IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO.288 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.251 OF 2016

Integrated Spaces Limited

…..Petitioner/the Demerged Company

AND

COMPANY SCHEME PETITION NO.289 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.252 OF 2016

Pranay Home Creators Private Limited

…..Petitioner/the Resulting Company

In the matter of Petition under Sections 391 to section 394 read with Section 100 to 104 of the Companies Act, 1956 and Section 52 of the companies Act, 2013

AND

In the matter of Scheme of Arrangement between Integrated Spaces Limited …Demerged Company

AND

Pranay Home Creators Private Limited

… Resulting Company

AND

Their Respective Shareholders and Creditors

<u>Called for Hearing</u>

Mr. Naser Ali Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioners.

Mr. Jitendra G. Shukla i/b. M/s. G.H. Shukla & Co., Advocate for Secured Creditor, IDBI Bank Ltd. in Company Scheme Petition No. 288 of 2016

Mr. Amendra J Mishra i/b. Mr. Pankaj Kapoor for Regional Director in both the Petitions.

CORAM: A.K. Menon, J.

DATE: 20th October, 2016

PC:

1. Heard learned counsel for parties.

2. Learned Advocate for the Petitioner Companies states that IDBI Bank Ltd., a Secured Creditor of the Petitioner/ Demerged Company has filed an Affidavit dated 18th July 2016 in Company Scheme Petition No.288 of 2016 objecting to the Scheme of Arrangement by way of Demerger on the ground that the terms loans at stated therein cannot be transferred to the Resulting Company as stated in Paragraph 8 & 9 of the Affidavit. In response to the Affidavit filed by Secured Creditor, the Petitioner/ Demerged Company has filed an Affidavit dated 7th September 2016, wherein it has been stated by the Demerged Company that the financial assistance availed against securities created in favour of IDBI Bank Ltd pertains to the retained business / remaining undertaking of the Demerged Company and same has nothing to do with the Demerged Undertaking, which is proposed to be transferred/ demerged to the Resulting company. Further it is stated that none of the securities offered under the Mortgage/ Loan Agreements forming part of Exhibits-“A”, “A-1”, “A-2” and “A-3” referred in Paragraph 5 of the Affidavit filed by IDBI Bank Ltd, are being diluted and/or transferred under the Scheme of Arrangement / Demerger

being Exhibit-A to the Company Scheme Petition No. 288 of 2016. The Demerged Company vide its Letter dated 26th August 2016 has also made full disclosure of the nature of transfer and provided the Divisional-wise Balance sheet with Chartered Accountant's Certificate, which are annexed at Exhibit-'B' & 'C' to the Affidavit dated 7th September 2016 of the Demerged Company. Learned advocate for the Petitioner Companies states that thus no prejudice will be caused to the said secured creditor as the right and liabilities or securities offered under the loan agreements and security documents executed by Integrated Spaces Limited in connection with the outstanding financial assistance of Loan against Property (nature of loan) aggregating to Rs 6,51,45,832/-plus accrued interest thereon are not transferred or diluted in any manner. The obligations of Integrated Spaces Limited under the loan and security agreements and the securities created in favour of IDBI Bank Ltd to continue till the loan is repaid by Integrated Spaces Limited. Further, Integrated Spaces Limited undertakes to repay the loan to IDBI Bank Ltd as per the loan and security agreements without any default.

3. In view of the aforesaid statement and undertaking given by the Petitioner Company inter-alia none of the securities offered to IDBI Bank Ltd. under the Mortgage Loan Agreements are being diluted or transferred under the Scheme of Arrangement, the objection raised by the Secured Creditor IDBI Bank Ltd. does not survive. The statement and undertaking of the Petitioner is accepted.

4. The Learned Advocate for the Petitioner states that apart from the above No other objector has come to oppose the Scheme nor has any party controverted any averments made in the Petitions.

