IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 322 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 212 OF 2015

WELLMANADVISORY SERVICES PRIVATE LIMITED

………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 323 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 213 OF 2015

FORTRESS MERCANTILE 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 the Companies Act, 1956 (or any corresponding provisions of Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Amalgamation Between Wellman Advisory Services Private Limited ("Transferor Company") and Fortress Mercantile Private Limited ("Transferee Company") 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. Anand Singh, i/b MrA. A. Ansari for Regional Director in both the Company Scheme Petitions.
Mr. S Ramakantha Official Liquidator, present in Company Scheme Petition No. 322 of 2015.

CORAM: S. C. Gupte, J.
DATE: 17th July, 2015

1. Heard the learned counsel for the Petitioner Companies. 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 Wellman Advisory Services Private Limited with Fortress Mercantile Private Limitedand their respective shareholders.

3. Learned advocate for the Petitioners states that the Petitioner in Company Scheme Petition No. 322 of 2015 is presently engaged in consulting business and Petitioner in Company Scheme Petition No. 323 of 2015 is presently engaged in trading business and Investment and financing activities.

4. The rationale for the merger is that both the companies under this Scheme of Amalgamation are part of same Group. The Group believes that the restructuring would benefit the companies and its stakeholders on account of simplification the group structures, elimination of multiple entities within the group, rationalisation of administrative, operative and financial costs and efficient management control and system.

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

6. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in company summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company summons for Directions.

7. Counsel appearing on behalf of the Petitioners has stated that they 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 undertakings given by the Petitioner Companies are accepted.

8. The Official Liquidator has filed his report on 29th June, 2015 in the Company Scheme Petition No. 322 of 2015 stating therein that the affairs of the Transferor Company have 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 dated 2nd July, 2015 stating therein that save and except as stated in paragraph 6 (a), 6(b) and 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

   In paragraph 6(a), 6(b) and6(c), of the said affidavit it is stated that:

   a) *Clause 6.2 of the scheme states that the Transferee company shall record all assets and liabilities of the Transferor company pursuant to this Scheme at their respective fair values as may be determined. In this regard, it is submitted that the assets and liabilities of the Transferor Company shall not be transferred on fair value basis.*

b) *Clause 6.5 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 – 14,the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with any other applicable accounting standards such as AS-5, etc.*

c) *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 and the 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, the assets and liabilities of the Transferor Company shall be recorded at their book values.

11. As far as observations made in paragraph 6 (b) 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 as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

12. As far as observations made in paragraph 6(c) 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 Amalgamationwill be met and answered in accordance with law.

13. 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 given by 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 No. 322 of 2015 filed by the Transferor Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 323 of 2015 filed by the Transferee Company is made absolute in terms of prayer clause (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 with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

18. 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 the Petitioner in Company Scheme Petition

No. 322 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.

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 amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)