IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 773 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 611 OF 2014

Lodha Buildtech Private Limited
…. First Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 774 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 612 OF 2014

Lodha Pranik Landmark Developers Private Limited

…. Second Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 775 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 613 OF 2014

Lodha Prime Buildfarms Private Limited

…. Third Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 776 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 614 OF 2014

Sambhavnath Reality And Farms Private Limited

…. Fourth Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 777 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 615 OF 2014

Lodha Strategic Development Private Limited

…. Fifth Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 778 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 616 OF 2014

Lodha Glowing Construction Private Limited

.... Sixth Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 779 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 617 OF 2014

Lodha Attentive Developers And Farms Private Limited

.... Seventh Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 780 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 618 OF 2014

International Airport Builders & Management Services Private Limited ....Eighth Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 781 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 619 OF 2014

Lodha Palazzo ....Ninth Transferor Company /Petitioner Company

AND

COMPANY SCHEME PETITION NO. 782 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 620 OF 2014

Lodha Construction (Dombivli)

.... Tenth Transferor Company /Petitioner 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, Section 390 read with Section 582(b) of the Companies Act, 1956 (or any corresponding provision of Companies act, 2013 as may be notified);

AND

In the matter of the Scheme of Amalgamation of

(1) Lodha Buildtech Private Limited (LBPL) AND

(2) Lodha Pranik Landmark Developers Private Limited (LPLDPL) AND

(3) Lodha Prime Buildfarms Private Limited (LPBFPL) AND

(4) Sambhavnath Reality And Farms Private Limited (SRFPL) AND

(5) Lodha Strategic Development Private Limited (LSDPL) AND

(6) Lodha Glowing Construction Private Limited (LGCPL) AND

(7) Lodha Attentive Developers And Farms Private Limited (LADFPL) AND

(8) International Airport Builders & Management Services Private Limited (IABMSPL) AND

(9) Lodha Palazzo (LP) AND

(10) Lodha Construction (Dombivli) (LC)

WITH

(11) Lodha Developers Private Limited (LDPL) and their respective shareholders, partners and creditors

<u>Called for Hearing</u>

Ms. Shruti Kelji, Advocate for the Petitioner

Smt. S. V. Bharucha i/b. H. P. Chaturvedi for the Regional Director in all the Company Scheme Petitions.

Mr. S. Ramakantha, Official Liquidator in CSP No. 773 of 2014 to 782 of 2014

Coram : S. J. Kathawalla, J.

Date : 13^{th} February, 2015

P.C:-

1. Heard Advocates for the parties. No objectors have come before the Court to oppose the Scheme nor any party has controverted any averments made in the Petition.

2. The sanction of the Court is sought under Sections 391 to 394, Section 390 read with Section 582(b) of the Companies Act, 1956 to a Scheme of Amalgamation of

Lodha Buildtech Private Limited, the First Transferor Company and Lodha Pranik Landmark Developers Private Limited, the Second Transferor Company and Lodha Prime Buildfarms Private Limited, the Third Transferor Company and Sambhavnath Reality And Farms Private Limited, the Fourth Transferor Company and Lodha Strategic Development Private Limited, the Fifth Transferor Company and Lodha Glowing Construction Private Limited, the Sixth Transferor Company and Lodha Attentive Developers And Farms Private Limited, the Seventh Transferor company and, International Airport Builders & Management Services Private Limited, the Eighth Transferor Company and Lodha Palazzo, the Ninth Transferor Company and Lodha Construction (Dombivli), the Tenth Transferor Company with Lodha Developers Private Limited, the Transferee Company and their respective shareholders, partners and creditors.