5. The sanction of the Court is sought under Sections 391 to section 394 read with Section 100 to 104 of the Companies Act, 1956 and Section 52 of the Companies Act, 2013 to a Scheme of Arrangement ("Scheme") between Integrated Spaces Limited and Pranay Home Creators Private Limited and their respective shareholders and creditors.

6. The learned Advocate for the Petitioner Companies states that the Demerged Company is engaged in the real estate business and has seven business verticals i.e. Tenant Encumbered projects, Society Redevelopment Projects, Open Plot Projects, Slum Rehabilitation Projects without PAP tenement (SRA1), Slum Rehabilitation Project with PAP tenement (SRA 2), Slum and Non slum Project and Generation of Transfer of Development Rights out of Land under Reservation in the Development Plan (TDR property). The Resulting Company is a newly incorporated company with the main objects of carrying on the business of Construction, Real Estate and TDR related activities and as such the Resulting Company intends to carry on business of real estate development.

7. The learned Advocate for the Petitioner Companies further states that the business verticals pertaining to retained Undertaking are thus significantly different in terms of their business models, growth opportunities, investment requirements, complexities, regulations etc as compare to demerged Undertaking. On one hand the retained undertaking offer tremendous growth potential, but also have large investment requirements and involves more compliances and complexities. On the other hand the Demerged Undertaking offers slow and steady growth, is profitable but has lesser investment requirements, less compliances and complexities. Operating these business verticals under one umbrella of Integrated has

made it difficult for each other to perform to full potential. Hence, in order to concentrate its growth efforts in a focused manner, introduce different strategies for growth and different focus for alliance / ventures and to enable direct Equity participation from investors in Development of Retained undertaking (remaining business), the Demerged Company has determined to create a focused entity and accordingly proposes the transfer and vesting of the Demerged Undertaking be transferred to and vested in the Resulting Company by way of a Demerger undertaken through this Scheme under the provisions of Sections 391 to 394 and other relevant provisions of the Act.

8. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

9. The Learned Advocate for the Petitioner in Company Scheme Petition No. 288 of 2016 states that as per clause (9) & (11) of the Scheme, the differences between the value of assets and value of liabilities transferred pursuant to the Scheme shall be debited or credited to Demerger / Reconstruction Adjustment Account. The debit balance of the said Demerger / Reconstruction adjustment account shall be adjusted against the Profit and Loss account and / or Securities Premium account of the Demerged Company. The proposed reduction in the Securities Premium Account of the Demerged Company shall be effected as an integral part of the Scheme and in view of the averments made in paragraph 26 of the Affidavit in Support of Company Scheme Petition, inter alia, stating that the proposed reduction neither involves diminution of liability in respect

of unpaid share capital of the Demerged Company nor payment to any shareholder of any paid-up capital nor is any call being waived and that rights of the creditors of the Demerged Company and the Resulting Company are not adversely affected. In view thereof, the procedure prescribed under section 101 (2) of the Companies Act, 1956 was dispensed with and the Demerged Company has passed a Special Resolution pursuant to provisions of Section 100 to 104 of the Companies Act, 1956 in the Extra Ordinary General Meeting of its Equity Shareholders held on 31st March, 2016 for the reduction of the Securities Premium Account of the Demerged Company and same is annexed as Exhibit "F" to the Company Scheme Petition No. 288 of 2016.

10. The learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction and seeks sanction to the said proposed Scheme of Arrangement.

11. The Learned Advocate appearing on behalf of the Petitioners has stated that they 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. The said undertaking is accepted.

12. The Regional Director has filed his Affidavit on 18th August, 2016, *inter alia,* stating therein that save and except as stated in paragraph 6 (a) to (d)

of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 (a) to (d) of the said Affidavit, the Regional Director has stated that :

"*6. That the Deponent further submits that:-*

(a) Petitioner in Clause No. 8.7 of the Scheme inter alia has mentioned that, pursuant to and upon this scheme becoming effective, the Resulting Company shall take necessary steps to increase and alter its authorized share capital suitably to enable the Resulting Company to issue and allot the equity shares in the Resulting Company to the shareholders of the Demerged Company in terms of this scheme and as an integral part of this scheme the share capital of the Resulting Company shall be increased in the manner set out in clause 15 of the scheme. Deponent prays that Hon'ble Court to direct the company to make compliance of the provisions of Companies Act, 2013 read with rules etc.

