IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 265 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 161 OF 2015.

Pegasus Real Estate Private Limited

……Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 266 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 162 OF 2015.

Pegasus Properties Private Limited

…Petitioner/Transferee Company

In the matter of the Companies Act (I of 1956);

AND

In the matter of Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation and Arrangement of Pegasus Real Estate Private Limited with Pegasus Properties Private Limited and their respective Shareholders.

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company

Ms. Jyotsna Pandhi i/b Mr. A.A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator Present in CSP No. 265 of 2015.

Mr. Ankit Kulkarni i/b Little & co. for M.I.D.C.

CORAM: S. C. Gupte, J.

DATE: 23rd October 2015

PC:

1. Heard counsel for the parties.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation and Arrangement of Pegasus Real Estate Private Limited with Pegasus Properties Private Limited and their respective Shareholders.

3. The Counsel for the Petitioner submit that the Transferor Company is engaged in the business of real estate development and allied activities. The Transferee Company engaged in the business of real estate development and allied activities.

4. The rational for the Scheme is that the Transferor and Transferee Company are engaged in the similar business of Real Estate in India and with a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Transferor Company with the Transferee Company. The amalgamation of the undertakings of the Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations and the amalgamation would create economies in administrative and managerial costs by consolidating operations

and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

5. 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.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions 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 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 undertakes 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.

8. The Official Liquidator has filed his report on 2nd July, 2015 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

9. The Regional Director has filed an Affidavit on 23rd July, 2015 stating therein, save and except as stated in paragraphs 6(a) & (b) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 of the said Affidavit, the Regional Director has stated that:-

(a) Clause 13.3 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 compliance of Accounting Standard such as AS -14, 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 implication, if any, arising out of Scheme is subject to final decision of Income Tax Authorities. The approval of Scheme by this Hon'ble Court may not deter Income Tax authority to scrutinize tax returns filed by Transferee Company after giving effect to the Scheme. The decision of the Income Tax authority is binding on the Transferor Company and Transferee Company.

10. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company undertakes 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 of Amalgamation to comply with any other applicable accounting standards.

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and

all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

12. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Company. The said undertakings given by the Petitioner Company are accepted.

13. The Scheme is opposed by MIDC through its Counsel on the ground that the agreement between MIDC and the Transferee Company, of which the former is a member, requires an affirmative vote of MIDC for any scheme of amalgamation or arrangement. Learned Counsel submits that such affirmative vote has not been sought from MIDC. Learned Counsel for the Petitioner, on the other hand, submits that despite the Transferee Company calling upon MIDC to give its consent to the scheme, the MIDC has neither replied to the requisition nor been forthcoming in this behalf. Besides, except for a formal want of its affirmative vote, MIDC has no other objection to offer to the scheme . MIDC cannot seek to enforce its private contract as a shareholder of the Transferee Company in the scheme proceedings. There is no requirement in the Articles of the Company of any such affirmative vote. The Transferee Company has obtained requisite approval/ consent letters from majority of the shareholders as required under Section 391 of the Companies Act 1956. Further the Transferee Company

has also passed Special Resolution as required under Section 100 of the Companies Act, 1956 at its Extraordinary General Meeting held on 27th February 2015 as reduction was being done as an integral part of the Scheme. Besides, the Transferee Company has also submitted that the scheme does not, in any way affect the rights of MIDC and that post sanctioning of the scheme MIDC would continue to hold 10.8% shareholding in the Transferee Company. In that view of the matter, there is no merit in the objection, formal as it seems to be, of MIDC to the present scheme.

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 No. 265 of 2015 and 266 of 2015 are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petitions.

16. The Petitioner Companies are directed to lodge a copy of this order and 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. Petitioner is 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioners 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. 265 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. 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 (O. S.), Bombay.

(S. C. Gupte, J.)

CERTIFICATE

I certify that this Order uploaded is a true and correct copy of original signed order.

Uploaded by: Shankar Gawde, Stenographer