

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 215 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 63 OF 2015

ABJA DEVELOPERS PRIVATE LIMITED

..... Petitioner / First Transferor Company

And

COMPANY SCHEME PETITION NO.216 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 64 OF 2015

ABJA INFRASTRUCTURE PRIVATE LIMITED

.... Petitioner / Second Transferor Company

And

COMPANY SCHEME PETITION NO.217 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 65 OF 2015

APP BUILDERS PRIVATE LIMITED

.... Petitioner / Third Transferor Company

And

COMPANY SCHEME PETITION NO.218 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 66 OF 2015

SAINATHSAKAL INFRASTRUCTURE LIMITED

.... Petitioner / Fourth Transferor Company

And

COMPANY SCHEME PETITION NO.219 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 67 OF 2015

SHRISAKAL INFRASTRUCTURE LIMITED

.... Petitioner / Fifth Transferor Company

And

COMPANY SCHEME PETITION NO.220 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 68 OF 2015
SHUBHSAKAL INFRASTRUCTURE LIMITED
.... Petitioner / Sixth Transferor Company
And
COMPANY SCHEME PETITION NO.221 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 69 OF 2015
SONASAKAL INFRASTRUCTURE LIMITED
.... Petitioner / Seventh Transferor Company
And
COMPANY SCHEME PETITION NO.222 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 70 OF 2015
STARSAKAL INFRASTRUCTURE LIMITED
.... Petitioner / Eighth Transferor Company
And
COMPANY SCHEME PETITION NO.223 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 71 OF 2015
SUNSAKAL INFRASTRUCTURE LIMITED
.... Petitioner / Ninth Transferor Company
And
COMPANY SCHEME PETITION NO.224 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 72 OF 2015
SURYASAKAL INFRASTRUCTURE LIMITED
.... Petitioner / Tenth Transferor Company
And
COMPANY SCHEME PETITION NO.225 OF 2015
CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 73 OF 2015

OCTON INDIA PRIVATE LIMITED

.... Petitioner / Eleventh Transferor Company

And

COMPANY SCHEME PETITION NO.226 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 74 OF 2015

ABJA CONSTRUCTIONS LIMITED

.... Petitioner / Transferee Company

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation
Of

Abja Developers Private Limited (“Abja Developers” or “the First Transferor Company”)

And

Abja Infrastructure Private Limited (“Abja Infrastructure” or “the Second Transferor Company”)

And

APP Builders Private Limited (“APP Builders” or “the Third Transferor Company”)

And

Sainathsakal Infrastructure Limited (“Sainathsakal” or “the Fourth Transferor Company”)

And

Shrisakal Infrastructure Limited (“Shrisakal” or “the Fifth Transferor Company”)

And

Shubhsakal Infrastructure Limited (“Shubhsakal” or “the Sixth Transferor Company”)

And
Sonasakal Infrastructure Limited
("Sonasakal" or "the Seventh Transferor
Company")

And
Starsakal Infrastructure Limited ("Starsakal"
or "the Eighth Transferor Company")

And
Sunsakal Infrastructure Limited ("Sunsakal"
or "the Ninth Transferor Company")

And
Suryasakal Infrastructure Limited
("Suryasakal" or "the Tenth Transferor
Company")

And
Octon India Private Limited ("Octon India" or
"the Eleventh Transferor Company")

With
Abja Constructions Limited ("Abja
Constructions" or "the Transferee Company")

And
their respective shareholders

Called for Hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioner
Companies.

Mr. S. Ramakantha, Official Liquidator present in Company Scheme
Petition Nos. 215 to 225 of 2015.

Ms. Jay Bhatia i/b Mr. A. A. Ansari for Regional Director in all the
Company Scheme Petitions.

CORAM: S. C. Gupte, J.

