IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 658 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 612 OF 2015

SUPREME VENTURES PRIVATE LIMITED

………… Petitioner / the Resulting Company 1

AND

COMPANY SCHEME PETITION NO 659 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 613 OF 2015

SUPREME PALATIAL DEVELOPERS PRIVATE LIMITED

………… Petitioner / the Resulting Company 2

AND

COMPANY SCHEME PETITION NO 660 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 614 OF 2015

SUPREME UNIVERSAL PRIVATE LIMITED

………… Petitioner / the Demerged 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 provisions of Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Arrangement

between

Supreme Ventures Private Limited ("Resulting Company 1")

And

Supreme Palatial Developers Private Limited ("Resulting Company 2")

And

Supreme Universal Private Limited ("Demerged Company")

And

their respective Shareholders

<u>Called for Hearing</u>

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

Ms. Purnima Awasthi i/b Mr A. A. Ansari for Regional Director in all the Company Scheme Petitions.

CORAM: S. C. Gupte, J.

DATE: 16th October, 2015

1. Heard the Learned Counsels for the Petitioner Companies. No objector has come before the Court to oppose the Scheme of Arrangement and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Arrangement between Supreme Ventures Private Limited ("Resulting Company 1") and Supreme Palatial Developers Private Limited ("Resulting Company 2") and Supreme Universal Private Limited ("Demerged Company") and their respective shareholders.

3. Learned Counsel for the Petitioner Companies that the Petitioner Companies are presently engaged in the business of real estate construction and development.

4. The rationale for the arrangement is that it will enable focused management to each undertaking with specialization and leadership vision, greater transparency and visibility on the operational and financial performance of each undertaking, higher degree of independence as well as accountability with autonomy for each of the undertakings, flexibility in fund raising exercise for future growth and expansion, unlocking of value for the shareholders of the Demerged Company, and flexibility to introduce investor in specific undertaking,

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

6. The Learned Counsel for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Scheme has been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The Learned Counsel appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Hon'ble High Court and they have filed necessary Affidavits of compliance with the Hon'ble High 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 are accepted.

8. The Regional Director has filed an Affidavit dated 9th October, 2015 stating therein that save and except as stated in paragraph 6 (a) to 6(c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a), 6(b) and 6(c) of the said Affidavit it is stated that:

   a) *Clause no. 6.1 and 15.1 of the Scheme provides for issue of shares upon coming into effect of this Scheme. The authorized share capital of the Resulting Company 1 and Resulting Company 2 may not be sufficient to issue further shares as provided in Clause no. 6.1 and 15.1 of the Scheme respectively. In this regard, it is suggested that the Resulting Companies may, if necessary and to extend required, increase its Authorized Share Capital to facilitate issue and allotment of Shares under this Scheme. In this connection, the Resulting Companies may be directed to comply with provisions section 61/63 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary* *forms with the Registrar of Companies after payment of necessary filing fee and stamp duty applicable on the said forms.*

b) *It has been observed from the Preamble of the Scheme that the entire business undertakings of the Demerged Company will be demerged to respective Resulting Companies leaving no business activities with Demerged Company. Besides, the Scheme provides for issue of Preference Shares only, that too Non-Convertible Preference Shares. In view of the above, the Shareholders of the Demerged Company may not continue as Shareholders of Resulting Company and as such the Scheme is not in consonance with provisions of Income Tax Act. In this regard, it is submitted that the tax issue 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 return filed by the Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

9. As far as observations made in paragraph 6 (a) of Affidavit of the Regional Director is concerned, the Resulting Company 1 and the Resulting Company 2 undertakes to comply with provisions section 61/63 of Companies Act, 2013 corresponding to section 94/97 of Companies Act, 1956, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty applicable on the said forms.

10. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Companies submits that the scheme is in consonance with the provisions

of Income Tax Act, 1961 since the shareholders of the demerged company shall continue to remain shareholders of the resulting company and all the conditions under section 2(19AA) of Income Tax Act, 1961 are complied with and further 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 of Arrangement 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.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 658 of 2015 to 660 of 2015 filed by the Petitioner Companies 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 the Order.

15. Petitioner Companies are 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.

16. The Petitioner Companies in all the Company Scheme Petitions 658 of 2015 to 660 of 2015 to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.

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

18. 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. C. Gupte, J.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer