IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 576 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 330 OF 2014

GALLERIA DEVELOPERS PRIVATE LIMITED
....Petitioner/ Transferor Company No. 1

AND

COMPANY SCHEME PETITION NO.577 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 331 OF 2014

ADVANTAGE RAHEJA BUILDERS PRIVATE LIMITED
....Petitioner/ Transferor Company No. 2

AND

COMPANY SCHEME PETITION NO.578 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 332 OF 2014

ADVANTAGE RAHEJA CONSTRUCTION PRIVATE LIMITED
....Petitioner/ Transferor Company No. 3

AND

COMPANY SCHEME PETITION NO.579 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 333 OF 2014

ADVANTAGE RAHEJA DEVELOPERS PRIVATE LIMITED
....Petitioner/ Transferor Company No. 4

AND

COMPANY SCHEME PETITION NO.580 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 334 OF 2014

ADVANTAGE RAHEJA HOSPITALITY PRIVATE LIMITED
....Petitioner/ Transferor Company No. 5

AND

COMPANY SCHEME PETITION NO.581 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 335 OF 2014

ADVANTAGE RAHEJA INFRAPROJECTS PRIVATE LIMITED

....Petitioner/ Transferor Company No. 6

AND

COMPANY SCHEME PETITION NO.583 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 336 OF 2014

ADVANTAGE RAHEJA INFRASTRUCTURE PRIVATE LIMITED

....Petitioner/ Transferor Company No. 7

AND

COMPANY SCHEME PETITION NO.584 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 337 OF 2014

ADVANTAGE RAHEJA PROPERTIES PRIVATE LIMITED

....Petitioner/ Transferor Company No. 8

AND

COMPANY SCHEME PETITION NO.582 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 338 OF 2014

ADVANTAGE RAHEJA RESORTS AND HOTELS PRIVATE LIMITED

....Petitioner/ Transferor Company No. 9

AND

COMPANY SCHEME PETITION NO.585 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 339 OF 2014

ANNONAY TRADERS AND DEVELOPERS PRIVATE LIMITED

....Petitioner/ Transferor Company No. 10

AND

COMPANY SCHEME PETITION NO.586 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 340 OF 2014

B. RAHEJA INFRASTRUCTURE PRIVATE LIMITED

....Petitioner/ Transferor Company No. 11

AND

COMPANY SCHEME PETITION NO.587 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 341 OF 2014

SANTORINI REALTY PRIVATE LIMITED

....Petitioner/ Transferor Company No. 12

AND

COMPANY SCHEME PETITION NO.588 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 342 OF 2014

BEAU RIVAGE INVESTMENT AND FINANCE PRIVATE LIMITED

....Petitioner/ Transferor Company No. 13

AND

COMPANY SCHEME PETITION NO.589 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 343 OF 2014

BEAU RIVAGE TRADING COMPANY PRIVATE LIMITED

....Petitioner/ Transferor Company No. 14

AND

COMPANY SCHEME PETITION NO.590 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 344 OF 2014

D.B.R. PROPERTIES PRIVATE LIMITED

....Petitioner/ Transferor Company No. 15

WITH

COMPANY SCHEME PETITION NO.591 OF 2014.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 345 OF 2014.

PEBBLE BAY DEVELOPERS PRIVATE LIMITED

....Petitioner/ Transferee Company

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

AND

In the matter of Sections 391 to 394 read with Sections 78, 100 to 103 of the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of GALLERIA DEVELOPERS PRIVATE LIMITED, ADVANTAGE RAHEJA BUILDERS PRIVATE LIMITED, ADVANTAGE RAHEJA CONSTRUCTION PRIVATE LIMITED,ADVANTAGE RAHEJA DEVELOPERS PRIVATE LIMITED, ADVANTAGE RAHEJA HOSPITALITY PRIVATE LIMITED, ADVANTAGE RAHEJA INFRAPROJECTS PRIVATE LIMITED, ADVANTAGE RAHEJA INFRASTRUCTURE PRIVATE LIMITED, ADVANTAGE RAHEJA PROPERTIES PRIVATE LIMITED, ADVANTAGE RAHEJA RESORTS AND HOTELS PRIVATE LIMITED, ANNONAY TRADERS AND DEVELOPERS PRIVATE LIMITED, B. RAHEJA INFRASTRUCTURE PRIVATE LIMITED, SANTORINI REALTY PRIVATE LIMITED, BEAU RIVAGE INVESTMENT AND FINANCE PRIVATE LIMITED, BEAU RIVAGE TRADING COMPANY PRIVATE LIMITED

AND

D.B.R. PROPERTIES PRIVATE LIMITED

WITH

PEBBLE BAY DEVELOPERS PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS.

Called for hearing

Mr. Rahul R. Mahajan alongwith Mr. Amit Surve and Ms. Akshita Palvia i/b Fortitude LawAssociates, Advocates for the Petitioners in all Petitions.

Mr. S. Ramakantha, Official Liquidator, present in Company Scheme Petition Nos. 576 TO 590 of 2014.

Mr. C. J. Joy i/b Dr. H.P.Chaturvedi for Regional Director all the Petitions.

