IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.401 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 343 OF 2015

Ess Gee Realty Private Limited....Petitioner Company

With

COMPANY SCHEME PETITION NO.402 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 344 OF 2015

Prime Hygiene Care Private Limited....Petitioner Company

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

AND

In the matter of Section 391 & 394 of The Companies Act, 1956;

AND

In the matter of Scheme of Arrangement of Ess Gee Realty Private Limited with Prime Hygiene Care Private Limited

<u>Called for hearing</u>

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

Mr. Siddharth Shah i/b Mr. A.A. Ansari for Regional Director.

Mr. S. Ramakantha, Official Liquidator Present

CORAM: S. C. Gupte, J.

DATE: 28th August, 2015

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Arrangement 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 Arrangement of Ess Gee Realty Private Limited with Prime Hygiene Care Private Limited.

3. The Learned Counsel for the Petitioners states that Petitioner Company in Company Scheme Petition No. 401 of 2015 is presently engaged in the business of Real Estate and the Petitioner Company in Company Scheme Petition No. 402 of 2015 is presently engaged in the business of Health Care.

4. Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely With a view to maintain a simple corporate structure, enjoy benefits of Large Scale Economies, to take effect of synergy gains and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of Ess Gee Realty Private Limited ("Transferor Company") into Prime Hygiene Care Private Limited ("Transferee Company") as both of them are into

similar nature of business. The amalgamation of all undertaking of Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, 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 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 26th 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 19th August, 2015 stating therein, save and except as stated in paragraphs 6 (a) to 6 (c) thereof, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to 6 (c) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) Clause 18.1 of the scheme provides for change of name of Transferee Company. In this connection Transferee Company may be directed to comply with the provisions of section 21/23 of the Companies Act 1956 corresponding to new section 13(2) & (3) read with 15 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies since under the computerized MCA 21 System of allotting the names, it is systemically not possible to reserve the names. Therefore, the

name if available at the time of filing of such application, shall be made available by the Registrar of Companies, Mumbai.

(b) Clause 12.3 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 the compliance of the 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) 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 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 Transferor Company and Transferee Company.

10. As far as the observations made in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner/ Transferee Company through their Counsel undertakes to comply with the provisions of section 21/23 of the Companies Act 1956 corresponding to new section 13(2) (3) & (6) read with 15 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies

and the proposed new name will be allowed subject to availability of the same, by the Registrar of Companies at the time of making such application by the Transferee Company.

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to comply and follow the accounting treatment such as AS-14, AS-5 and other applicable accounting standards which are necessary in connection with the scheme.

12. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the petitioner through their counsel submits that the petitioner is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of amalgamation will be met and answered in accordance with law.

13. 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.

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. 401 of 2015 is made absolute in terms of the prayer clause (a) of the Company Scheme Petition and Company Scheme Petition No. 402 of 2015 is made absolute in terms of the prayer clause (a) & (b) of the Company Scheme Petition.

16. The Petitioner Companies are directed to lodge a copy of this order and Scheme along with 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 order.

17. 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, 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. 401 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 and form of minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. C. Gupte, J.)