IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 432 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 274 OF 2015.

PUNE-MUMBAI REALTY PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 433 OF 2015.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 275 OF 2015

RIVER VIEW PROPERTIES PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of PUNE-MUMBAI REALTY PRIVATE LIMITED, the Transferor Company with RIVER VIEW PROPERTIES PRIVATE LIMITED, the Transferee Company

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. H. V Mehta i/b Mr. A.A. Ansari for the Regional Director.

Mr. S. Ramakantha, the Official Liquidator.

CORAM: S. C. Gupte, J.

DATE: 30th October, 2015

PC:

1. Heard Learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of PUNE-MUMBAI REALTY PRIVATE LIMITED, the Transferor Company with RIVER VIEW PROPERTIES PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business Real Estate Construction and

Development including develop, improve build, sell, lease, manage, commercially exploit and otherwise deal in real estate, properties of all nature and description or any rights therein including land, buildings and other estate and realty including shopping malls and the Transferee Company has been carrying on the business of property owners, builders, contractors, property agents, promoters of corporate or joint ownership housing societies. The proposed scheme of Amalgamation will have the benefit as per the opinion of the management, that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to broad base the area of operation and create a stronger financial base which would be advantageous to combine the activities and operations of both the companies into a single Company for synergistic linkages as both the Companies are engaged in the same type of business activities and thus there will be benefit of combined financial resources, this will be reflected in the profitability of the Transferee Company and that this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and the Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business which the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation and by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have 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 undertake 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.

7. The Official Liquidator has filed his report on 2nd day of September, 2015 in Company Scheme Petition No. 432 of 2015 stating 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.

8. The Regional Director has filed an Affidavit on 28th day of September, 2015 stating therein, save and except as stated in paragraph 6, 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,

(a) *Clause 13.4 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 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 as such as AS-5 etc.*

(b) with reference to clause 13.1 of the scheme, it is submitted that the assets and liabilities of the transferor company shall be transferred to transferee company on book value basis only following the accounting treatment for amalgamation in the nature of merger provided in AS-14 in as much as the transferor company is a 100% subsidiary of transferee company.

(c) *That the Deponent further 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 the amalgamation, The decision of the Income Tax Authority is binding on the petitioner company.*

9. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that in addition to the compliance of 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.

10. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the assets and liabilities of the transferor company shall be transferred to transferee company on book value basis only as per AS-14.

11. So far as the observation in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of 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. Chandana Muthu, 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 Petitioners. The above undertakings are accepted.

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, Company Scheme Petition No. 432 of 2015 are made absolute in terms of prayers clause (a), (b) and (d) and 433 of 2015 is made absolute in terms of prayer clauses (a) and (c).

15. The Petitioner Companies to file 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.

16. The Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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 Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 432 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the Order.

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 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.