

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 158 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 21 OF 2016

In the matter of the Companies Act, 1956;

And

In the matter of Section 391 to 394 of the
Companies Act, 1956;

And

In the matter of the Scheme of Amalgamation of
Bhavika Trades Private Limited with Deepika
Infrastructus Private Limited

Bhavika Trades Private Limited.

...Petitioner Company

Called for Hearing

Mr. Ramesh Saraogi , Advocate for the Petitioner Company.

Mr. Siddharth Shah i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator Present.

Coram: B. P. Colabawalla, J.

Date: 22nd July, 2016

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner. No objector has come before the Court to oppose the Scheme and nor any party has controvened 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 Bhavika Trades Private Limited with Deepika Infrastucturs Private Limited.
3. The Petitioner Company is engaged in real estate related activities. The Transferee Company is also engaged in the area of real estate activities.
4. The rationale for the Scheme is that the amalgamation will result into consolidation and expansion of activities, will result into optimum and better utilization of resources and will benefit the shareholders of the company in long run.
5. The Transferor Company and the Transferee Company has approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Company.
6. That the Petitioner Company is a wholly owned subsidiary company of the Transferee Company and as per clause 13.1 of the scheme of amalgamation, no shares are proposed to be issued to any person due to this amalgamation and after the scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Company. The scheme does not affect the rights and interests of the

members and creditors of the Petitioner Company and does not involve any reorganization of the share capital of the Transferee Company and as per observations made by this court in Mahamba Investment Limited Vs IDI Limited (2001) Company Cases 105, filing of separate Company Scheme Petition by the Transferee Company, Deepika Infrastructurs Private Limited was dispensed with vide order dated 11th February, 2016 passed in Company Summons For Direction No. 21 of 2016.

7. The learned Advocate for the Petitioner Company further states that the Petitioner Company have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the order passed in Company Summons for Directions.
8. The Learned Counsel appearing on behalf of the Petitioner Company have stated that the Petitioner Company has complied with all requirements as per the directions of this Court and filed necessary Affidavit of Compliance in this behalf. The Petitioner Company further undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 as may be applicable, and the Rules made there under. The said undertaking is accepted.
9. The Official Liquidator has filed his report on 7th June, 2016 stating therein that the Affairs of the Petitioner/ Amalgamating Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved by this Hon'ble Court.

10. The Regional Director has filed an Affidavit on 28th June 2016 stating therein that save and except as stated in paragraph 6(a) and 6(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, the Regional Director has stated that :-

6(a) In Clause 5.1 of the Scheme, the number of Preference shares as well as amount of Authorised Share Capital of the Transferor Company has been shown wrongly. In this regard, the Petitioner Company may be directed to correct the same wherever it appears in the Scheme as well as in the Petition. Further consequential correction has to be carried out in Para 13.2 of Scheme, so far as it relates to combination of authorized share capital which may also be corrected suitably.

6(b) - It is respectfully submitted that the Tax implication, if any, arising out of the scheme is subject final decision of Income Tax Authorities. The 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 Transferee Company after giving effect to this Scheme. The decision of the Income Tax Authority is binding on the Transferor Company and Transferee Company.

11. As far as observation made in paragraph 6(a) of the Affidavit of Regional Director are concerned the Petitioner Company is correcting the typographical error in clause 5.1 and para no. 13.2 of the Scheme of Amalgamation. Leave to amend is granted. Amendment to be

carried out within two weeks from today. All consequential amendments are also permitted.

12. As far as observation made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all the applicable provisions of the Income Tax Act and all tax issues arising out of the scheme will be met and answered in accordance with the law.
13. The Counsel for the Regional Director on instructions of Mr. S.Ramakantha, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking given by the Petitioner Company. The said undertaking given by the Petitioner Company 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 Petition No. 158 of 2016, filed by the Petitioner is made absolute in terms of prayer clause (a) of the Petition.
16. The Petitioner Company is 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 order.

17. Petitioner Company is directed to file a copy of this 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 the physical copy as per the relevant provisions of Companies Act, 1956/2013 Act, whichever is applicable.

18. The Petitioner Company to pay costs of Rs. 10,000/- each to the Regional Director and to the Official Liquidator, High Court, Bombay. The 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.

(B.P. Colabawalla J.)

CERTIFICATE

I certify that the order uploaded is a true copy of original signed order.

Uploaded by: Shankar Gawade, Stenographer.