3. Learned Advocate for the Petitioner states that the First Transferor Company is engaged in the business of builders, contractors, erectors, constructors for residential, office, industrial institutions or commercial purposes or structure, and the Second Transferor Company is engaged in the business of builders, property developers, real estate developers, etc., and the Fourth, Fifth and Seventh Transferor Companies are engaged in the business of builders, developers, executors, contractors, construction of residential, commercial, multistoried buildings, flats, houses, apartment and the Third Transferor and the Sixth Transferor Companies are engaged in the business of own, buy, sell, possess, develop, construct, demolish, rebuild, renovate, repair, maintain, let out, hire, rent, lease, pledge, mortgage or

otherwise deal in land, structures and building and/or to purchase for investments or resell and to traffic in land and house and other immovable properties and the Eighth Transferor Company is engaged in the business of to own, buy, sell, possess, develop, construct, demolish, rebuild, renovate, repair, maintain, let out, hire, rent, lease, pledge, mortgage or otherwise deal in hand, structures and building and /or purchase for investments or resell and to traffic in land and house and other immovable properties and to carry on the business of developing, maintain and operating of airport, carry out detailed studies for the airport project inclusive of physical/ engineering surveys and investigation, concept planning, detailed master planning, detailed design and engineering and all such activities that together provide the basis for the implementation of the project and the Ninth Transferor Company is engaged in the business of buying of purchases, sales and development of various property, plots, flats, office garages, shops industrial units etc. and the Tenth Transferor Company is engaged in the business of buying and selling of the plots, flats, offices, garages, shops, industrial units on ownership basis, carryout contracts of building construction and the Transferee Company is engaged in the business of builders, property developers, facilities, management and real estate developers.

4. The Learned Advocate states that the proposed scheme will have the benefits of Consolidation of the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to a more efficient utilization of capital and create a stronger base for future growth of the amalgamated entity and greater

efficiency in cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and benefit of operational synergies to the combined entity and greater leverage in operations planning and process optimization and cost savings are expected to flow from more focused operational efforts, rationalization and standardisation of administrative expenses.

5. The Petitioner Companies have approved the Scheme of Amalgamation by passing Resolutions at Board meeting & Partners meeting which are annexed to the Company Scheme Petitions.

6. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies are wholly owned subsidiary of Transferee Company viz. Lodha Developers Private Limited and no new shares are being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of this Hon'ble Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Palava Dwellers Private Limited, Transferee Company was dispensed with vide order dated 1st August, 2014 passed in Company Summons for Direction No. 611 of 2014 to 620 of 2014.

7. The Learned Advocate for the Petitioner further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions has been filed in consonance with the Order passed in Company Summons for Directions.

8. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the court. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Partnership Act and the Rules made thereunder. The said undertaking is accepted.

9. The Official Liquidator has filed report on 3rd February, 2015 in Company Scheme Petition No. 773 to 782 of 2014 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 10th February, 2015 stating therein, save and except as stated in paragraph 6 (a) and (b), it appears that the Scheme is not prejudicial to the interest of the shareholders and public. The aforesaid paragraph 6 (a) and (b) reads as under :

6. That the Deponent further submits that,

(a) Clause 11.4 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 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) 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 scrutinize the tax returns filed by the petitioner companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner companies.

11. As far as observations made in paragraph 6(a) of the Affidavit of the Regional Director are concerned, the Petitioner Companies through their Advocate undertake to follow the Accounting Treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.

12. As far as the observations made in paragraph 6(b) of the Affidavit of the Regional Director are concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

13. The Learned Counsel 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 undertakings given by the Petitioner Companies as regards para 6(a) and 6(b) are concerned. The said undertakings given by the Petitioner Companies 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 No.773 of 2014 to 782 of 2014 are made absolute in terms of prayer clause (a), (b) and (d).

16. The Petitioner Companies are directed 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. The Petitioner Companies viz., the First, Second, Third, Fourth, Fifth, Sixth, Seventh and Eighth Transferor 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 copies as per relevant provisions of the Companies Act, 1956/2013 whichever is applicable and further the Ninth and Tenth Transferor Companies being the partnership firms are directed to file a copy of

this order alongwith a copy of the Scheme of Amalgamation with the Registrar of Firms, Mumbai.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay in the Company Scheme Petition Nos. 773 to 782 of 2014. 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 Scheme duly authenticated by the Company Registrar, High Court, (O.S.), Bombay.

(S. J. Kathawalla, J.)