

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 483 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 435 OF 2016

Lake View Developers ... Petitioner Company

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 484 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 436 OF 2016

Hiranandani Builders ... Petitioner Company

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 485 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 437 OF 2016

Omega Associates ... Omega Associates

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 486 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 438 OF 2016

Crescendo Associates ... Petitioner Company

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 487 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 439 OF 2016

Alpha Associates

...

Petitioner Company

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 488 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 440 OF 2016

Powai Cliff Hill Resorts Private Limited

...

Petitioner Company

[CIN: U99999MH1992PTC064987]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 489 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 441 OF 2016

HGP Community Private Limited

...Petitioner Company

[CIN: U45201MH2016PTC274222]

In the matter of the Companies Act, 1956
or any re-enactment thereof;

And

In the matter of Petition under Sections
391 to 394, of the Companies Act, 1956
or any re-enactment thereof;

And

In the matter of the Scheme of Amalgamation amongst Lake View Developers, Hiranandani Builders, Omega Associates, Crescendo Associates, Alpha Associates, Powai Cliff Hill Resorts Private Limited and HGP Community Private Limited and their respective partners and shareholders.

Called for Hearing

Mr. Virag V Tulzapurkar, Senior Counsel along with Mr. Chetan Kapadia and Mr. Tapan Deshpande, Ms. Priya Patwa Counsels instructed by Cyril Amarchand Mangaldas, Advocates for Petitioner Companies.

Mr. Fredun De'vitre Senior Counsel along with Mr. Rohan Cama counsel, instructed by Mr. Anil T. Agarwal, Advocate for Ms. Priya Hiranandani, Objector in the Petitions

Mr. P S. Gujar, i/b Mr. A. K. Chaturvedi for Regional Director in all 7 Petitions
Vinod Sharma, Official Liquidator, present in CSP no. 488 of 2016

Coram: S. C. Gupte, J.

Date: 18th November, 2016

MINUTES OF THE ORDER

PC:

1. Heard Counsel for the parties.
2. Learned Advocate for the Petitioner Companies states that the Petitions have been filed to seek sanction to the Scheme of Amalgamation amongst Lake View Developers (hereinafter referred to as **“Transferor Company 1”**), Hiranandani Builders (hereinafter referred

to as **“Transferor Company 2”**), Omega Associates (hereinafter referred to as **“Transferor Company 3”**), Crescendo Associates (hereinafter referred to as **“Transferor Company 4”**), Alpha Associates (hereinafter referred to as **“Transferor Company 5”**), Powai Cliff Hill Resorts Private Limited (hereinafter referred to as **“Transferor Company 6”**) and HGP Community Private Limited (hereinafter referred to as **“Transferee Company”**) (collectively referred to as **“Transferor Companies”**) and their respective partners and shareholders (the **“Scheme of Amalgamation”**), pursuant to the provisions of Sections 391 to 394, of the Companies Act, 1956 or any re-enactment thereof (the Act). Transferor Companies 1 to 5 are partnership firms and as such unregistered companies, within the meaning of Section 390 read with Section 582 (b) of the Companies Act, 1956. Transferor Company 6 and the Transferee Company are private limited companies, registered under the Act.

3. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the respective Company Scheme Petitions have been filed in consonance with the orders passed in the respective Company Summons for Directions.
4. The Learned Counsel for the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per the directions of this Court and have filed necessary Affidavits of

compliance in the Court. Moreover the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956 / Companies Act, 2013 and the Rules made thereunder. The said undertakings are accepted.

5. Transferor Companies 1 to 5 and the Transferee Company are *inter alia* engaged in the business of real estate development and property management. Transferor Company 6 is engaged *inter alia* in the business, of owning and operating holiday resorts, hotels, motels, restaurants etc. The learned Counsel for the Petitioner Companies says that the rationale and significant benefits of the Scheme are to consolidate and streamline the business undertakings held by Petitioner Companies, to facilitate ease of management and enable raising capital. The Partners / Board of Directors of the respective Petitioner Companies have approved the said Scheme of Amalgamation in their respective Partners /Board meetings by passing their respective resolutions, which are annexed to the Petitions.

