IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.293 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 339 OF 2016

TOWN & COUNTRY REALTY PRIVATE LIMITED

...Petitioner/Transferor Company

With

COMPANY SCHEME PETITION NO.294 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.340 OF 2016

ATTARCHAND TRADING COMPANY PRIVATE LIMITED

....Petitioner/Transferee Company

In the matter of 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 Amalgamation

OF

Town & Country Realty Private Limited ('the Transferor Company')

WITH

Attarchand Trading Company Private Limited ('the Transferee Company')

AND

Their Respective Shareholders

Called for hearing

Mr. Rajesh Shah, i/b M/s Rajesh Shah & Co. Advocate for the Petitioner Companies.

Mr. Shrikant Padhi i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator present in CSP No. 293 of 2016.

CORAM: A.K. Menon, J.

DATE:22nd September, 2016

PC:

1. Heard the learned advocate for the parties. No objector has come before the court to oppose the Scheme of Amalgamation and nor any party has controverted any averments made in the Company Scheme Petition.

2. The sanction of the Court is sought under Sections 391 to 394 to the Scheme of Amalgamation of Town & Country Realty Private Limited with Attarchand Trading Company Private Limited and their respective Shareholders.

3. The Learned Advocate for the Petitioners states that Petitioner Company in Company Scheme Petition No. 293 of 2016 is engaged in business of constructing and developing real estate projects and the Petitioner Company in Company Scheme Petition No. 294 of 2016 is engaged in business of real estate and trading and distributing of various articles.

4. The Learned Advocate for the Petitioners states that the Scheme will result into following benefits namely simplifying the Group structure, minimizing the cost of administration of two legal entities, better and more economic and efficient management, controlling and running of the businesses of the companies concerned and to pool the resources of both the companies for growth.

5. The Learned Advocate for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petition of the Petitioner Company.

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective 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.

7. The Learned Advocate appearing on behalf of the Petitioner Companies 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 undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit on 20th September, 2016 stating therein, save and except as stated in paragraphs 6 (i) to (vii), it appears according to Regional Director, that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs6 (i) to (vii) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

i. *Petitioner in clause 4 of the scheme inter alia mentioned that in so far as immovable properties in respect of which the transferor company has executed an Agreement to sell or Development Agreement or similar agreement has been executed by the transferor company with the Land owners and which Agreement have been duly stamped, conveyance deed/sale deed will be executed in favour of the transferee company whereby the transferee company shall be entitled to avail credit to the stamp duty already paid on the respective agreements. Deponent prays that the Hon'ble Court direct the company to comply with the relevant provisions of the concerned Act in this manner.*

ii. *It is further inter alia mentioned in clause 4.5 of the petition that all the existing securities, mortgages, charges, encumbrances, if any, as on the appointed date and those created by the transferor company after the appointed date, over the assets of the transferor company transferred to the transferee company shall, after the effective date, continue to relate and attach* *to such assets or any part thereof to which they are related or attached to prior to the effective date.*

Deponent to state that there are no secured creditors as per the scheme in the petitioner companies, therefore it is prayed that the Hon'ble Court direct the company to comply with the relevant provisions of the Companies Act, if required.

iii. *Petitioner in Clause no. 10 of the scheme inter alia has mentioned that on the scheme becoming effective, the Transferor Company shall account for the amalgamation in its books of accounts as under:*

(a) *All the assets and liabilities as on the appointed date, recorded in the books of the Transferor Company shall stand transferred to and vested in the Transferee Company pursuant to the Scheme and shall be recorded by the Transferee Company at their fair values.*

(b) *Intercompany loans, advances investments or any other balances, between the Transferor Company and the Transferee Company, if any will stand cancelled.*

(c) *The excess, if any, of fair value of assets over the fair value of liabilities and after considering adjustment in sub clause 10.1(b) shall be credited to the capital reserve account. In case of there being shortfall, the same shall be debited to Goodwill account.*

Deponent to state that the petitioner companies has not mentioned the Accounting standard 14 for accounting for the amalgamation in its books of accounts. Therefore, it is prayed that the Hon'ble Court direct the company to comply with the Accounting Standard-14 and other applicable accounting standards as per provisions of the Companies Act, 1956.

iv. *Petitioner in clause 10.2 of the scheme inter alia has mentioned that if considered appropriate for the purposes of application of uniform accounting methods and policies between the transferor company and the transferee company, the transferee company may make suitable adjustments and reflect the effect thereof in the Profit and Loss Account of the transferee company.*

v. *Petitioner in clause 8.3 of the scheme inter alia has mentioned that all profits or income arising to the transferor company or expenditure or losses incurred by the transferor company shall be deemed to be profit or income or expenditure or loss of the transferor company.*

Deponent prays that the Hon'ble Court direct the company to comply with the relevant provisions of the accounting standards in this manner as per the provisions of the Companies Act, 1956.

vi. *Petitioner in clause 8.4 of the scheme inter alia mentioned that the transferor company and transferee company with the approval of respective Board of Directors shall be entitled to issue bonus shares, reclassify, consolidate, subdivide and/or spilt the shares.*

Deponent prays that the Hon'ble Court direct the company to comply with the relevant provisions of the Companies Act for issue bonus shares, reclassify, consolidate, subdivide and/or spilt the shares.

vii. *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 Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies."*

9. As far as observations made in paragraph 6 (i) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that the Petitioner Company will comply with the relevant provisions of the concerned Act in this matter.

10. As far as observations made in paragraph 6(ii) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate submits that there are no Secured Creditors as per the Scheme. However, the Petitioner Company will comply with the relevant provisions of the Companies Act, if required.

11. As far as observations made in paragraph 6 (iii) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Advocate undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply will comply withthe Accounting Standard 14 and other applicable accounting standards as per the provisions of the Companies Act, 1956/2013.

12. As far as observations made in paragraph 6(iv) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Advocate undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply with relevant provisions of the accounting standards as per the provisions of the Companies Act, 1956/2013.

13. As far as observations made in paragraph 6(v) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Advocate undertakes that it shall pass such accounting entries which may be necessary in connection with the Scheme to comply with relevant provisions of the accounting standards as per the provisions of the Companies Act, 1956/2013.

14. As far as observations made in paragraph 6(vi) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate undertakes to comply with the relevant provisions of the Companies Act, 2013 for issue bonus shares, reclassify, consolidate, subdivide and/or split the shares, if any.

15. As far as observations made in paragraph 6(vii) of Affidavit of the Regional Director is concerned, the Petitioner Companies through their Advocate undertakes to comply with all applicable provisions of the Income Tax Act and tax implications, if any arising out of the Scheme of Amalgamation will be subject to the decision of the Income Tax Authority.

16. The Learned Counsel appearing for the Regional Director on instructions of Ms. P. Sheela, Joint Director (Legal) 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 Advocate on behalf of the Petitioner Companies. The said undertakings are accepted.

17. The Official Liquidator has filed his report on 1st August, 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 without being wound up by this Court.

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, Company Scheme Petition No.293 of 2016 is made absolute in term of prayer clause (a), (c) and (d) and 294 of 2016 is made absolute in terms of the prayer clause (a) and (c).

20. The Petitioner Companies are directed to lodge a copy of this order and 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 order.

21. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme 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 in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and Petitioner Company in Company Scheme Petition No. 293 of 2016 to pay cost of Rs.10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid 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 a copy of this order along with the Schemeduly 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.