IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 672 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 496 OF 2014

MAGARPATTA SPORTS AND RECREATION COMPANY PRIVATE LIMITED ……. Petitioner 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 of Magarpatta Sports and Recreation Company Private Limited with Magarpatta Township Development and Construction Company Limited and their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both the Petitions.

Mr. S Ramakantha Official Liquidator, present

Mr. R.C. Master, i/b Mr. H.P Chaturvedi for Regional Director.

CORAM: S. J. Kathawalla, J.
DATE: 30th January, 2015

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and 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 the Scheme of Amalgamation of Magarpatta Sports and Recreation Company Private Limited with Magarpatta Township Development and Construction Company Limited and their Respective Shareholders.

3. Learned Advocate for the Petitioner states that the Petitioner Company is engaged in the business in the field of Sports and recreation activity and for development of Physical fitness of men, women, children, elders and for purpose to setup, manage, construct, lease, own, develop, build, maintain, provide for various fitness centers, gymnasiums, swimming pools, sport centers etc.

4. Learned Advocate for the Petitioners states that the Transferor Company is the 100 % subsidiary of the Transferee Company therefore amalgamation of Magarpatta Sports and Recreation Company Private Limited with Magarpatta Township Development and Construction Company Limited will enable consolidation and optimum utilization of financial resources with the additional benefit of lower interest costs, Combining the activities and operations of the Transferor and the Transferee Company in a single Company would provide synergistic linkage besides economies in costs by combining the total business functions and the related operations and activities contributing to the overall growth and profitability, coupled with better working capital management and better administration for the merged entity, optimum utilization of the facilities, reserves, financial,

managerial, technological and marketing expertise, marketing networks, manpower and other resources, It would also lead to growth prospects for the personnel and organizations connected with these companies and thus, be in the interest of and for the welfare of, the employees of the companies concerned in this Scheme and will also be in the larger interest of the public, Amalgamation will result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Amalgamated Company to grow and prosper at a faster pace and the combined managerial and financial resources will enhance the capability of the Amalgamated Company to invest in larger and more sophisticated projects to ensure rapid growth, and will consolidate the strategic strength of the Amalgamated Company.

5. The Petitioner Companies and the Transferee Company have approved the said Scheme by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. Learned Advocate for the Petitioners further states that since the Transferor Companies are wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are presently held by the Transferee Company, Magarpatta Township Development and Construction Company Limited and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by Magarpatta Township Development and Construction Company Limited, the Transferee Company was dispensed with, by order dated 4th July, 2014 passed in CSD NO. 496 of 2014.

7. The learned Advocate for the Petitioners further states that, Petitioner Company has 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 Summons for Direction.

8. The learned Advocate appearing on behalf of the Petitioner Companies has stated that the Petitioner Company has complied with all requirements as per directions of this Hon'ble Court and they have filed necessary affidavits of compliance with the Hon'ble 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 there under. The said undertakings given by the Petitioner Companies is accepted.

9. The Official Liquidator has filed his report on 28th January 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Company 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) to 6(e), it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs 6(a) to 6(e), of the said affidavit it is stated that:-

6. That the Deponent further submits that,

a) Clause 11.6 of the Scheme provides for adjustment of difference arising out of the Scheme of Amalgamation. In this regard, it is submitted that the Surplus, if any arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee company.

b) *It is observed from the affidavit submitted by Mr. Satish Magar, Director of the Transferor company to the Deponent that the Transferor company is not having any dues pending towards the Income Tax, Sales Tax or any Government Tax, etc. Copy of the said affidavit is annexed hereto as 'Exhibit-CJ '. However, the Income Tax Department vide its letter no. PNIITO / Wd 14(4) / Amalg-MSRCPV2014-15 / 1 dated 0111212014, annexed hereto as Exhibit- D, has informed the deponent herein that the Transferor company is due for paying the Income Tax demand under section 143(1) of the Income Tax Act for the Assessment Year 2010-11, an amount of Rs. 46,284/- and for the Assessment Year 2011-12, a demand of FBT of Rs. 2,800/-. It is therefore evident that the Petitioner companies are suppressing material facts and therefore they may be directed to submit the factual position before this Hon'ble High Court.*

c) *It is observed that Clause nos. 4.3 to 4. 7 of the Scheme have not been numbered properly. The Petitioner company may be directed to renumber these clauses as 4.1 to 4.5.*

d) *Existing Clause 4.7 of the Scheme provides for amendment to the Object clause of the Memorandum of Association of the Transferee Company by inserting new object clause 29 in its Memorandum of Association so as to enable the Transferee company to carry on the present business activities of Transferor company. In this regard, the Transferee Company may be directed to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended* *copy of Memorandum of Association alongwith necessary form with Registrar of Companies.*

e) *It is respectfully submitted that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon 'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Transferee Company after giving effect to the Scheme. The decision of the I nco me Tax Authority is binding on Transferee company*

11. As far as the observations in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Transferee Company through their Counsel undertakes that surplus, if any arising out of this scheme will be credited to Capital Reserve Account of Transferee Company and the Deficit, if any arising, will be debited to Goodwill Account of the Transferee company.

12. As far as the observations in paragraph 6(b) of the affidavit of the Regional Director is concerned, the petitioners through their counsel clarifies that the petitioner company has submitted its returns of income since inception to Assessment Year 2014-2015 before the respective prescribed dates provided for submission of the returns and assessments/ intimations till A.Y. 2014-15 are completed. There were apparently small arrears of Rs.46,284/- and Rs. 2,800/- appeared for A.Y. 2010-11 and A.Y. 2011-12. The same were rectified / cancelled and the Income Tax Department has issued refunds for subsequent years i.e. A.Y. 2012-13 and A.Y. 2013-14 only after confirming no arrears for any preceding previous years. The Counsel for the Petitioner Company clarifies that if any dues of the Income Tax authorities for the relevant period are due, the same will be paid by the Transferee Company.

13. As far as the observations in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Counsel for the Petitioner submits that there is typographical error in numbering clauses 4.1 to 4.5 of the Scheme as 4.3 to 4.7 as appearing in the Scheme the same shall be deleted and to be corrected as clauses 4.1 to 4.5.

14. As far as the observations in paragraph 6(d) of the Affidavit of the Regional Director is concerned, The Transferee Company through their counsel undertakes to comply with provisions of Section 13(1) & (6) read with Section 15 of the Companies Act, 2013 corresponding to section 40 read with section 18 of the Companies Act, 1956 and to file amended copy of Memorandum of Association along with necessary form with Registrar of Companies.

15. As far as the observations in paragraph 6(e) of the Affidavit of the Regional Director is concerned, The Transferee Company through their counsel undertakes that it is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

16. The Learned Counsel for Regional Director on the instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submission given by the advocate on behalf of the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.

17. 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.

18. The Counsel for the Petitioner submits that there is typographical error in numbering clauses 4.1 to 4.5 of the Scheme as 4.3 to 4.7 as appearing in the

Scheme the same shall be deleted and to be corrected as clauses 4.1 to 4.5. Learned Counsel for the Petitioner Company seeks leave to amend clause 4.3 to 4.7 of the Scheme. Leave to amend clause 4.3 to 4.7 of the Scheme is granted. Amendment to be carried out within two weeks from today.

19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayer clauses (a) of the Petition.

20. The Petitioner Company to file a copy of this order and the amended 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.

21. 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 concerned E-Form INC 28 in addition to physical copy as per provisions of the Companies Act 1956 / 2013.

22. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

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

24. 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)