

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 409 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 312 OF 2015
Astrum Developers Private Limited... Petitioner Company
AND
COMPANY SCHEME PETITION NO 410 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 313 OF 2015
Neo Pharma Private Limited... Petitioner Company
AND
COMPANY SCHEME PETITION NO 411 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 314 OF 2015
Kalpataru Retail Ventures Private Limited..... Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

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

AND

In the matter of Composite Scheme of Amalgamation and Arrangement of Astrum Developers Private Limited ('Transferor Company') and Neo Pharma Private Limited ('Transferee Company' and 'Demerged Company') and Kalpataru Retail Ventures Private Limited ('Resulting Company') and their Respective Shareholders and Creditors

Called for Hearing

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

Mr. R.C Master, i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator Present in CSP No 409 of 2015.

Mr. M. Menon for Shree Ganesh Enterprises, Objector .

Ms. A. Ghone, i/b P. M. Jadhav for Kalpataru Towers Co-operative Housing Society Limited, Objector.

CORAM: S. C. Gupte, J.

DATE: 4th September 2015

1. Heard counsel for the parties.
2. The sanction of the Court is sought under Sections 391 to 394 read with Sections 100-103 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013, to the Composite Scheme of Amalgamation and Arrangement of Astrum Developers Private Limited ('Transferor Company') between Neo Pharma Private Limited ('Transferee Company' or 'Demerged Company') and Kalpataru Retail Ventures Private Limited ('Resulting Company') and their Respective Shareholders and Creditors.
3. Learned Counsel has stated that the Petitioner Company in Company Scheme Petition No. 409 of 2015 is engaged in the business of construction of residential properties, the Petitioner Company in Company Scheme Petition No. 410 of 2015 is engaged in the business of construction, leasing and renting of properties and sale of properties and the Petitioner Company in Company Scheme Petition No. 411 of 2015 is engaged in the business of construction, leasing & renting of properties and sale of properties.
4. The rational for the composite scheme of amalgamation and arrangement is that the Petitioner Companies are part of same group of

companies. Consolidation of the Petitioner Companies pursuant to this composite Scheme would result in achieving operational and managerial efficiency, consolidation of property leasing and renting business with a view to bringing it under common holding thereby exploring Real Estate Investment Trust (REIT) option, management focus and enhanced flexibility, simplification of group structure and bringing synergy in operations and optimum utilisation of common resources.

5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation and Arrangement 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 17th August 2015 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Court.
9. The Regional Director has filed an Affidavit on 24th August 2015, stating therein, save and except as stated in paragraph 6(a) & (b), it appears that the scheme is not prejudicial to the interest of shareholders and public.

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

- (a) *With reference to Clause 10 of the scheme, it is submitted that the reserve if any arising out of the Amalgamation shall be credited to Capital Reserve Account of Demerged Company.*
 - (b) *Clause 19.1 of the scheme provides for issue of only preference shares alone is in compliance of provisions of Section 2(19A) of the Income Tax Act or not is a matter within the domain of Income Tax Authority. In this regard tax 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 amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Company.*
10. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes that surplus, if any arising out the scheme shall be credited to Capital Reserve Account of Transferee Company.

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Company submits that the Petitioner Company 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.
12. 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 Petitioner Company. The said undertakings given by the Petitioner Company are accepted.
13. The Counsel for the Petitioners submits that the Transferee Company / Demerged Company, has received objections through affidavit of M/s. Kalpataru Towers Co-operative Housing Society Limited objecting to the Scheme. The counsel for the Petitioners taking into account the concern of M/s. Kalpataru Towers Co-operative Housing Society Limited clarifies that the leasehold rights in the land bearing CTS No. 134C, 132 A/1 to 132 A/3, 135A, 135B, 135C and 136 situated at Village Akruli, Kandivali (East), Mumbai – 400101 will not be transferred to the Resulting Company as a part of the Scheme and the Demerged Company post sanctioning of the scheme will continue to hold all the leasehold rights, title and interest in respect of the said land and shall convey / transfer the said land in favour of the Society in future

and also rights of the society as Unsecured Creditor shall remain unaffected and unchanged.

14. In so far as objection raised by Shree Ganesh Enterprises, the Counsel for the Petitioners further submits that the claim of M/s Shree Ganesh Enterprise is disputed. The Learned Counsel for the Petitioners submit that it will be open to the objector to peruse legal remedies as may be advised for recovery of their alleged dues.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 409 of 2015 to 411 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Company Scheme Petition.
17. Petitioners are 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 the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.
18. The Petitioner Companies to lodge a copy of this order and the Scheme, along with the form of minutes 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 the receipt of the Order.

19. The Petitioners in all 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. 409 of 2015 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of receipt of the order.
20. Filing and issuance of the drawn up order is dispensed with.
21. All concerned regulatory authorities to act on a copy of this order along with the Scheme and form of minutes duly authenticated by the Company Registrar, High Court, Bombay.

(S. C. GUPTE, J.)

CERTIFICATE

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

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