IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 427 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 368 OF 2015

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

Hemkunt Buildtech Private Limited ("the Transferor Company")

with

Payone Enterprises Private Limited ("the Transferee Company")

and

Their respective Shareholders

HEMKUNT BUILDTECH PRIVATE LIMITED

....Petitioner/ the Transferor Company

Called for hearing

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

Mr. A. R. Verma i/b Mr. A.A. Ansari for Regional Director.

Mr. Vinod Sharma, Official Liquidator, present.

CORAM: B.P. COLABAWALLA, J.
DATE: 1st April, 2016

PC:

1. Heard Learned Counsel for the party. No objector has come 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 and other relevant provision of the Companies Act, 1956, to a Scheme of Amalgamation of Hemkunt Builtech Private Limited, the Transferor Company with Payone Enterprises Private Limited, the Transferee Company and their respective shareholders.

3. The Learned Counsel for the Petitioner states that the Transferor Company and the Transferee Company are engaged in the business of real estate. The rationale for the Scheme is to reduce managerial overlaps, which are necessarily involved in running multiple entities, to reduce administrative cost, to remove multiple layer inefficiencies and to achieve operational and management efficiency.

4. Learned Counsel for the Petitioner further states that the Board of Directors of the Petitioner Company and the Transferee Company have approved the said Scheme by passing Board Resolutions, which were annexed to the Company Scheme Petition.

5. Learned Counsel for the Petitioner further states that since the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Petitioner Company are presently held by the Transferee Company, Payone Enterprises Private Limited along with its nominees and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and there would be no reorganization of the Share Capital in the Transferee Company and also in view of the judgment of this Court in Mahaamba Investments Limited Versus IDI Limited (2001) 105 Company Cases, filing of a separate Company Summons for Direction and Company Scheme Petition by the Transferee Company was dispensed with vide order dated 8th day of May, 2015 passed in CSD No. 368 of 2015.

6. The Learned Counsel for the Petitioner further states that, Petitioner Company have complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the order passed in Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner have stated that the Petitioner Company have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements if any, as required under the Companies Act,

1956 / 2013 and Rules made there under whichever are applicable. The said undertaking is accepted.

8. The Official Liquidator has filed his report on 30th day of March, 2016 in Company Scheme Petition stating that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

9. The Regional Director has filed an Affidavit on 19th day of August, 2015 stating therein, save and except as stated in paragraph 6, 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 has stated that:-

> *"6. That the Deponent further submits that,*
>
> *a) 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.*
>
> *b) With reference to clause 2.3.1 of the scheme, it is submitted that the assets and liabilities of Transferor Company may be transferred to Transferee Company on book value basis instead of fair value basis in as much as when the 100% subsidiary company is merging with the holding company the accounting standard for amalgamation in the nature of merger following pooling of interest method may be followed.*

10. As far as the observation in paragraph 6(a) of the affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company are bound to comply with all

applicable provisions of Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

11. As far as the observation in paragraph 6(b) of the affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to transfer the assets and liabilities to the Transferee Company at book value basis.

12. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) 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 Petitioner. The above undertakings is accepted.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition is made absolute in terms of prayers clause (a), (c) and (d).

15. The Petitioner Company to file 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 the Order.

16. The Petitioners are directed to file a certified copy of 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.

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

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

19. 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.

(B.P. Colabawalla, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer