IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.639 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.603 OF 2014

MAHAVIR BUILD ESTATE PRIVATE LIMITED

… First Transferor Company / Petitioner Company

AND
COMPANY SCHEME PETITION NO.640 OF 2014
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.604 OF 2014

GALAXY PREMISES PRIVATE LIMITED

… Second Transferor Company/ Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of the Scheme of Amalgamation of
(1) Mahavir Build Estate Private Limited (MBEPL) and
(2) Galaxy Premises Private Limited (GPPL) with
(3) Palava Dwellers Private Limited (PDPL) and their respective shareholders and creditors.

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan, Mr. Ameya Lambhate, for the Petitioners

Mr. R. C. Master & H. V. Mehta i/b. H. P. Chaturvedi for the Regional Director in both the Company Scheme Petitions.

Mr. S. Ramakantha, Official Liquidator in CSP No.639 and 640 of 2014

Coram : S. J. Kathawalla, J.

Date : 16th January, 2015

P.C:-

1. Heard Advocate for the parties. No objectors have come before the Court to oppose the Scheme nor has any party controverted any averments made in the Company Scheme Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation of Mahavir Build Estate Private Limited (MBEPL) and Galaxy Premises Private Limited (GPPL) with Palava Dwellers Private Limited (PDPL) and their respective shareholders and creditors.

3. Learned Advocate for the Petitioner Companies state that the First Transferor Company is engaged in business of building and developing and the Second Transferor Company is engaged in business of

building and construction. The Transferee Company is engaged in business of all types of real estate, building and constructions.

4. The proposed scheme of amalgamation of the Transferor and the Transferee companies will have the benefits that the Transferor Companies are subsidiaries of the Transferee Company and it will consolidate the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to more efficient utilisation of capital and create stronger base for future growth of the amalgamated entity and greater efficiency in cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and it will also greater leverage in operations planning and process optimization and further cost savings are expected to flow from more focused operational efforts, rationalization and standardisation of administrative expenses.

5. The Petitioner Companies have approved the Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petitions.

6. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies are wholly owned subsidiary of Transferee Company viz. Palava Dwellers Private Limited and no new shares are being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of this Hon'ble Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Palava Dwellers Private Limited, Transferee Company was dispensed

with vide order dated 1st August, 2014 passed in Company Summons for Direction No. 603 and 604 of 2014.

7. The Learned Advocate for the Petitioners further states that the 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 Order passed in Company Summons for Directions.

8. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Company through their Advocate 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 2nd January, 2015 in Company Scheme Petition No. 639 and 640 of 2014 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 an Affidavit on 14th January, 2015 stating therein, save and except as stated in paragraph 6 (a) and (b) it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 (a) to (b) reads as under :

6. That the Deponent further submits that,

(a) Clause 11.4 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 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.

11. As far as the observation made in paragraph 6(a) of the Regional Director is concerned, the Petitioner Companies undertake that the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standards.

12. As far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Petitioner Companies bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

13. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Companies is 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 No. 639 and 640 of 2014 are made absolute in terms of prayer clause (a), (b) and (d).

16. The Petitioner Companies are directed 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. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC 28 in addition to physical copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay in Company Scheme Petition No. 639 and 640 of 2014. 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.)