6. The Regional Director has filed an Affidavit dated 17th October, 2016, stating therein, that save and except as stated in paragraph 6 of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 of the Affidavit of the Regional Director, it is stated that:

“6. *That the Deponent further submits that,*

- (i) *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.

- ii. *The deponent submit that the merger is between five partnership firms, company incorporated under provisions of the Companies Act, 1956 collectively recorded as Transferor company along with the company incorporated under the Companies Act, 2013 as Transferee Company. The Deponent submit that once order is passed for dissolution of the firms, the Registrar of Firms, Maharashtra, Mumbai may kindly be directed to transfer all documents relating to transferor company No.1 i.e. M/s. Lake View Developer, Transferor company No. 2 i.e. M/s. Hiranandani Builders, transferor company No.3 i.e. M/s. Omega Associates, transferor company No.4 i.e. M/s. Crescendo Associates & Transferor company No.5 i.e. Alpha Associates to the ROC, Mumbai for record and public interest.*
- iii. *As per scheme the Partners of transferor company No.1 i.e. M/s. Lake View Developers will be allotted 15,13,90,000 equity shares of face value of Rs. 10 each at par, Partners of transferor company No. 2 i.e. Hiranandani Builders will be allotted 8,76,60,000 equity shares of face value of Rs. 10 each at par, Partners of transferor company NO. 3 i.e. M/s. Omega Associates will be allotted 5,49,40,000 equity shares of face value or Rs.10 each at par, Partners of transferor company No. 4 M/s. Crescendo Associates will be*

allotted 6,65,90,000 equity shares of face value of Rs.10 each at par & Partners of transferor Company No. 5 i.e. M/s. Alpha Associates will be allotted 2,87,50,000 equity shares of face value of Rs.10 each at par & Shareholders of Transferor company No. 6 i.e. M/s. Powai Cliff Hill Resorts Pvt. Ltd. will be allotted 1 equity share of Transferee company for every share held by them in transferor company No. 6 i.e. M/s. Powai Cliff Hill Resorts Pvt. Ltd.

The deponent submit that, the transferee company may be directed to increase the Authorised share capital in compliance with the applicable provisions of section 61 read with section 13 and section 64 of The Companies Act, 2013 and other provisions and rules made thereon, as on the date of scheme the Authorised share capital of Transferee Company is one lakhs Rupees.

iv. *The transferor company 1 to 5 are partnership firms, hence the transferee company may be directed to take appropriate step to dissolve the said transferor companies/firms upon the scheme becoming effective.*

v. *As per para No. 24(VII) of the scheme, the petitioner has stated as follows:*

The difference between the amount recorded as share capital issued by the Transferee Company and the amount of capital of the Transferor Companies shall be adjusted in reserves in the books of the Transferee Company.

The deponent states that since the shares are allotted at par on the basis of capital balance as on 31/03/2016, there is no generation or reserves.

- vi. *As per para No. 13 of the scheme, the petitioner has stated as follows:*

The capital accounts of the partners (both fixed and fluctuating) of the Transferor Company 1, the Transferor Company 2, the Transferor Company 3, the Transferor Company 4 and the Transferor Company 5 shall be held in trust of the Transferee Company till the effective date and any variations in such capital accounts shall be made good by the respective partners to maintain status quo ante as on the Record Date.

The deponent states that the partners' capital Account as on 31/03/2016 shall be read as fixed Capital."

7. As regards the observation set out in paragraph 6 (i), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel submits that the Petitioner Companies shall comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with law.
8. As regards the observation set out in paragraph 6 (ii), of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake to serve a copy of this order on the office of Registrar of Firms, Maharashtra, Mumbai for its necessary action as per direction given by this Court.