CORAM: S. J. Kathawalla, J.
DATE : 9th January, 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 between GALLERIA DEVELOPERS PRIVATE LIMITED, ADVANTAGE RAHEJA BUILDERS PRIVATE LIMITED, ADVANTAGE RAHEJA CONSTRUCTION PRIVATE LIMITED, ADVANTAGE RAHEJA DEVELOPERS PRIVATE LIMITED, ADVANTAGE RAHEJA HOSPITALITY PRIVATE LIMITED, ADVANTAGE RAHEJA INFRAPROJECTS PRIVATE LIMITED, ADVANTAGE RAHEJA INFRASTRUCTURE PRIVATE LIMITED, ADVANTAGE RAHEJA PROPERTIES PRIVATE LIMITED, ADVANTAGE RAHEJA RESORTS AND HOTELS PRIVATE LIMITED, ANNONAY TRADERS AND DEVELOPERS PRIVATE LIMITED, B. RAHEJA INFRASTRUCTURE PRIVATE LIMITED, SANTORINI REALTY PRIVATE LIMITED, BEAU RIVAGE INVESTMENT AND FINANCE PRIVATE LIMITED, BEAU RIVAGE TRADING COMPANY PRIVATE LIMITED and D.B.R PROPERTIES PRIVATE LIMITED, the Transferor Companies intoPEBBLE BAY DEVELOPERS PRIVATE LIMITED, the Petitioner / Transferee Company and their respective shareholders and creditors, under Sections 391 to 394 read with Sections 78, 100 to 103 of the Companies Act, 1956.

3. Learned Counsel for the Petitioners states that the Transferor Company No. 1 is engaged in the business of real estate development,Transferor Company No. 2is engaged in the business of real estate development, the Transferor Company No. 3 is incorporated to carry on real estate development, however, presently the Transferor Company No. 3 is not carrying on the same, Transferor Company No. 4is engaged in the business of real estate development, Transferor Company No. 5is incorporated to carry on real estate development, however, presently the Transferor Company No. 5is not carrying on the same, Transferor Company No. 6is incorporated to carry on real estate development, however, presently the Transferor Company No. 6 is not carrying on the same, Transferor Company No. 7is incorporated to carry on real estate development, however, presently the Transferor Company No. 7is not carrying on the same, Transferor Company No. 8is incorporated to carry on real estate development, however, presently the Transferor Company No. 8 is not carrying on the same, Transferor Company No. 9is incorporated to carry on real estate development, however, presently the Transferor Company No. 9 is not carrying on the same, Transferor Company No. 10is incorporated to carry on real estate development, however, presently the Transferor Company No. 10 is not carrying on the same, Transferor Company No. 11is incorporated to carry on real estate development, however, presently the Transferor Company No. 11is not carrying on the same, Transferor Company No. 12is incorporated to carry on real estate development, however, presently the Transferor Company No. 12has not commenced the same,Transferor Company No. 13is incorporated to carry on the business of investment activity, Transferor Company No. 14is incorporated to carry on trading activity, however, presently the Transferor Company No. 14has not commenced the same, Transferor Company No. 15is incorporated to carry on real estate development, however, presently the Transferor Company No. 15has not commenced the same. The Transferee Company is engaged in the business of real estate development.

4. The proposed scheme of Amalgamation will have the benefit that the combined assets and cash flows of the fifteen (15) companies. The combined

resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and It will be conducive to better and more efficient and economical control and conduct of the Companies and With the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and A larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company and It will result in duplication of work in areas like accounts, company law and tax assessments, common administrative services, reduction in regulatory/procedural compliances and accordingly lead to synchronization of efforts to achieve uniform corporate policy and ease in decision making at the group level.

5. The Transferor Companies and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

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

7. The Learned Counsel appearing on behalf of the Petitioners have stated that the Transferor Companies and the Transferee Company 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 rule made there under whichever is applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 6th January, 2015 in Company Scheme Petitions No. 576 to 590 of 2014 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved

9. The Regional Director has filed an Affidavit on 20th November, 2014 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, it is stated as under.

'6. That the Deponent further submits that :-

> a) *Clause 15(h) 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 such as AS-5 etc.*
>
> b) *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.*
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> c) *One of the unsecured creditor i.e M/s. Gaurav International has submitted his objection to the scheme as the petitioner company has not settled their dues of Rs 3.98 lacs this is for information of the Hon'ble High Court.*

10. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner /Transferee Company undertakes that in addition to compliance of Accounting Standard 14, the Transferee Company will pass such accounting entries which are necessary in connection with this Scheme to comply with any other Accounting Standards.

11. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

12. So far as the observation in paragraph 6(c), with respect to paragraph 6(b) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioners submits that M/s. Gaurav International, Unsecured Creditors of

the Petitioner Transferee / Company vide its letter being OTS No. 24 of 2014 objected to the proposed Scheme of Amalgamation stating that the dues of aforesaid creditors have not paid by the Petitioner/Transferee Company. The Counsel for the Petitioner states that the Scheme does not affect the rights of the Creditors including creditors mentioned herein above and no Compromise or Arrangement is called for with any of the Creditors. It is open to the Unsecured Creditors including M/s. Gaurav International to pursue their legal remedies against the Transferee Company as may be advised for recovery of their dues. The Transferee Company shall abide by the final outcome of the said legal remedies if any, in favour of the Creditors.

13. 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 undertaking given by the Advocate for the Petitioner Company in paragraph Nos. 10 and 11 herein above. The undertaking 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, Company Scheme Petition Nos. 576 to 591 of 2014 are made absolute in terms of prayer clause (a) of the respective Petitions.

16. 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.

17. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Arrangement 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, 2013.

18. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioners in the Company Scheme Petition No. 576 to 590 of 2014 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 Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J.)