IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 673 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 497 OF 2014

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 Infrastructure Private Limited with Magarpatta Township Development and Construction Company Limited and their Respective Shareholders

Magarpatta Infrastructure Private Limited

….Petitioner/Transferor Company

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner.

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

Mr. S. Ramakantha Official Liquidator.

CORAM: S. J. Kathawalla, J.

DATE: 13th February 2015

1. Heard the learned counsel for the Petitioner. No objector has come before the court to oppose the Scheme 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

Infrastructure Private Limited with Magarpatta Township Development and Construction Company Limited and their Respective Shareholders.

3. The Transferor and Transferee Companies are engaged in the business of infrastructure development, management, creation, erection, designing, construction, maintenance of roads, bridges, highways etc.

4. The rational for the scheme is that the Transferor Company is the 100 % subsidiary of the Transferee Company and the Amalgamation of the two Companies 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. The amalgamation would result in most 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. 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 Transferor Company and Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the Company Scheme Petition filed by the Petitioner Company.

6. Learned Advocate for the Petitioner further states that since the Petitioner/Transferor Company is a 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. 497 of 2014.

7. The learned counsel for the Petitioner state that Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the orders passed in Company summons for Direction.

8. Counsel appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavit of compliance in the Court. Moreover, Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company is accepted.

9. The Official Liquidator has filed his report on 5th February 2015 stating that the affairs of the Transferor Company 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 19th January 2015, stating therein, save and except as stated in paragraph 6(a) and 6(b), it appears that the scheme is not prejudicial to the interest of shareholders and public.

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

6. That the Deponent further submits that,

6(a) Clause 11.6 of the scheme provides for adjustment of differences arising out of the Scheme of

Amalgamation. In this regard, it is submitted that surplus ,if any arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and the Deficit, if any arising, shall be debited to Goodwill Account of the Transferee Company.

6(b) It is respectfully submitted that the tax implication, if any arising out of the Scheme is subject to final decision of the 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 Income Tax authority is binding on the Transferee Company.

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

12. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Company submit that the Petitioner is 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.

13. The Learned Counsel appearing 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 undertaking given by the Petitioner Company. The said undertaking given by Petitioner Company are 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 filed by the Petitioner/Transferor Company is made absolute in terms of prayer clause (a).

16. 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 the Order.

17. 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.

18. The Petitioner Company to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. 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 the Scheme duly authenticated by the Company Registrar, High Court, Bombay.

(S. J. KATHAWALLA, J.)