IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 287 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 100 OF 2016

OMKAR SPACES PRIVATE LIMITED
....Petitioner/ Transferor Company

In the matter of the Companies Act, 1956 (to the extent not repealed) and/or the Companies Act, 2013 (to the extent notified);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 as amended and the corresponding provisions of the Companies Act, 2013 upon their notification (including any statutory modifications(s) or re-enactment(s) thereof;

AND

In the matter of Scheme of Amalgamation of OMKAR SPACES PRIVATE LIMITED

WITH

FOREMOST REALTORS PRIVATE LIMITED

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS.

Called for hearing

Mr. Rahul R. Mahajan alongwith Mr. Amit Surve and Mr. Vishal Shah, i/b Fortitude Law Associates, Advocates for the Petitioner.
Mr. Vinod Sharma, Official Liquidator, present in Company Scheme Petition No. 287 of 2016.
Mr. Mayuresh Lagu, i/b by Mr. A.K. Chaturvedi for Regional Director for the aforesaid petition.

CORAM: A.K. MENON, J.
DATE : September 29, 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 Petition.

2. The sanction of the Court is sought to a Scheme of Amalgamation of OMKAR SPACES PRIVATE LIMITED, the Transferor / Petitioner Company, with FOREMOST REALTORS PRIVATE LIMITED, the Transferee Company and their respective shareholders and creditors, under Sections 391 to 394 of the Companies Act, 1956.

3. Learned Counsel for the Petitioner states that the Transferor Company is engaged in the business of buying, selling, leasing, licensing, constructing land and buildings. The Transferee Company is engaged in the business of construction, developers, builders, contractors, designers, architects, decorators, engineer of all types of construction and development work.

4. The Transferor / Petitioner Company is a wholly owned subsidiary of Transferee Company. The proposed Scheme of Amalgamation will have the benefit of opportunity to leverage combined assets and build a stronger sustainable business; reduce the managerial overlaps involved in operating multiple entities, integrate business functions; eliminate duplication and rationalization of administrative expenses; benefits of synergy and stability of operations and would help to achieve economies of scale through efficient utilization of resources and facilities as the companies concerned would be able to combine their resources, expand their activities and eliminate duplication of work in areas like accounts, company law and tax assessments, common administrative services, reduction in regulatory/procedural compliances. The Transferor

Company and the Transferee Company are engaged in similar businesses and hence, the business of both the companies can be conveniently, advantageously and economically carried on by a single entity.

5. The Transferor Company and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Transferor / Petitioner Company.

6. The Learned Counsel for the Petitioner further states that, Petitioner Company has complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in the Company Summons for Directions.

7. In view of the averments made in paragraphs 19 and 20 of the affidavit in support of the Summons for Direction and also in view of the judgment of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition in relation of the said Scheme by Foremost Realtors Private Limited, the Transferee Company was dispensed with by this Court.

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

9. The Official Liquidator has filed its report on 23rd August, 2016 in Company Scheme Petition No. 287 of 2016 stating that the affairs of

the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

10. The Regional Director has filed an Affidavit on 25th August, 2016 stating therein that, save and except as stated in paragraph 6(a) & (b), it appears according to the Regional Director that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6(a) & (b) of the said Affidavit, it is stated as under:

"6. That the Deponent further submits that:-

(a) There is no specific clause in the scheme in respect of transfer and safeguard of employees of the Transferor Company by the Transferee Company. Hence, the petitioner company may be directed to modify the scheme or pass such orders as may deem fit.

(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 company after giving effect to the amalgamation, The decision of the Income Tax Authority is binding on the petitioner company."

11. So far as the observation in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Transferor / Petitioner Company submit that the Petitioner Company has complied with the direction of this Hon'ble Court dated September 22, 2016 by amending Scheme by inserting following sub clause (vii) in Clause 3 of the Scheme:

"Clause 3(vii): *<u>Transfer of Employees</u>:*

Transferor Company does not have any employees on its payroll. Hence, the amalgamation of the Transferor

Company with the Transferee Company does not involve transfer of employees of the Transferor Company."

12. So far as the observation in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Transferor / Petitioner Company submit that the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of Scheme will be met and answered in accordance with law.

13. The Learned Counsel for Regional Director on instructions of Ms. P. Sheela, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the compliance given by the Advocate for the Petitioner Company in paragraph No. 11 above.

14. The Learned Counsel for Regional Director further states that they are satisfied with the undertaking given by the Advocate for the Petitioner Company in paragraph No. 12 above. The undertaking given by the Petitioner Company are accepted.

15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 287 of 2016 is made absolute in terms of prayer clause (a) of the Petition.

17. The Petitioner Company 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.

18. Petitioner 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 physical copy as per the relevant provisions of the Companies Act, 2013.

19. The Petitioner Company to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the Order.

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

21. 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.)*

<u>CERTIFICATE</u>

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

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