IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO 518 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO 452 OF 2016

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Section 391 to 394 of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation of Gera Realty India Private Limited ("The Transferor Company" or "GRIPL") with Gera Developments Private Limited ("The Transferee Company" or "GDPL") and their Respective Shareholders

GERA REALTY INDIA PRIVATE LIMITED

....Petitioner/Transferor Company

Called for Hearing

Mr. Hemant Sethi i/b. M/s. Hemant Sethi & Co., Advocates for the Petitioner

Mr. Vinod Sharma, Official Liquidator present

Ms. Prachi Tatake, i/by Pankaj Kapoor for Regional Director

CORAM: A. K. Menon, J

DATE: 20th October, 2016

1. Heard counsel for the parties. 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 of the Companies Act, 1956 to the Scheme of Amalgamation of Gera Realty

India Private Limited with Gera Developments Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner state that Transferor Company is involved in the business of real estate development. The company constructs buildings, structures and is also involved in maintenance or improvement of the same. The Transferee Company is also engaged in the same business of real estate development and construction.

4. Learned Counsel for the Petitioner states that the Petitioner Company is a wholly owned subsidiary of the Transferee Company and all the shares are presently held by the Transferee Company, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and also in view of the judgment of this Court in Mahaamba Investment Limited v/s IDI Limited (2001) Company Cases 105, filing of Company Summons for Direction and Company Scheme Petition by Gera Realty India Private Limited, the Transferee Company was dispensed with by order dated 1st July, 2016.

5. The rationale behind the scheme is that this amalgamation will lead to creation of synergy and increase the operational as well as organizational efficiency of business. The management believes that the restructuring would benefit the companies and its stakeholders on account of operational rationalization, organizational efficiency and optimal utilization of various resources, simplification of the group structure, consolidation of businesses, maximize synergies, reduction of administrative, operative and marketing costs and greater administrative efficiency.

6. Learned counsel for the Petitioner further states that the Board of Directors of both the Company have approved the said Scheme by passing Board Resolutions, which is annexed to the Company Scheme Petition.

7. Learned Counsel for the Petitioner further state that, the Petitioner Company have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.

8. Learned Counsel for the Petitioner further state that the Petitioner have complied with all requirements as per directions of this Court and they have filed necessary affidavits 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 the Rules made there under whichever applicable. The said undertaking is accepted.

9. The Regional Director has filed an affidavit dated 27th September, 2016 stating therein that save and except as stated in paragraph 6 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 of the said affidavit it is stated 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 Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

(ii) The Transferor Company and Transferee Company are regular in filing the statutory returns as required under the Companies Act. However, the appointed date is 30.12.2015. Deponent prays that the Hon'ble Court may pass such orders as deem fit.

(iii) Petitioner in Clause no.9 of Part B of the scheme inter alia has mentioned that with effect from the appointed date and upto and

including the effective date the transferor company shall not utilize the profits or income, if any, for the purpose of declaring or paying dividend or for any other purpose in respect of the period falling on and after the appointed date, without the prior written consent of the Board of directors of the Transferee company. Deponent prays that the Hon'ble Court may pass such orders as deem fit.

(iv) Petitioner in Clause no.6 of Part B of the scheme inter alia has mentioned that the transferee company in respect of the Transferor Company, do the accounting in the books of accounts as under:

a) Transferee Company shall record all assets and liabilities of the Transferor Company as on the appointed date at their respective fair value.

b) The intercompany investments/balances and transactions, if, any Transferee Company and the Transferor Company shall stand cancelled.

c) The excess arising on transfer of the assets and liabilities would be credited to Capital Reserve account of the Transferee Company. The deficit if any shall be debited by the transferee company to its goodwill account.

d) Accounting policy of the transferee company would be applicable and in case of difference, if any between accounting policy of transferor company and transferee company.

However petitioner company nor mentioned the accounting standards that would be applied for accounting treatment. Deponent prays that the Hon'ble Court may direct the company to undertake to comply with applicable accounting standards issued by the ICAI/Government.

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10. In so far as observations made in paragraph 6 (i) of the Affidavit of Regional Director are concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all applicable

provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.

11. Insofar as observations made in paragraph 6 (ii) of the Affidavit are concerned, the Petitioner Company states that Petitioner Company is a wholly owned subsidiary company of the Transferee Company and all the shares are presently held by the Transferee Company. It is stated that there is no issue / allotment of new shares pursuant to merger. Hence keeping appointed date 30.12.2015 as will not affect the shareholders / creditors.

12. Insofar as observations made in paragraph 6 (iii) of his Affidavit, are concerned, the Petitioner Company states that it is a wholly owned subsidiary company of the Transferee Company and all the shares are presently held by the Transferee Company. So dividend, if any paid / declared by the Petitioner Company will be received / receivable to GDPL, the Transferee Company. Since this is a merger of a wholly owned subsidiary company into its parent company, where all assets and liabilities will get transferred to parent company on the Appointed date, there will not be any requirement of distributing profits to parent company after the Appointed Date.

13. Insofar as observations made in paragraph 6 (iv) of his Affidavit are concerned, the Transferee Company through its counsel undertakes to follow the accounting entries as provided in the Scheme and clarifies that the Transferee Company will follow Purchase Method as specified in Accounting standard -14 and such other Accounting standards issued by ICAI/ government.

14. The Learned Counsel for the Regional Director on instructions of Mrs. P Sheela, Joint Director (Legal) in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertaking and submission given by the Petitioner Company. The said undertaking given by the Petitioner Company are accepted.

15. The Official Liquidator has filed his report on 15th October, 2016 in the Company Scheme Petition 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 by this Court.

16. From the material on record, the Scheme appears to be fair and reasonable and does not appear to be violative of any provisions of law or contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 518 of 2016 filed by the Petitioner Company is made absolute in terms of prayer clauses (a).

18. 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.

19. The Petitioner Company is 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, 2013.

20. The Petitioner Company in the Company Scheme Petition to pay cost 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.

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

22. 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.
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