(b) Petitioner in clause No. 14.1 of the Scheme inter alia has mentioned that, ISL may issue or allot any further shares either rights or bonus or otherwise to its shareholders out of its profits and reserves and surplus earned up to 31st March 2015 and thereafter out of the profit earned up to 31st March, 2015 excluding the profit pertaining to SRA 1 and TDR Undertaking. Simultaneously ISL may issue or allot any further shares as per the provisions of the Companies Act, 2013 as and when it is essential for ISL and on the terms and conditions as they may decide and such changes in capital structure will not in any way affect or change the exchange ratio provided in clause 8 of the

scheme. Deponent prays that Hon'ble Court may issue directions as may deem fit.

(c) Petitioner in Clause No.10 of the Scheme inter alia has mentioned that Accounting Treatment. However, not undertaken to make compliance of Accounting Standards-14. Deponent prays that the Hon'ble Court may direct the company to ensure compliance of applicable accounting standards including AS-14, further to what is stand in clause 10 of the scheme.

(d) 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.

13. As far as the objection of the Regional Director in paragraph 6(a) of his affidavit is concerned, the Resulting Company through its advocate undertakes that the Resulting Company shall comply with the provisions of Section 94/97 of the Companies Act, 1956 corresponding to section 61/64 of the Companies Act, 2013 in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

14. As far as the objection of the Regional Director in paragraph 6(b) of his affidavit is concerned, the Demerged Company through its advocate undertakes that the Demerged Company shall comply with clause no.14.1

of the Scheme interalia stating that changes in capital structure by issuance or allotment of any further shares either rights or bonus or otherwise to its shareholders out of its profits and reserves and surplus earned up to 31st March 2015 and thereafter out of the profit earned after 31st March, 2015 excluding the profit pertaining to SRA-1 and TDR Undertaking and issue or allot any further shares as per the provisions of the Companies Act, 2013 as and when it is essential for Demerged Company and on the terms and conditions as Demerged Company may decide without affecting or changing the exchange ratio provided in clause 8 of the scheme. Further there is no change in the Share Capital of the Demerged Company from the Appointed Date till date hereof.

15. As far as the objection of the Regional Director in paragraph 6(c) of his affidavit is concerned, the Demerged and Resulting Companies through its advocate undertakes that the Demerged and Resulting Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with Accounting Standard -14 and other applicable Accounting Standard such as AS – 5 etc.

16. So far as the objection of the Regional Director as stated in paragraph 6(d) of his Affidavit is concerned, the Petitioner Company submit that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

17. The Learned Counsel for Regional Director on instructions of Ms. Sheela Joint Director, in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied

with the undertakings made by the Petitioner Company through their advocate. In view thereof, the said undertakings are accepted.

18. 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.

19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.288 of 2016 filed by the Demerged Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No.289 of 2016 filed by the Resulting Company is made absolute in terms of prayer clauses (a) and (b).

20. The Petitioner Company to lodge a copy of this order along with the Scheme and Form of Minutes (Exhibit-'H' to Company Scheme Petition No.288 of 2016) duly authenticated by the Company Registrar, High Court, 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 this order.

21. Petitioner is directed to file/lodge a copy of this order along with the Scheme and Form of Minutes (Exhibit-'H' to Company Scheme Petition No.288 of 2016) duly authenticated by the Company Registrar, High Court, Bombay, 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.

22. The Petitioners to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of the order.

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

24. All concerned regulatory authorities to act on copy of this order along with the Scheme and Form of Minutes 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