IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 23 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 889 OF 2014

GODREJ BUILDWELL PRIVATE LIMITED ………… Petitioner / the Transferor Company

AND

COMPANY SCHEME PETITION NO 24 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 890 OF 2014

GODREJ PROJECTS DEVELOPMENT PRIVATE LIMITED

………… Petitioner / the Transferee 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 Companies Act, 1956 read with Section 52 of the Companies Act, 2013 and Sections 100 to 103 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation

OF

Godrej Buildwell Private Limited

WITH

Godrej Projects Development Private Limited

AND

their Respective Shareholders

Called for Hearing

Mr. Virag Tulzapurkar and Mr. Shyam Mehta, Senior Counsels along with Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocates for the Petitioners in both the Petitions.

Mr. S. Ramakantha, Official Liquidator present in Company Scheme Petition No. 23 of 2015.
Mr. C. J. Joy i/b Mr. H.P. Chaturvedi for Regional Director in both the Company Scheme Petitions.

CORAM: S. J. Kathawalla, J.

DATE: 18th April, 2015

1. Heard counsel for the parties. 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 Godrej Buildwell Private Limited with Godrej Projects Development Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioners states that both the Petitioner Companies are presently engaged in real estate development activities. Learned Counsel for the Petitioners further states that the Scheme would consolidate the operations and will have the benefits of simplified group structure and rationalisation of administrative, operative and marketing costs.

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

5. Learned Advocate for the Petitioner/Transferee Company further states that reduction of the Securities Premium Account of the Petitioner Company shall be effected as an integral part of the Scheme and pursuant to clause 6.8 of the said Scheme, the reduction does not involve either diminution of liability in respect of unpaid share capital or payment to any shareholder the Petitioner Company and also does not envisage any compromise or arrangement with any of the creditors of the Petitioner Company and as per the undertaking the Petitioner Company has passed

Special Resolution dated 5th December, 2014 and a copy of the same is annexed as Exhibit "L2" to the Company Scheme Petition and in view thereof procedure prescribed under Section 101(2) of the Companies Act, 1956 was dispensed with as per order dated 12th December, 2014 passed in Company Summons for Direction No. 890 of 2014.

6. The learned Counsel for the Petitioners further states that, Petitioner company 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 learned counsel appearing on behalf of the Petitioners has stated that the Petitioners have complied with all requirements as per directions of this Court and they have filed necessary affidavits 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 applicable. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 18/03/2015 stating therein that save and except as stated in paragraph 6 (a), (b), (c) and (d) 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 it is stated that:

> *"a) Clause 6.6 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) That the Deponent further submits that the Tax issue if any arising out of the scheme shall be subject to final decision of lncome Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinze 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.

c) It is further observed that, Class (B) and Class (C) category of the equity share capital of the Transferor Company is entirely held by the Transferee Company only which shall get cancelled on amalgamation. Hence question of allotment of shares as provided in clause 5.2 of the scheme in respect of those equity share capital referred to herein above does not arise, consequently the same may be deleted.

d) The entire share capital of the Transferor Company is held by Transferor Company and its ultimate holding company i.e. Godrej Properties Limited. Thus, the entire share capital of the Transferor Company is directly or indirectly held by its holding company / ultimate holding company. In that situation, transfer of assets and liabilities of Transferor Company to the Transferee Company would not amount to change in beneficial ownership of assets. There is no event of purchase by the Transferee Company / ultimate holding company the assets and liabilities of the Transferor Company. It is therefore, more appropriate that what was reflected in the standalone balance sheet of Transferor Companies / Transferee Company i.e subsidiary company and its holding company shall be in the same form in the post amalgamation financial statement of the Transferee Company. In other words, identity of reserve has to be maintained by following merging of interest of Transferor Company with Transferee Company. In this case, there is no justification for transferring the assets and liabilities of the Transferor Company to the Transferee Company as provided in clause 6.1 of the Scheme on fair value basis to Transferee Company. In as much, there is no transaction of purchase between Transferor Company and Transferee Company as there is no change in the ownership of the Transferor Company's assets when it is merging with Transferee Company the assets and liabilities has to be transferred by pooling of interest method only and as such the Transferee Company has to record the assets and liabilities on book value basis, instead of fair value basis as provided in clause 6.1 of the Scheme. Under the grap of amalgamation the Petitioner Company is attempting to record the assets / liabilities on fair value basis, only to *increase its net-worth artificially. The Petitioner is attempting to get some benefit indirectly, which they are otherwise not eligible to account for. The intention of the Petitioner is only to seek an approval of The Hon'ble High Court to cover up their attempt for window dressing. If this irregularity is approved, which will set a bad precedent, and hence Petitioner shall not be allowed to revalue their assets by way of this Scheme.*

9. The Learned counsel for the Petitioner Companies states that they have filed affidavit dated March 20, 2015 in reply to the objections raised by Regional Director and as far as observation made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their counsel submits that it undertakes to follow the accounting treatment provided in the Scheme and to comply with the requirements of the relevant applicable accounting standards.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director, the Petitioner Companies/ Transferee Company through their counsel submits that they are bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme of Amalgamation will be dealt with in accordance with law.

11. As far as the observations in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioner Companies/ Transferee Company through their counsel submits that the Petitioners agrees for the deletion of the para incorporated clause 5.2 of the Scheme relating to allotment of shares to Class B and Class C shareholders which reads as under:

> *"1 (One) 7% redeemable non-cumulative preference share of face value of Rs. 10/- (Rupees Ten) each (credited as fully paid up) of the Transferee Company for every 1 (One) Class B equity share of face value of Rs. 10/- (Rupees Ten) each (credited as fully paid-up)*

> *held by such member or her respective legal heirs, executors or successors in the Transferor Company."*
>
> *"1 (One) 7% redeemable non-cumulative preference share of face value of Rs. 10/- (Rupees Ten) each (credited as fully paid up) of the Transferee Company for every 1 (One) Class C equity share of face value of Rs. 10/- (Rupees Ten) each (credited as fully paid-up) held by such member or her respective legal heirs, executors or successors in the Transferor Company."*

The learned counsel seeks leave of this court to amend the scheme by deleting the aforesaid paragraphs incorporated in Clause 5.2 of the Scheme.

12. With reference to the observation of the Regional Director in paragraph 6(d) Petitioner Companies/ Transferee Company through their counsel submits that the reply to said observation is given in Paragraph 6 of the affidavit dated March 20, 2015 filed in the Transferee Company. Further, the Petitioner Company submits that, the net worth of the Petitioner Company would be rather reduced on account of adjustment of deficit (being difference between the fair value of net assets transferred and cancellation of shares of Transferor Company held by the Transferee Company and the preference shares to be issued pursuant to the Scheme) against the Securities Premium Account and therefore the contention of the learned Regional Director that the Petitioner Company is attempting to increase the networth artificially and thereby doing window dressing is not correct and without any basis.

13. The learned Counsel for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings and agrees with the amendment as suggested in para 11 above which is required to be carried out in the

scheme. The said undertakings given by the Advocate for the Petitioner Companies are accepted. Leave to amend is granted and amendments to be carried out within four weeks from the date of order.

14. Learned Counsel for the Petitioners further states that One of the creditor of the Transferor Company named Gammon India Limited through their advocates RMG Law Associates have filed Vakalatnama for opposing the Scheme. Learned Counsel for the Petitioner Companies tenders a copy of letter dated April 1, 2015, received from the Advocate of the said creditor wherein they have stated that they have decided not to file any objection to the Scheme and will withdraw their appearance in the matter.

15. The Official Liquidator has filed his report on 25/02/2015 in the Company Scheme Petition No 23 of 2015 stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved by this Court.

16. 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.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 23 of 2015 and 24 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a), (c) and (d).

18. The Petitioner Company to lodge a copy of this order along with the amended Scheme and Form of Minutes, 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.

19. Petitioner is directed to file a copy of this order along with a copy of the amended Scheme and Form of Minutes with the concerned Registrar of Companies, electronically, along with E-Form INC-28 in addition to physical copy as per the relevant provisions of the Companies Act, 1956 / 2013.

20. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 23 of 2015 to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

21. Filing and issuance of the drawn up order is dispensed with.

22. All concerned authorities to act on a copy of this order along with amend Scheme and Form of Minutes duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(S. J. Kathawalla, J)