

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 556 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 505 OF 2015

KANAKIA DESIGN & CONSTRUCTION PRIVATE LIMITED,
....Petitioner/ Transferor Company
WITH
COMPANY SCHEME PETITION NO.557 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 506 OF 2015

KANAKIA SPACES REALTORS PRIVATE LIMITED
....Petitioner/ Transferee
Company

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

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation
Between Kanakia Design & Construction
Private Limited ('the Transferor Company')

AND

Kanakia Spaces Realtors Private Limited,
(formerly known as Centaur Mercantile
Private Limited) ('the Transferee 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 Petitioners in both Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No 556 of 2015

Ms. Purnima Awasthi for Regional Director in both the Petitions.

CORAM: S. C. GUPTE, J .

DATE : 30th October, 2015

PC:

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Petition and to contravene averments made in the Petition.
2. The sanction of the Court is sought to the Scheme of Amalgamation between Kanakia Design & Construction Private Limited and Kanakia Spaces Realtors Private Limited and their respective Shareholders.
3. Learned Counsel for the Petitioners states that the Transferor Company is engaged in the business of construction and development of real estate properties. The Transferee Company is engaged in the business of construction and development of real estate properties.
4. The proposed Scheme of Amalgamation will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operational and management efficiencies.
5. The Transferor Company and the 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 Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.
7. The Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if

any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 27th October 2015 stating therein that save and except as stated in paragraph 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 Submits that :

(a) It has been observed that the name of the transferee Company has been changed to M/s. Kanakia Spaces Realtors Private Limited. Hence the petitioner company shall take appropriate steps to amend the scheme suitably wherever the name of the Transferee Company appears in the scheme.

(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.

9. As far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Counsel of the Petitioners seeks leave of this Court to change the name of the Transferee Company from 'Centaur Mercantile Private Limited' to 'Kanakia Spaces Realtors Private Limited. Leave to amend the Scheme and the Petition and all consequential amendments allowed by substituting the name 'Centaur Mercantile Private Limited' with 'Kanakia Spaces Realtors Private Limited' wherever appearing in the Scheme and the Petition. Amendment to be carried within 4 weeks from today.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioners clarifies that the

approval of the Scheme by this Court will not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme and all issues arising out of the Scheme will be met and answered in accordance with law.

11. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

12. The Official Liquidator has filed his report on 6th October, 2015 stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this 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. None of the parties concerned have come forward to oppose the Scheme.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 556 of 2015 and Company Scheme Petition 557 of 2015 are made absolute in terms of prayer clause (a) of the respective Petitions.

15. The Petitioner Companies to lodge a copy of this order, the Scheme and form of Minutes 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 receipt of the order.

16. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of companies, electronically, along with form GNL-1 in addition

to the physical copy, within 30 days from the date of issuance of the order by the Registry.

17. The Petitioner Companies in both Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No 556 of 2015 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of this Order.

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

19. All authorities concerned 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