limited and their respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

Mr. G. Hariharan, i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha Official Liquidator.

CORAM: S. C. GUPTE, J.

DATE: 3rd JULY 2015

1. Heard the learned counsel for the Petitioner. 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 Wagholi Properties Private Limited with Panchshil Infrastructure Holdings Private Limited and their respective Shareholders.

3. Petitioner /Transferor Company is currently engaged in the business of Promoters, Builders and Developers and other related activities. The Transferee company is engaged in the business of developing, operating and maintaining hotel/service apartments.

4. The Rational for Scheme is that the Transferor Company being wholly owned subsidiary of the Transferee Company, it would be beneficial to amalgamate the transferor company with the Transferee Company as it would generate the benefits including Amalgamation would result in most optimum utilization of facilities, reserves, financial, managerial, technological and marketing expertise, distribution networks, manpower and other resources which will be conducive to enhance the capability to face competition in the market more effectively, thereby strengthening further the market position and growth prospects. It would also lead to growth prospects for the personnel and organizations connected with these concerned Companies and thus it will be in the interest and for the welfare of the employees of the Companies concerned in these arrangements and will also be in the interest of the Public. The Amalgamated Company will be able to source and absorb new technology and its capacity to spend on Research and Development will be enhanced. It will also provide opportunities to introduce new products and access to the latest research based products. In order to expand the activities and to increase the product portfolio it is thought necessary and advantageous to combine the activities and operations of both the

Companies. While combining the activities of the Transferor and Transferee Company in a single Company, it was felt advisable also to combine Transferor and Transferee Company which would help better working capital management and better administration of sales for the merged Company. The Transferor Company being as such wholly owned subsidiary of the Transferee Company, the merger provides a larger platform for the Companies to operate in the competitive environment.

5. The Transferor Company and Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. Learned Advocate for the Petitioner further states that since the Petitioner/Transferor Company is wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company, Panchshil Infrastructure Holdings Private Limited and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Companies by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by

Panchshil Infrastructure Holdings Private Limited, the Transferee Company was dispensed with, by order dated 6th February 2015 passed in Company Summons for Directions Nos. 86 of 2015.

7. The learned counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

8. Counsel appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company is accepted.

9. The Official Liquidator has filed his report dated 19th May 2015 on 21st May 2015 stating that the affairs of the Transferor Company has been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 17th 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 paragraphs 6 of the said affidavit it is stated that:-

> *"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 the petitioner Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company."*

11. In so far as observations made in paragraph 6 of the Affidavit of Regional Director is concerned, the Transferee Company is bound to comply with all applicable provisions of Income Tax Act, 1961 and all tax issues arising out of scheme will be met and answered in accordance with law.

12. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by Petitioner Company is 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 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the Petition.

15. Petitioners are 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 the physical copy as per the

relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

16. The Petitioner Company 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 receipt of the Order.

17. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.

18. Costs to be paid within four weeks from today.

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

20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. C. GUPTE, J.)