IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 559 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 323 OF 2015

Growth Trading Private Limited

…..Petitioner/ First Transferor Company.

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 542 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 324 OF 2015

Simple Constructions Private Limited

…..Petitioner/ Third Transferor Company.

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 543 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 325 OF 2015

Shubha Mercantile Private Limited

…..Petitioner/ Second Transferor Company.

In the matter of the Companies Act, 1956/2013

AND

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

AND

In the matter of scheme of amalgamation

of

Growth Trading Private Limited,

Shubha Mercantile Private Limited

And

Simple Constructions Private Limited

With

SNS Real Estate Private Limited

Called for Hearing

Mr. Naserali Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

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

Mr. S. Ramakantha, Official Liquidator, present.

CORAM: K. R. SHRIRAM, J.

DATE: 18th December, 2015

PC:

1. Heard learned Advocate for Petitioners. No objector has come to oppose the Scheme 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 an arrangement embodied in the Scheme of Amalgamation of Growth Trading Private Limited and Shubha Mercantile Private Limited and Simple Constructions Private Limited With SNS Real Estate Private Limited.

3. The learned Advocate for the Petitioner Companies states that the Transferor Companies and the Transferee Company are not having much business activity and are presently engaged in investment activity only.

4. The learned Advocate for the Petitioner Companies further states that the Scheme of amalgamation will enable to achieve integration of the business operations, strategic flexibility and a scale to pursue growth opportunities. Further the combined entity will be able to showcase strength and there will also be synergy benefits through combined operations and will also result in cost efficiencies and will lead to more efficient and economical control and conduct of the affairs.

5. The learned Advocate appearing on behalf of the Petitioner Company submits that by an order passed by this court on 24th April, 2015 in Company Summons for Direction No. 323 of 2015, the filing of a separate Company Summons for Direction and Company Scheme Petition in relation to the proposed Scheme by SNS Real Estate Private Limited, the Transferee Company has been dispensed with as the Transferor Company is wholly owned subsidiary of the Transferee Company and no new shares will be issued and that there will be no change in the capital structure of the

Transferee company and that the scheme will not adversely affect the rights of members or creditors of the Transferee Company and in view of the judgment of this court in Mahaamba Investment Limited v/s IDI Limited (2001) Company Cases 105.

6. The Petitioner/Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the respective Company Scheme Petition.

7. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in 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 and seeks sanction to the said proposed Scheme of Amalgamation.

8. The Learned Advocate appearing on behalf of the Petitioners has stated that they 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 the Rules made thereunder. The said undertaking is accepted.

9. The Official Liquidator has filed his report on 14^{th} December 2015 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

10. The Regional Director has filed his Affidavit on 17th November 2015, *inter alia,* stating therein that save and except as stated in paragraphs 6 (a) to 6(c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), (b) & (c) of the said Affidavit, the Regional Director has stated that :

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

a) Clause 11.5 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) Clause 13.1 of the Scheme provides for insertion of new object clauses in the Memorandum of Association of the Transferee Company to enable the Transferee Company to carry on the business of the Transferor Companies. In this regard, the Transferee Company may be directed to comply with the provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act 1956 and to file amended copy of the Memorandum of Association with necessary form with Registrar of Companies.

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."*

11. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Transferee Company through its advocate undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard.

12. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Learned Counsel for the Petitioners states that the Resulting Company through their Counsel undertakes to comply with the provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of Companies Act 1956 and to file amended copy of the Memorandum of Association with necessary form with Registrar of Companies.

13. So far as the objection of the Regional Director as stated in paragraph 6(c) of his Affidavit is concerned, learned advocate submits that the Petitioner Companies and the Transferee Company shall be bound to comply with all applicable provisions of the

Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

14. 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 and assurance given by the Petitioner Company through their advocate. In view thereof, the undertakings are accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.559 of 2015, 542 of 2015 and 543 of 2015 filed by the Transferor Companies are made absolute in terms of prayer clauses (a) and (b) of the respective petitions .

17. The Transferee Company to lodge a copy of this order along with the Scheme 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 this order.

18. Petitioner Companies and Transferee Company are directed to file/lodge a copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court, Bombay, 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.

19. The Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay in their respective Petitions. Costs to be paid within four weeks from the date of the order.

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

21. All concerned regulatory authorities to act on copy of this order along with the Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K.R. SHRIRAM, J.)

CERTIFICATE

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

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