IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 153 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 167 OF 2015

GODREJ PREMIUM BUILDERS PRIVATE LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 154 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 168 OF 2015

GODREJ PROJECTS DEVELOPMENT PRIVATE LIMITED

………… Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of Companies Act, 1956 read with Section 52 of the Companies Act, 2013 and Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation

OF

Godrej Premium Builders Private Limited

WITH

Godrej Projects Development Private Limited

AND

their Respective Shareholders

<u>Called for Hearing</u>

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

Mr. S. Ramakantha, Official Liquidator present in Company Scheme Petition No. 153 of 2015.

Mr. Rui Rodrigues i/b Mr. A.A. Ansari for Regional Director in both the Company Scheme Petitions.

CORAM: S. C. Gupte, J.

DATE: 3rd July, 2015

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 Godrej Premium Builders Private Limited with Godrej Projects Development Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that both the Petitioner Companies are presently engaged in real estate development activities. Learned Counsel for the Petitioners further states that the Scheme would consolidate the operations and will have the benefits of simplified group structure and rationalisation of administrative, operative and marketing costs.

4. The Petitioner Companies approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petitions.

5. Learned Advocate for the Petitioner/Transferee Company further states that reduction of the Securities Premium Account of the Petitioner Company shall be effected as an integral part of the

Scheme and pursuant to clause 6.8 of the said Scheme, the reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder the Petitioner Company and also does not envisage any compromise or arrangement with any of the creditors of the Petitioner Company and as per the undertaking the Petitioner Company has passed Special Resolution dated 11^{th} February, 2015 and a copy of the same is annexed as Exhibit "J2" to the Company Scheme Petition and in view thereof procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 27^{th} February, 2015 passed in Company Summons for Direction No. 168 of 2015.

6. The learned Counsel for the Petitioners further states that, Petitioner company 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 Direction.

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 05/05/2015 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 6.6 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 is respectfully submitted that the tax implications, 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 High 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 Petitioner Companies.

9. As far as observation made in paragraph 6(a) of the Affidavit of the Regional Director, the Petitioner Companies 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 submit that the Petitioner is 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 the 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 for the Petitioner Companies. The undertaking given by the Advocate for the Petitioner Companies are accepted.

12. The Official Liquidator has filed his report on 30/04/2015 in the Company Scheme Petition No 153 of 2015 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner 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 Nos. 153 of 2015 and 154 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c).

15. The Petitioner Company to lodge a copy of this order along with the Scheme and 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 in both the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 153 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 and Form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J)