DATE: 3rd July, 2015

PC:-

1. Heard Advocate 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 under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Abja Developers Private Limited (“Abja Developers” or “the First Transferor Company”), Abja Infrastructure Private Limited (“Abja Infrastructure” or “the Second Transferor Company”), APP Builders Private Limited (“APP Builders” or “the Third Transferor Company”), Sainathsakal Infrastructure Limited (“Sainathsakal” or “the Fourth Transferor Company”), Shrisakal Infrastructure Limited (“Shrisakal” or “the Fifth Transferor Company”), Shubhsakal Infrastructure Limited (“Shubhsakal” or “the Sixth Transferor Company”), Sonasakal Infrastructure Limited (“Sonasakal” or “the Seventh Transferor Company”), Starsakal Infrastructure Limited (“Starsakal” or “the Eighth Transferor Company”), Sunsakal Infrastructure Limited (“Sunsakal” or “the Ninth Transferor Company”), Suryasakal Infrastructure Limited (“Suryasakal” or “the Tenth Transferor Company”), Octon India Private Limited (“Octon India” or “the Eleventh Transferor Company”) with Abja Constructions Limited (“Abja Constructions” or “the Transferee Company”) and their respective shareholders.
3. Learned Advocate for the Petitioners states that Abja Construction Limited, Transferee Company and Octon India Private Limited, Eleventh Transferor Company are engaged in the business of renting out immovable properties and all other Transferor Companies presently do not carry on any significant business operations. The Scheme of amalgamation of the aforementioned Companies would have the benefits of Simplification of the group structure and Rationalisation of administrative and other costs.
4. The Learned Advocate further states that the Boards 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 Advocate for the Petitioners further states that, Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Summons for Directions.
6. Learned Advocate appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies 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. The said undertaking is accepted.
7. The Official Liquidator has filed his report on 21st May, 2015 in Company Scheme Petition Nos. 215 to 225 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.
8. The Regional Director has filed an Affidavit on 12th 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 it is stated that:

6. That the Deponent further submits that,

- a) *Clause 7.1 of the Scheme provides for accounting in the books of the Transferee company by transferring the assets and liabilities of the Transferor companies to Transferee company on fair value basis. In this regard, it is observed that none of the Transferor companies are having any operative income, besides there are no valuable assets/liabilities. Under these circumstance, the*

question of transferring the assets and liability on fair value basis from Transferor companies to Transferee company does not arise. In view of the above, the Petitioner companies may be directed to transfer the assets and liabilities of Transferor company to Transferee company on book value basis only.

- b) Clause 7.1.4 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor companies and Transferee company. In this regard, it is submitted that in addition to 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.
- c) Clause no.5.3.2 of the Scheme states that, “1 (one) fully paid up 4% Preference Share of Rs.100 each of Abja Constructions shall be issued and allotted for every 97 (ninety seven) 4% Preference shares of Rs.100/- each held in Octon India.” In this regard, it is submitted that the liability of the transferor company so far relates to preference shares has to be discharged by Transferee company as per the original terms and conditions. Therefore, for every 1 preference share of Rs.100/- each held in the 11th Transferor company, the Transferee company has to allot 1 preference share of Rs.100 each. Accordingly, the petitioner company vide its letter dated 01/06/2015 has clarified that the entire redemption value will be discharged by the Transferee company. Copy of the same is annexed hereto and marked as Exhibit ‘E’. In this regard, it is submitted that Clause 5.3.2 of the Scheme may be corrected suitably and petitioner company shall ensure the payment of Income Tax as may be arising at the time of redemption of preference shares.
- d) 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.

9. As far as the observations in paragraph 6 (a) of the affidavit of the Regional Director is concerned, the Petitioner Companies through

its counsel undertake to transfer the assets and liabilities of Transferor Companies to Transferee Company at book value instead of fair value.

10. As far as observation made in paragraph 6 (b) of the affidavit of the Regional Director, the Transferee Company through its counsel submits that it undertakes to follow the accounting entries as provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.
11. As far as the observations in paragraph 6 (c) of the affidavit of the Regional Director is concerned, the Transferee Company through its counsel submits that the redemption value of the preference shares issued by the Transferee Company would be the value appearing in the books of the Eleventh Transferor Company viz., Octon India Private Limited.
12. As far as the observations in paragraph 6 (d) of the affidavit of the Regional Director is concerned, the Petitioner Companies through their counsel submit that the Petitioners are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be dealt with in accordance with law.
13. Learned Advocate for Regional Director on the instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the counsel of the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.
14. 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 215 to 225 of 2015 are made absolute in terms of prayer clauses (a), (b) and (c) and Company Scheme Petition No. 226 of 2015 is made absolute in terms of prayer clauses (a) and (b).
16. 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.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme duly authenticated by the Company Registrar with the concerned Registrar of Companies, electronically, along with concerned E-Form INC 28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
18. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Companies in Company Scheme Petition Nos. 215 to 225 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.
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 Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J)