9. As regards the observation set out in paragraph 6 (iii), of the Affidavit of the Regional Director is concerned, the Counsel for the Transferee Company on instructions, undertakes to this Court that the Transferee Company shall increase its authorized share capital, in compliance with the applicable provisions of the Companies Act, 2013 and rules made therein, as suggested by the Regional Director.
10. As regards the observation set out in paragraph 6 (iv), of the Affidavit of the Regional Director is concerned, the Counsel for the Petitioner Companies states that the Transferor Companies 1 to 5 have sought a prayer for dissolution of the Transferor Companies 1 to 5 in their respective Petitions and once the said prayer is granted by this Court, the Transferor Companies 1 to 5 shall communicate the said order to the Registrar of Firms for taking on record the order of dissolution of the said firms from the records of the Registrar of Firms, Maharashtra, Mumbai.
11. As regards the observation set out in paragraph 6 (v), of the Affidavit of the Regional Director is concerned, the Petitioner Companies agrees with the observation of the Regional Director, since the shares are being allotted to the Partners/ Shareholders of the Transferor Companies will be at par on the basis of capital balance there will be no generation of reserve.
12. As regards the observation set out in paragraph 6 (vi), of the Affidavit of the Regional Director is concerned, the Petitioner Companies

through its Counsel states that the capital accounts of the Partners of Transferor Companies 1 to 5 as on 31st March, 2016 shall be read as fixed capital as observed by the Regional Director.

13. The Learned Counsel for the Regional Director on instructions of R.K. Dalmia, Deputy Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the explanations given by the Petitioner Companies to the observations in paragraph 7 to 12 hereinabove and also the undertakings given hereinabove by the Petitioner Companies through its Counsel.
14. The Official Liquidator has filed his Report dated 10th October, 2016 in this Court stating that the affairs of the Transferor Company 6 have been conducted in a proper manner and that the Transferor Company 6 may be ordered to be dissolved by this Court without winding up.
15. The Petitioner Companies contest the locus of Ms. Priya Hiranandani to object to the Scheme. In view of the security (deposit of amounts and Bank Guarantee) having been provided in terms of order dated 14th October, 2016 clarified by order dated 17th October, 2016, in Arbitration Petition Nos. 102 & 103 of 2016, counsel appearing for Ms. Priya Hiranandani applies for withdrawal of the objection filed in the captioned Petitions. Application for withdrawal is allowed and objection stands withdrawn.

16. Since all requisite statutory compliance have been fulfilled, Company Scheme Petition Nos. 483 to 488 of 2016 filed by the Transferor Companies is made absolute in terms of prayer clauses (a) to (c) of the said respective Company Scheme Petition and Company Scheme Petition No. 489 of 2016 is made absolute in terms of prayer clauses (a) and (b).
17. The Registrar of Firms, Maharashtra, Mumbai is directed to take note of this order of dissolution of Transferor Companies 1 to 5 and transfer all documents relating to Transferor Companies 1 to 5 respectively to the Registrar of Companies, Mumbai for record and upon such transfer, Registrar of Companies, Mumbai to consolidate the said documents with the files of the Transferee Company. Transferor Companies 1 to 5 to ensure compliance as required by the office of the Registrar of Firms, Maharashtra, Mumbai, if any.
18. The Registrar of Companies Mumbai is directed to transfer the files of the Transferor Company 6 with the files of the Transferee Company maintained by it and the Registrar of Companies, Mumbai to consolidate both the files of Transferor Company 6 with the files of Transferee Company.
19. The Transferee Company to lodge a copy of this composite order along with a copy of the Scheme, sanctioned by this court, duly authenticated by the Company Registrar, High Court [O.S.], Bombay, with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of the order.

20. The Petitioner Companies to pay in the respective Company Scheme Petitions, costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 488 of 2016 to pay a sum of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
21. Filing and issuance of the drawn up order is dispensed with.
22. All concerned authorities to act on a copy of this composite order along with the Scheme, attached thereto, duly authenticated by the Company Registrar, High Court [O.S.], Bombay.

(S. C. Gupte, J.)

CERTIFICATE

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

Uploaded by: S. Gawde
Stenographer