

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 155 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 164 OF 2015
E-CITY REALTY HOLDINGS PRIVATE LIMITED
..... Petitioner / the First Transferor Company
AND
COMPANY SCHEME PETITION NO 156 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 165 OF 2015
SUNCITY EQUIFIN PRIVATE LIMITED
..... Petitioner / the Second Transferor Company
AND
COMPANY SCHEME PETITION NO 157 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 166 OF 2015
E-CITY REAL ESTATES 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 read
with Sections 100 to 103 of the
Companies Act, 1956;
AND
In the matter of Scheme of
Amalgamation
of
E-City Realty Holdings Private Limited
(the First Transferor Company”)
AND
Suncity Equifin Private Limited (“the
Second Transferor Company”)
WITH

E-City Real Estates 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. 155 and 156 of 2015.

Ms. S. I. Shah i/b Mr. A. A. Ansari for Regional Director in all the Company Scheme Petitions.

CORAM: S. J. Kathawalla, J.

DATE: 8th May, 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 read with sections 100 to 103 of the Companies Act, 1956, to the Scheme of Amalgamation of E-City Realty Holdings Private Limited (“the First Transferor Company”) and Suncity Equifin Private Limited (“the Second Transferor Company”) with E-City Real Estates Private Limited (“the Transferee Company”) and their respective shareholders.
3. Learned advocate for the Petitioners states that all the Petitioner Companies are engaged in the business of retail real estate development. Learned advocate for the Petitioner further states that the Scheme would consolidate and synergies business operations and lead to enhancement of scale of operations and reduction in overheads, operational, administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of various resources and

reduce managerial overlaps, which are necessarily involved in running multiple entities.

4. The Transferor Companies 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/ Transferee Company further states that the reduction of the Share Capital of the Petitioner/ Transferee Company shall be effected as an integral part of the Scheme pursuant to clause 2.2.4 of the Scheme and the said reduction does not involve either diminution of liability in respect of unpaid share capital of the Petitioner Company or payment to any shareholder of any paid up share capital of the Petitioner Company and hence procedure prescribed under section 101(2) of the Companies Act, 1956 was dispensed with vide order dated 27th February 2015 passed in CSD No 166 of 2015. Further the Petitioner Company has passed a Special Resolution in the Extra Ordinary General Meeting of its Members on 9th day of February, 2015, a copy of the same is annexed as Exhibit 'J' to the Company Scheme Petition
6. 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.
7. 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.

8. The Regional Director has filed an affidavit on 29th April, 2015 stating therein that save and except as stated in paragraph 6(a) and (b) 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 2.3.3 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) 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. 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.
10. In so far as observations made in paragraph 6(b) 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 been accepted.

12. The Official Liquidator has filed his report on 5th May,2015 in the Company Scheme Petition No. 155 and 156 of 2015 stating therein 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 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 Petitions filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c).
15. The Petitioner Companies to lodge a copy of this order and the Scheme along with Form of Minutes, 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 and Form of Minutes 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 costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Companies in Company Scheme Petition Nos. 155 and 156 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 and Form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J)