

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 514 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 564 OF 2016.

METRO ENTERTAINMENT (BOMBAY) PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 515 OF 2016.

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 565 OF 2016

PRIMEZONE REALTY PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1
of 1956 and other relevant provision
of Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of
the Companies Act, 1956 and other
relevant provision of the Companies
Act, 2013;

AND

In the matter of Scheme of Amalgamation of
METRO ENTERTAINMENT (BOMBAY)
PRIVATE LIMITED, the Transferor
Company with PRIMEZONE REALTY
PRIVATE LIMITED, the Transferee
Company.

Called for hearing

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

Mr. Sachin D Kadam i/b Mr. Pankaj Kapoor for the Regional Director.

Mr. Vinod Sharma, the Official Liquidator.

CORAM: A.K Menon, J.

DATE: 27th October, 2016

PC:

1. Heard Learned 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 Petitions.
2. The sanction of the Court is sought to a Scheme of Amalgamation of METRO ENTERTAINMENT (BOMBAY) PRIVATE LIMITED, the Transferor Company with PRIMEZONE REALTY PRIVATE LIMITED, the Transferee Company, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.

3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of Entertainment, Exhibition of Motion Pictures satellite trans, mission, Catering and to acquire, erect construct, own, hold, improve exploit, operate, places of amusement, Theaters, Cinema Halls and the Transferee Company has been carrying on the business of owing & operating the places of amusement, theatres, cinema halls, multiplex, multi screens, multi-functional auditoriums, restaurants, eating houses and to exhibit, screen, produce leasing and property business, buying and selling of immovable properties acting as landlords, builders, developers of immovable properties. In the opinion of the management, the proposed scheme of Amalgamation would enhance the asset base of the Transferee Company following the acquisition of the business of the Petitioner Company and that the merger would result in substantial cost reduction.
4. The Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Counsel for the Petitioners further states that 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 respective Company Summons for Directions.

6. The Learned Counsel appearing on behalf of the Petitioners have stated that the Petitioner Companies 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 Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and rules made there under whichever is applicable. The said undertaking is accepted.
7. The Regional Director has filed an Affidavit on 21st day of October, 2016 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,

- (i) That the Petitioner Companies had accepted the pooling of interest method as set out in AS14 however the Petitioner Companies should also shall pass accounting entries as mentioned in As-5 of the Accounting Standards. Therefore, Deponent prays that the Hon’ble Court may pass such orders as deem fit.*
- (ii) The Petitioner Companies in the Clause No.16 inter alia has mentioned that upon the scheme becoming effective, with effect*

from the appointed date, the name of Primezone Realty Private Limited may be changed to “Metro Entertainment (Bombay) Private Limited”. Therefore, Deponent prays that the Hon’ble Court may pass orders that this change may be allowed only subject to the compliance of the provisions of the sections 4,13 and other applicable provisions of the Companies Act, 2013 and rules and guidelines made thereunder.

(iii) 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.

8. So far as the observation in paragraph 6(i) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies have accepted the pooling of interest method as set out in AS14 and the Petitioner Companies shall pass accounting entries as mentioned in As-5 of the Accounting Standards.

9. So far as the observation in paragraph 6 (ii) of the Affidavit of Regional Director is concerned, the Petitioner Company through its counsel

submitted that the Petitioner Company in the Clause No.16 inter alia have mentioned that upon the scheme becoming effective with effect from the appointed date the name of the Primezone Realty Private Limited may be changed to “Metro Entertainment (Bombay) Private Limited” shall be subject to the compliance of the provisions of the sections 4,13 and other applicable provisions of the Companies Act, 2013 and rules and guidelines made thereunder.

10. So far as the observation in paragraph 6(iii) of the Affidavit of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submit that the Petitioner Companies 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. The Learned Counsel for 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 undertakings given by the Petitioners. The above undertakings are accepted.
12. The Official Liquidator has filed his report on 15th day of October, 2016 in Company Scheme Petition No. 514 of 2016 stating that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.

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, Company Scheme Petition No. 514 of 2016 is made absolute in terms of prayers clause (a) to (d) and 515 of 2016 is made absolute in terms of prayer clauses (a) to (c).
15. The Petitioner Companies 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 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.
17. The Petitioner Companies to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Scheme Petition No. 514 of 2016 to pay costs of Rs.10,000/-

to 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.

(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.