IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 844 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 840 OF 2014

Ashoka Properties Private Limited

………. Petitioner/First Transferor Company

AND

COMPANY SCHEME PETITION NO 845 OF 2014

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 841 OF 2014

Kiyana Properties Private Limited

………. Petitioner/ Second Transferor 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 Ashoka Properties Private Limited and Kiyana Properties Private Limited with Kalpataru Gardens Private Limited and their Respective Shareholders and Creditors

Called for Hearing

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

Ms. Neeta Masurkar, i/b Mr H.P. Chaturvedi for Regional Director.

Mr. S. Ramakantha, Official Liquidator, Present

CORAM: S. J. Kathawalla, J.

DATE: 13th February 2015

1. Heard the learned counsel for the Petitioners. 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 Ashoka Properties Private Limited and Kiyana Properties Private Limited with Kalpataru Gardens Private Limited and their Respective Shareholders and Creditors.

3. Learned Counsel states that the Petitioner Companies and the Transferee Company are engaged in the business of development and sale of residential projects.

4. The Rationale for the amalgamation is that the Petitioner Companies and the Transferee Company are part of same group of companies. Consolidation of the Transferor Companies into the Transferee Company pursuant to this Scheme would result in achieving operational and managerial efficiency, management focus and enhanced flexibility, simplification of group structure and bringing synergy in operations and optimum utilisation of common resources.

5. The Petitioner Companies and the Transferee Company had approved the said Scheme of Amalgamation by passing the Board Resolutions

which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.

6. Learned Advocate for the Petitioners further states that since the Petitioner/Transferor Companies are wholly owned subsidiaries of the Transferee Company and all the shares of the Transferor Companies are presently held by the Transferee Company along with its nominees after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Companies 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 the Transferee Company was dispensed with, by order dated 12th December 2014 passed in Company Summons for Directions Nos. 840 & 841 of 2014.

7. The learned counsel for the Petitioner Companies states that Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petitions 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 Companies undertake 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 Companies are accepted.

9. The Official Liquidator has filed his report on 11th February 2015 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 10th February, 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(a) and 6(b) of the said affidavit, it is stated that:

That the deponent further submits that,

(a) *Clause 10.2 of the scheme provides for adjustments 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) *That the deponent further submits that the tax issue if any arising out of this scheme shall be subject to final decision of the Income Tax Authority and approval of 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.

11. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner Companies and Transferee Company undertakes it shall pass such accounting entries which are necessary in connection with the Scheme of Amalgamation and to comply with any other applicable accounting standards.

12. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Companies and Transferee Company submits that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation 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 Regional Director states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by Petitioner Companies is 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 Petitions filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

16. Petitioners 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 the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

17. The Petitioner Companies to lodge a copy of this order and the Scheme, duly authenticated by the Company Registrar, High Court, 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.

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. 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.)