IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 589 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.537 OF 2015

KANAKIA SPACES PRIVATE LIMITED,
....Petitioner/ Transferor Company

WITH

COMPANY SCHEME PETITION NO.590 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.538 OF 2015

CELEBRATION DEVELOPERS 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 Arrangement between Kanakia Spaces Private Limited ('the Transferor Company')

AND

Celebration Developers 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. Prashant Jadhav i/b A.A. Ansari for Regional Director in both the Petitions.

CORAM: K.R.SHRIRAM, J

DATE : 18th DECEMBER , 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 Arrangement between Kanakia Spaces Private Limited and Celebration Developers Private Limited and their respective Shareholders.

3. Learned Counsel for the Petitioners states that the Transferor Company and Transferee Company are engaged in the business of construction and development of real estate properties.

4. The proposed Scheme of Arrangement is a part of realignment exercise within the group.

5. The Transferor Company and the Transferee Company have approved the said Scheme of Arrangement 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 9th December 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) This scheme of arrangement is not falling within the purview of demerger as provided in section 2(19AA) of the Income Tax Act, 1961 for the following reasons.

(i) That the Brand proposed to be transferred is not reflected as tangible/intangible assets of the Transferor Company and representing any book value in the financial statement of Transferor Company.

(ii) The consideration arrived by the valuer is payable by way of cash and this transaction is subject to the approval of Income Tax Authorities. Further the Transferor Company proposes to record the consideration received, as a profit in the profit and loss account of the Transferee Company.

(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.

(c) The Income Tax Department vide their letter No. CEN.CIR.4(1)/ Arrangement/2015-16 dated 14/08/2015 has raised some objections in respect of transaction happened between Transferor Company and Navjeevan Charitable Trust and made allegations in respect of some bogus transaction. Copy of the same is annexed her marked as Exhibit 'D'. In this regard issue was taken up with the company and the company vide its dated 17/11/2015 has clarified that the petitioner company has submitted its reply to the Income Tax

Department vide their letter dated 03/09/2015. Further, the petitioner has stated that the Department has moved an application under section 245D(6) of the Income Tax Act to the Hon'ble Settlement Commission and the final verdict is awaited. Further, the petitioner company have agreed to honour the final decision of the Settlement Commission proceedings. Copy of the reply received from the petitioner company is annexed here marked as Exhibit 'E'. In view of the undertaking given by the petitioner company the scheme be approved subject to the final decision of proceedings pending before Hon'ble Settlement Commission.

9. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies submits that the Scheme of Arrangement would not be considered as demerger as provided under section 2(19AA) of the Income-tax Act, 1961 and the Transferor Company would discharge the applicable tax liability, if any, as per the applicable provisions of Income-tax Act, 1961.

10. In so far as observations made in paragraphs 6(b) to 6(c) of the Affidavit of the Regional Director is concerned, the Petitioners through their Counsel 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 by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 589 of 2015 and Company Scheme Petition 590 of 2015 are made absolute in terms of prayer clause (a) of the respective Petitions.

14. The Petitioner Companies to lodge 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 receipt of the order.

15. Petitioner Companies 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 form INC-28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.

16. The Petitioner Companies in both Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Costs to be paid within four weeks, from date of this Order.

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

18. 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.

(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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