

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 374 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.204 OF 2016
KANAKIA KING STYLE CONSTRUCTION PRIVATE LIMITED
....Petitioner/Transferor Company
WITH

COMPANY SCHEME PETITION NO.375 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.205 OF 2016
KANAKIA SUPREMO CONSTRUCTION PRIVATE LIMITED
....Petitioner/ Transferor Company
WITH

COMPANY SCHEME PETITION NO.376 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.206 OF 2016
KANAKIA SPACES PRIVATE LIMITED
....Petitioner/ Demerged Company
WITH

COMPANY SCHEME PETITION NO.377 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.207 OF 2016
KANAKIA SPACES REALTY PRIVATE LIMITED
....Petitioner/ Resulting/Transferee 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 Arrangement
between Kanakia King Style Construction
Private Limited (the 'First Transferor
Company')

AND
Kanakia Supremo Construction Private
Limited (the 'Second Transferor Company')

AND
Kanakia Spaces Private Limited (the
'Demerged Company')

AND
Kanakia Spaces Realty Private Limited
(the 'Resulting Company' or the 'Transferee
Company')

AND
Their respective Shareholders

Called for hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocate for the
Petitioners in all the four Petitions.

Mr. Prashant Jadhav i/b. Pankaj Kapoor for Regional Director in all
the four Petitions.

Mr. Vinod Sharma, Official Liquidator, present in CSP No 374 of
2016 and CSP No 375 of 2016

CORAM: S.C Gupte, J

DATE: 29th NOVEMBER, 2016

PC:

1. Heard the learned counsel for the Petitioner Companies. None
appears before the Court to oppose the Petitions and to
contravene averments made in the Petitions.
2. The sanction of the Court is sought to the Scheme of
Arrangement between Kanakia King Style Construction Private
Limited and Kanakia Supremo Construction Private Limited

and Kanakia Spaces Private Limited and Kanakia Spaces Realty Private Limited and their respective Shareholders.

3. Learned Counsel for the Petitioners states that the Transferor Company, Resulting Company and Transferee Company are engaged in the business of construction and development of real estate properties.
4. The proposed Scheme of Arrangement will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operative and management efficiencies.
5. The Transferor Company, the Transferee Company, the Demerged Company and the Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Counsel for the Petitioner Companies further states that, the Petitioner Companies 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 Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required

under the Companies Act, 1956 or Companies Act 2013, as may be applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 17th November 2016 stating therein that save and except as stated in paragraph 6 (a) (b) & (c) 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, the Regional Director Submits that :

(a) In addition to compliance of AS-14 the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 etc.,

(b) Regarding clause 15 of the scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the scheme shall be debited to Goodwill Account of Resulting Company.

(c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the demerged/resulting Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioners through their Counsel undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection

with the Scheme to comply with AS-14 or any other applicable Accounting Standard such as AS-5.

10. In so far as observations made in paragraph 6(b) of the Affidavit of the Regional Director is concerned, the Petitioners through their Counsel undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Resulting Company.
11. In so far as observations made in paragraph 6(c) of the Affidavit of the Regional Director is concerned, the Petitioners through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and tax implications, if any arising out of the Scheme of Arrangement will be met and answered in accordance with law.
12. The Counsel for the Regional Director on instructions of Mr. S Ramakantha, Joint Director (Inspection) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking by the Petitioner Companies. The said undertakings given by the Petitioner Companies are accepted.
13. The Official Liquidator has filed his report on 25th October, 2016 stating therein 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 by this Court.
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. None of the parties concerned have come forward to oppose the Scheme.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 374 of 2016, Company Scheme Petition No. 375 of 2016, Company Scheme Petition No. 376 of 2016 and Company Scheme Petition 377 of 2016 are made absolute in terms of prayer clause (a) of the respective Petitions.
16. The Petitioner Companies to lodge 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 receipt of the order.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of companies, electronically, along with form INC-28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies in all Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No. 374 of 2016 and Company Scheme Petition No.375 of 2016 to pay sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of this Order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

21. It is directed that the scheme shall take effect from the date of the filing of a signed copy of this order with the Registrar of Companies. Learned Counsel for the Petitioner undertakes to file a authenticated copy of the scheme along with this order with the Registrar of Companies within a period of one month from today.

(S.C. Gupte, J)

CERTIFICATE

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

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