IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITON NO. 625 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 436 OF 2015

Shri Shankheshwara Multipurpose Infratech Private Limited.

.... Petitioner Company

AND

COMPANY SCHEME PETITON NO. 626 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 437 OF 2015

Marvell Mall Development Company Limited.

.... Petitioner Company

In the matter of the Companies Act, 1956;

And

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

And

In the matter of the Scheme of Amalgamation of:
**Shri Shankheshwara Multipurpose Infratech Private Limited.**
**(TRANSFEROR COMPANY)**

With

**Marvell Mall Development Company Limited.**
**(TRANSFEREE COMPANY)**

**Called for Hearing**

Mr. Prakash Shah a/w Mr. Durgaprasad Poojari, i/b. M/s. PDS Legal, Advocates for the Petitioners in all Petitions.

Mr. Anil D. Yadav instructed by Mr. A.A. Ansari for the Regional Director in both the Company Scheme Petitions.

Mr. S. Ramakanta, Official Liquidator present.

**Coram: K. R. Shriram J.**

**Date: 18th December, 2015**

**MINUTES OF THE ORDER**

1. Heard the learned advocate for the Petitioner Company. No objector has come before the court to oppose the Scheme and nor any party as controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394 read with sections 100 to 103 of the Companies Act, 1956 and other applicable provisions of the Companies Act, 1956 and Companies Act, 2013 and to the In the matter of the Scheme of Amalgamation of **Shri Shankheshwara Multipurpose Infratech Private Limited (SSMIPL)** with **Marvel Mall Development Company Limited (MMDCPL)** and their Respective Shareholders.

3. The learned advocate for the Petitioner Company states that the proposed Scheme of Amalgamation will result in better, efficient and streamlined management, control and operation of businesses, and will lead to synergies of operations and combined operations offer business opportunities owing to economies of scale. The arrangement would enable optimum utilization of funds and resources, it would also enable the merged entity to achieve a better market place, it will integrate all activities of management functions and the amalgamated company will be in a position to generate/raise additional funds and diversify and expand into other profitable ventures with larger resources. The Petitioner Company had approved the said Scheme of

Arrangement by passing the Board Resolution which is annexed to the Company Scheme Petition filed by the Petitioner Company.

4. The learned Advocate for the Petitioner state that Petitioner Company has complied with all directions passed in company summons for Direction and that the Company Scheme Petition has been filed in consonance with order passed in Company summons for Direction.

5. The learned advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per direction of this Court and it has filed necessary affidavit of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 /2013 and the Rules made there under. The said undertaking given by the Petitioner Company is accepted.

6. The Regional Director has filed an Affidavit on 24th November, 2015 stating therein, save and except as stated in paragraph 6 (a) to (c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (a) to (c) of the said Affidavit, the Regional Director submits that:-

*6. That the Deponent further submits that,*

*(a) Clause 11(i) 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) *It has been observed that in the equity capital of Transferee Company, the Transferor Company is holding 13,860,000 no of equity shares. On amalgamation of the Transferor Company with the Transferee Company these shares has to be cancelled. Consequently, there will be a reduction of capital in the paid up capital of the Transferee Company. The scheme is silent with respect to compliance of section 100 of the Companies Act, 1956 and hence the petitioner company has to take appropriate steps for compliance of the above provisions of law.*

(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 scrutinise 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.*

7. As far as the observation in paragraph 6 (a) of the affidavit of the Regional Director is concerned, the Petitioner through their advocate states that in addition to the compliance of Accounting Standard 14, Transferee Company shall pass such accounting entries, which are necessary in connection with the scheme and implementation thereof, to comply with other applicable Accounting Standards such as AS-5 etc.

8. As far as the observation in paragraph 6 (b) of the affidavit of the Regional Direction is concerned, the Petitioner through its advocate submits that the

Equity Shares held by the Transferor Company will stand cancelled and consequently there will be a reduction of paid-up equity share capital of the Transferee Company. Hence, the learned counsel for the Petitioner Companies prays for the amendment to the scheme by adding paragraph 10(v) after paragraph 10 (iv) of the scheme as under:

*"10(v) The Transferor Company holds 1,38,60,000 Equity shares of Rs. 10/- each in the Share Capital of the Transferee Company. Pursuant to this Scheme of Amalgamation, the investment of the Transferor Company in the Transferee Company shall stand cancelled. The cancellation and reduction of the share capital account as aforesaid shall be effected as an integral part of this scheme itself as the same does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and the order of the court sanctioning the scheme shall be deemed to be an order under section 102 of the Act confirming the capital reduction."*

9. So far as the observation in paragraph 6 (c) of the affidavit of the Regional Direction is concerned, the Petitioner through its advocate submits that the Petitioner shall comply with all the applicable provisions of the Income Tax Act, and all the tax issues arising out of the Scheme shall be met and answered in accordance with law.

10. Learned counsel for the Petitioner Company submits that the Transferee Company has filed an Affidavit dated 16th December, 2015 of Mr. Sandeep Doshi, the Director of the Transferee Company accordingly giving its undertakings as mentioned in paragraphs 4 to 6 of the said Affidavit.

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 undertakings given by the Petitioner Company and also agrees with the amendment sought in paragraph 8 mentioned hereinabove as the same is required to be carried out in the scheme.

12. In view of the above, leave to amend the scheme is granted. Amendment to be carried out within two weeks from the date of the order and undertakings given by the Petitioner/Transferee Company hereinabove are accepted.

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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 625 of 2015 is made absolute in terms of prayer clauses (a) to (e) and (g) of the Petition and Company Scheme Petition No. 626 of 2015 is made absolute in terms of prayer clauses (a) to (d) and (g).

15. The Petitioner Company 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 Order.

16. The Petitioner Company is 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 copy as per the provisions of the Companies Act 1956 / 2013.

17. The Petitioner Company in the Company Scheme Petition to pay costs of Rs.10,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.

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

19. 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.

**(K. R. Shriram, J.)**

## C E R T I F I C A T E

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

Uploaded by: Shankar Gawde, Stenographer