IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 292 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 341 OF 2016

SURANJAN HOLDING & ESTATE DEVELOPERS PRIVATE LIMITED

…. Petitioner /Transferor 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 Amalgamation

OF

Suranjan Holding & Estate Developers Private Limited ('the Transferor Company')

WITH

Keystone Realtors Private Limited ('the Transferee Company')

AND

Their Respective Shareholders

Called for hearing

Mr. Rajesh Shah i/b Rajesh Shah & Co., Advocate for the Petitioner Company.

Mr. A. R. Verma i/b Mr. Pankaj Kapoor for Regional Director.

Mr. Vinod Sharma, Official Liquidator.

Coram: A. K. Menon, J.

Date: 22nd September, 2016

1. Heard the learned advocate for the Petitioner Company. 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 of the Companies Act, 1956 to the Scheme of Amalgamation of Suranjan Holding & Estate Developers Private Limited with Keystone Realtors Private Limited and their respective shareholders.
3. The Learned Advocate for the Petitioner states that the Petitioner and the Transferee Companies are engaged in the business of constructing and developing real estate projects.
4. The Learned Advocate for the Petitioner states that the amalgamation of the Petitioner Company with the Transferee Company would help to simplify the group structure minimize cost of administration of two legal entities for better and more economic and efficient management, control 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 Petitioner Company states that the Petitioner Company is wholly owned subsidiary of Keystone Realtors Private Limited, the Transferee Company and there is no reorganisation of share capital of the Transferee Company and no new shares are required to be issued by the Transferee Company and rights of creditors of the Transferee Company are not affected as mentioned in paragraphs

20 to 23 of the Affidavit in support of the Company Summons for Direction and observations made by this Court in Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases page 16 to 18. In view of the above the filing of separate Company Summons for Direction and Company Scheme Petition under Section 391 to 394 of the Companies Act, 1956 by Keystone Realtors Private Limited, the Transferee Company was dispensed with by order dated 29th April, 2016 passed in Company Summons for Direction No. 341 of 2016.

6. The Petitioner Company and the Transferee Company have approved the said Scheme by passing Board Resolutions which are annexed to the Company Scheme Petition of the Petitioner Company.

7. The Advocate for the Petitioner states that the Petitioner Company has complied with all directions passed in Company Summons for Direction and that the Scheme has been filed in consonance with the order passed in the Company Summons for Direction.

8. The Advocate for the Petitioner further states that the Petitioner Company has complied with all requirements as per direction of this Court and filed necessary affidavits of compliance in the Court. Moreover, Petitioner Company undertakes 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.

9. The Regional Director has filed its Affidavit on 10th August, 2016 stating therein that save and except as stated in paragraph 6(a) and 6(b)

of the said affidavit, it appears, according to Regional Director, that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) and 6(b) of the said affidavit, it is stated that:

(a) Clause 10 of the scheme provides for adjustment of differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standards-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(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.

10. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Advocate undertakes that the Transferee Company shall pass such accounting entries which may be necessary in connection with the Scheme to comply with other applicable accounting standards.

11. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Advocate undertakes to comply with all applicable provisions of the

Income Tax Act and tax implication, if any arising out of the Scheme of Amalgamation will be subject to the decision of the Income Tax Authority.

12. The Learned 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 undertakings given by the Advocate on behalf of the Petitioner Company. The said undertakings are accepted.

13. The Official Liquidator has filed his report on 23rd August, 2016 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner 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.

15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition filed by the Petitioner/Transferor Company are made absolute in terms of prayer clauses (a) and (b).

16. The Petitioner Company 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 Order.

17. The Petitioner/Transferee Company 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.

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

(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.