IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 442 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 380 OF 2016.

In the matter of Companies Act, of 1956 (to the extent not repealed and the Companies Act, 2013 to the extent notified)

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (to the extent not repealed and the Companies Act, 2013 to the extent notified).

AND

In the matter of the Scheme of Amalgamation of PARMEKA PRIVATE LIMITED, the Transferor Company with MARATHON NEXTGEN REALTY LIMITED, the Transferee Company.

PARMEKA PRIVATE LIMITED, a company incorporated under the Companies Act, 1956 having its Registered Office at 702, Marathon Max, Junction of Mulund – Goregaon Link Road, Mulund (W) Mumbai 400080.) ...Applicant Company.

Called for Hearing

Mr. Ameya Deosthale i/b Hariani & Co Advocate for Petitioner Company.

Mr. A. R. Varma i/b Shri. Pankaj Kapoor for Regional Director in all the Petitions.

Ms. Yogini D. Chauhan Deputy Official Liquidator, present in C.S.P No. 442 of 2016.

Coram : A. K. Menon, J.

Date: 06th October, 2016

PC:

1. Heard learned counsel for parties. None appears 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 under Sections 391 to 394 of the Companies Act, 1956, to a Scheme of Amalgamation of PARMEKA PRIVATE LIMITED, the Transferor Company with MARATHON NEXTGEN REALTY LIMITED, the Transferee Company.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.

4. The learned Advocate for the Petitioner states that the Petitioner Company has complied with all the directions passed in Company Summons for Direction and that the Petitions have been filed in consonance with the order passed in the Company Summons for Direction.

5. The Learned Advocate appearing on behalf of the Petitioner 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 thereunder whichever is applicable. The said undertaking is accepted.

6. The Official Liquidator has filed his report on 01/10/2016 in Company Scheme Petition No. 442 of 2016, inter alia, 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.

7. The Regional Director has filed his Affidavit on 30/09/2016 inter alia, stating therein that save and except as stated in paragraph 6 (a) to (c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a) to (c) of the said Affidavit, the Regional Director has stated that :

> *(a) In addition to the compliance of Accounting Standard-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) 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 Transferee Company and will not be adjusted against any other reserves of the Transferee Company.*
>
> *(c) The Tax implication 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."*

8. So far as the observation in paragraph 6 (a) of the Affidavit of Regional Director is concerned, the Petitioner/Transferee Company through its counsel undertakes that in addition to compliance of

Accounting Standard 14, the Transferee Company will pass such accounting entries as may be necessary in connection with this Scheme to comply with any other Accounting Standards.

9. So far as the observation in paragraph 6 (b) of the Affidavit of Regional Director is concerned, the Petitioner/Transferee Company through its 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 scheme shall be debited to Goodwill Account of Transferee Company and will not be adjusted against any other reserves of the Transferee Company.

10. So far as the observations made in paragraph 6 (c) of the affidavit of Regional Director is concerned, 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.

11. The Learned Counsel for Regional Director on instructions of Mr. S. Ramakanth, Joint Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Advocate for the Petitioner Company. The said undertaking is accepted.

12. 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.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 442 of 2016 is made absolute in terms of prayer clauses (a) to (c).

14. The Petitioner Companies to lodge a copy of this order and the Scheme 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.

15. Petitioner is directed to file/lodge 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 1956 / 2013, whichever is applicable.

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

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

18. All concerned regulatory authorities to act on a copy of this order along with the 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.