

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.686 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 608 OF 2015
KANAKIA BHUMI CONSTRUCTION PRIVATE LIMITED
....Petitioner/ Transferor Company
AND

COMPANY SCHEME PETITION NO.687 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 609 OF 2015
SARANG PROPERTY DEVELOPERS PRIVATE LIMITED
....Petitioner/ Demerged Company

AND

COMPANY SCHEME PETITION NO. 688 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 610 OF 2015
KANAKIA SPACES REALTY PRIVATE LIMITED (formerly known as
'KANAKIA SPACES REALTORS PRIVATE LIMITED')

....Petitioner/Resulting/Transferee 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 Arrangement
between Kanakia Bhumi Construction
Private Limited ('the Transferor Company')

AND

Sarang Property Developers Private Limited
(the Demerged Company)

AND

Kanakia Spaces Realty Private Limited
(formerly known as 'Kanakia Spaces
Realtors Private Limited') (the Transferee
Company)

AND

Their respective Shareholders

Called for hearing

Mr. Virag Tulzapurkar, Senior Counsel with Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocate for the Petitioners in all three Petitions.

Ms. Anjani Kukar Singh, with Mr A. A. Ansari, for Regional Director in all three Petitions.

Mr. S. Ramakantha, Official Liquidator, present in CSP No 686 of 2015

CORAM: K.R.SHRIRAM, J

DATE: 18th DECEMBER, 2015

PC:

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Petition and to contravene averments made in the Petition.
2. The sanction of the Court is sought to the Scheme of Arrangement between Kanakia Bhumi Construction Private Limited and Sarang Property Developers Private Limited and Kanakia Spaces Realty Private Limited (formerly known as 'Kanakia Spaces Realtors Private Limited') and their respective Shareholders.
3. Learned Counsel for the Petitioners states that the Transferor Company, Resulting Company and Transferee Company are engaged in the business of construction and development of real estate properties.
4. The proposed Scheme of Arrangement will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and

achievement of administrative, operative and management efficiencies.

5. The Transferor Company, the Transferee Company and the Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Counsel for the Petitioner Companies further states that, the Petitioner Companies have 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 respective Company Summons for Direction.
7. The Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.
8. The Regional Director has filed an Affidavit on 9th December 2015 stating therein that save and except as stated in paragraph 6 (a) & (b) of the said Affidavit; it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director Submits that :

(a) Clause 5.4 & 15.5 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) Clause 14.1 of the scheme provides for issue of only preference shares by the Resulting Company to the shareholders of Demerged Company. Whether the allotment of preference shares alone is in compliance of provisions of section 2(19AA) of the Income Tax Act or not is a matter within the domain of Income Tax Authority. In this regard tax implication 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

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner Company through its Counsel submits that the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 or any other applicable Accounting Standard such as Accounting Standard – 5.
10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioners 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 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. The Official Liquidator has filed his report on 4th December, 2015 stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.
13. The Counsel for the Petitioners state that with effect from 3rd November 2015, the name of the Transferee Company has been changed from 'Kanakia Spaces Realtors Private Limited' to 'Kanakia Spaces Realty Private Limited' and therefore seeks leave to amend the Scheme and Petition. Leave to amend the Scheme and the Petition and all consequential amendments are allowed by substituting the name 'Kanakia Spaces Realtors Private Limited' with 'Kanakia Spaces Realty Private Limited' wherever appearing in the Scheme and the Petition. Amendment to be carried within 4 weeks from today. Re-verification of Petitions dispensed with.
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. None of the parties concerned have come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 686 to 688 of 2015 are made absolute in terms of prayer clause (a) of the respective Petitions.
16. 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 receipt of the order.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of companies, electronically, along with form INC-28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies in all Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No. 686 of 2015 to pay sum of Rs.10,000/- to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of this Order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All authorities concerned 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)

CERTIFICATE

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

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