

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 397 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 224 OF 2015

Gokuldharm Real Estate Development Company Private Limited

....Petitioner/Amalgamating Company

COMPANY SCHEME PETITION NO 398 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 225 OF 2015

D B Realty Limited.....Petitioner/Amalgamated Company

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

And

In the matter of Section 391 & 394 of the Companies Act, 1956; (to the extent applicable provisions of the Companies Act, 2013)

And

In the matter of Scheme of Amalgamation of Gokuldharm Real Estate Development Company Private Limited (Amalgamating Company) with D B Realty Limited (Amalgamated Company) and their respective shareholders

Called for Hearing

Mr. Virag Tulzapurkar, Senior Counsel, with Mr. Hemant Sethi i/b Hemant Sethi & Co, Advocate for the Petitioner in both the Petition.

Mr. Anil D'souza, Advocates for Star Protection Private Limited one of the unsecured Creditor in CSP no 397 of 2015.

Mr. Sharon Patole, Advocates for AI group Design Decorate one of the Unsecured Creditor in CSP No. 397 of 2015.

Mr. Anil D Yadav, i/b Shri. A. A. Ansari for Regional Director in both the Petitions.

Mr. S. Ramakantha, Official Liquidator, present in C.S.P No. 397 of 2015.

CORAM: S. C. GUPTE, J

DATE : 16th OCTOBER, 2015

PC:

1. Heard learned counsel for parties.
2. The Counsel representing Star Protection Private Limited, states that the claim of their client has been settled. The Counsel representing AI group Design Decorate states the claim of their client has been settled by the Transferee Company and for other claims they will pursue remedies in accordance with law .
3. The sanction of the Court is sought under Sections 391 to 394 to the Companies Act, 1956, to a Scheme of Amalgamation of Gokuldharm Real Estate Development Company Private Limited (Amalgamating Company) with D B Realty Limited (Amalgamated Company) and their respective shareholders .
4. The Transferor and Transferee Company are presently engaged in the business of Real estate, Development and Construction.
5. The Rational for the Scheme is that the nature of business carried on by the Amalgamating Company is similar to the Amalgamated Company, which is also it's holding company. Achieving economies of scale, Lesser regulatory / procedural compliances. Integrate, rationalize and streamline the management structure of the merged business. Pooling of the human talents in terms of manpower, management, administration and marketing which would result in savings of costs. Amalgamation of the Company would eliminate duplication of work, administrative services, and will result in cost savings. Cost saving in fees/ duties payable on statutory and procedural compliance. Facilitate inter transfer of resources and costs and optimum utilization of Assets. Synchronizing of efforts to

achieve uniform corporate policy. To reflect the consolidated net worth of the Company in one balance sheet.

6. The Petitioner Companies have approved the said Scheme by passing the Board Resolution which is annexed to the respective Company Scheme Petition.
7. The learned counsel for the Petitioners states that the Petitioners have complied with all directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the orders passed in respective Company summons for Directions.
8. The learned counsel for the Petitioners further states 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 undertakes 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.
9. The Regional Director has filed an Affidavit on 15th September , 2015 in the above Petition stating therein that save and except as stated in paragraphs 6 of the said Affidavit, it appears that the scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has stated that:-

6. *“That the Deponent further submits that:-*

6. *“That the deponent respectfully submits that 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 the 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 the Amalgamation. The decision of the Income tax authority is binding on the Petitioner Company.

10. In so far as observations made in paragraph 6 of the Affidavit of Regional Director is concerned, Petitioner Companies are bound to comply with all the applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.
11. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamutthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company is accepted.
12. The Official Liquidator has filed his report on 9th September 2015 stating therein that the Affairs of the Petitioner/ Amalgamating Company has been conducted in a proper manner and that the Petitioner/ Transferor Company may be ordered to be dissolved by this Hon'ble Court.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, both the Company Scheme Petitions are made absolute in terms of the prayer clause (a) of the respective Company Scheme Petitions.
15. 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 receipt of the order.

16. 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.

17. 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. 397 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.

18. Filing and issuance of the drawn up order is dispensed with.

19. 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.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer