IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 438 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 76 OF 2016.

RMG ENTERPRISES PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 439 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 77 OF 2016

GROWMORE INVESTMENTS AND
DEVELOPERS PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and other relevant provision of Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of RMG ENTERPRISES PRIVATE LIMITED, the Transferor Company with GROWMORE INVESTMENTS AND

DEVELOPERS PRIVATE LIMITED, the Transferee Company.

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioners.

Mr. Dushyant Kumar i/b Mr. Pankaj Kapoor for the Regional Director.

Mr. yogini Chauhan, the Dy. Official Liquidator.

CORAM: A.K Menon, J.

DATE: 6th October, 2016

PC:

1. Heard Learned 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 Petitions.

2. The sanction of the Court is sought to a Scheme of Amalgamation of RMG ENTERPRISES PRIVATE LIMITED, the Transferor Company with GROWMORE INVESTMENTS AND DEVELOPERS PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of real estate broking and related advisory services and the Transferee Company has been carrying on the business of renting of immovable properties. In the opinion of the management, the proposed scheme of Amalgamation would enhance the asset base of Transferee Company following the acquisition of the business of

the Petitioner Company and that the merger would result in substantial cost reduction.

4. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

5. The Learned Counsel for the Petitioners further states that Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 20th day of September, 2016 in Company Scheme Petition No. 438 of 2016 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

8. The Regional Director has filed an Affidavit on 4th day of October, 2016 stating therein, save and except as stated in paragraph 6, 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 has stated that:-

"6. . That the Deponent further submits that,

(i) *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 Authorities and approval of the scheme by this 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.*

(ii) *Petitioner Company not mentioned about Accounting Standard/Accounting policy that would be adopted for accounting treatment not mentioned in clause 13 of the scheme.*

(iii) *The Petitioner in clause 11.4 of the scheme inter alia mentioned that the Transferee Company, if and to the extent required, apply for and obtain any approvals from the concerned regulatory authorities for the issue and allotment of Equity Shares to the members of the Transferor Company under the Scheme. Deponent prayed that the Hon'ble court may direct the company to comply with the provisions of the Companies Act, 2013 for increase in Capital.*

(iv) *The Petitioner in clause 10.6 of the scheme inter alia mentioned that all the profits or income occurring or arising to the Transferor Company* *and/ or any cost, charges, expenditure or losses arising or incurred by them shall, for all purposes, be treated and be deemed to be and accrue as the profits or incomes or cost, charges, expenditure or losses of the Transferee Company.*

Deponent prayed that the Hon'ble court to direct the company to mention the Accounting standards and Accounting Policy that would be adopted for the same.

9. So far as the observation in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

10. So far as the observation in paragraph 6 (ii) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel submitted that the Petitioner Company has not mentioned about Accounting Standard/Accounting policy in clause 13 of the scheme and that the Petitioner Company will comply with required accounting treatment as prescribed under "Accounting Standard- 14" i.e "Accounting for Amalgamation" issued by the Institute of Chartered Accountants of India.

11. So far as the observation in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner in clause 11.4 of the scheme inter alia mentioned that the Transferee Company, for the issue and allotment of Equity Shares to

the members of the Transferor Company under the Scheme will comply with the provisions of the Companies Act, 2013 for increase in Capital.

12. So far as the observation in paragraph 6(iv) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that in clause 10 of the scheme it is inter alia mentioned that with effect from the Appointed date and up to the Effective Date, the Transferor Company shall be deemed to be carrying on all their business activities for and on account of and in trust for the Transferee Company and all the profits or income accruing or arising to the Transferor Company and/ or any cost, charges, expenditure or losses arising or incurred by them will for all the purposes, be treated and be deemed to be and accrue as the profits or incomes or cost, charges, expenditure or losses of the Transferee Company and accordingly the Transferee Company will account the same as per standard mercantile/ accrual system of accounting.

13. The Learned Counsel for Regional Director on instructions of Deputy Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertakings given by the Petitioners. The above undertakings 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. 438 of 2016 is made absolute in terms of prayers clause

(a) to (d) and 439 of 2016 is made absolute in terms of prayer clauses (a) to (c).

16. The Petitioner Companies 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 Petitioners are directed to file a certified copy of order along with a copy of the Scheme of Amalgamation 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 whichever is applicable.

18. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 438 of 2016 to pay costs of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Cost 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.

(A.K Menon, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.