IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 647 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 533 OF 2015

Marvel Ultra Realtors and Developers (Pune) Private Limited
……….Petitioner

AND

COMPANY SCHEME PETITION NO 648 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 534 OF 2015

Zory Realtors and Developers Private Limited
………..Petitioner

AND

COMPANY SCHEME PETITION NO 649OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 535 OF 2015

Windshield Developers Private Limited .….Petitioner

AND

COMPANY SCHEME PETITION NO 650 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 536 OF 2015

Marvel Omega Builders Private Limited
……….Petitioner

In the matter of 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 Marvel Ultra Realtors and Developers (Pune) Private Limited ("Transferor Company-I"), Zory Realtors and Developers Private Limited ("Transferor Company-II") and Windshield Developers Private Limited ("Transferor Company-III") with Marvel Omega Builders Private Limited ("Transferee Company") and their respective shareholders

<u>Called for hearing</u>

Mr. Hemant Sethi with Mr. Ajit Singh Tawar i/b. Hemant Sethi & Co., Advocates for the Petitioners in all three Petitions.

Mr. A.R Varma, i/b Mr. A. A. Ansari, for Regional Director in all the Petitions.
Mr. Vinod Sharma , Official Liquidator, present

CORAM: K. R. Shriram, J.

DATE: 4th March , 2016

PC:

1. Heard the learned counsel for the Petitioner Companies. 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 to the Scheme of Amalgamation of Marvel Ultra Realtors and Developers (Pune) Private Limited ("Transferor Company-I"), Zory Realtors and Developers Private Limited ("Transferor Company-II") and Windshield Developers Private Limited ("Transferor Company-III") with Marvel Omega Builders Private Limited ("Transferee Company") and their respective shareholders.

3. The learned Counsel for the Petitioners states that Transferor Companies and the Transferee Company are presently engaged in the business of development and construction of residential and commercial buildings.

4. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:

   (i) The Transferee Company and the Transferor Companies are part of the same management group. Transferor Companies are wholly owned subsidiaries of the Transferee Company.

   (ii) The amalgamation will enable pooling of resources of the companies involved in amalgamation to their common advantage, resulting in more productive utilization of the said resources and achieving economies of scale resulting into cost and operational efficiencies, which would be beneficial for all the stakeholders;

   (iii) The amalgamation would bring synergies in procurement, administration and marketing operations;

(iv) *The amalgamation would facilitate inter-unit transfer of resources that would in turn result into operational synergies;*

(v) *The amalgamation would help in combining the administrative and marketing functions of the entities involved and consequently result into more efficient functioning of the merged entity in a cost effective manner;*

(vi) *The amalgamation is expected to increase the financial strength of the companies enabling further growth and development of the Transferee company;*

(vii) *The amalgamation would bring greater management focus and would help in achieving uniform corporate policies and faster / effective decision making and its implementation;*

(viii) *The amalgamation would help in avoiding duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved in such compliances;*

(ix) *Post amalgamation, the Transferee Company will have better financial and operational prospects. The amalgamation shall be beneficial and in the best interests of the shareholders, creditors, employees of the companies involved and all concerned.*

5. The Transferor Companies and the Transferee Company have approved the Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Counsel for the Petitioners further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or Companies Act 2013, as may be

applicable and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 24th November , 2015 stating therein that save and except as stated in paragraph 6 (a) to (d) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph 6(a) and 6(b), of the said affidavit it is stated that:

6(a*) Clause 12.1.5 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Company and Transferee Company. In this regard, it is submitted that in addition to the compliance of Accounting Standard-14, the Transferee Company shall pass such entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as –As -5 etc.*

6(b) 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.

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of Accounting Standard-14, the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards.

10. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Transferee Company submits that the Transferee Company is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.

11. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, 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 undertakings given by the Petitioner Company are accepted.
12. The Official Liquidator has filed his report dated 24th February, 2016 in Company Scheme Petition No. 647 to 649 of 2015 stating therein that the affairs of the Transferor Companies Company have been conducted in a proper manner and that the Petitioner 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. None of the parties concerned has come forward to oppose the Scheme.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 647 of 2015 to 650 of 2015 filed by the Transferor Companies and the Transferee Company are made absolute in terms of prayer clauses (a) of the respective Petitions.

15. The Petitioner Companies to lodge a copy of this order and the amended 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 receipt of Order.

16. Petitioner Companies are directed to file a copy of this order along with a copy of the amended Scheme with the concerned Registrar of Companies, electronically, along with E - Form 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013, whichever is applicable.

17. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition Nos. 649 of 2015 to 649 of 2015 to pay costs of Rs 10,000/- each to the Official Liquidator. Costs 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 authorities to act on a copy of this order along with amended Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(K.R.Shriram, J)

CERTIFICATE

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

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