IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 685 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 457 OF 2015

Fun Multiplex Private Limited………..Petitioner

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

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provisions of the Companies Act, 2013 as may be notified);

AND

In the matter of the Scheme of Amalgamation of Fun Multiplex Private Limited, (Transferor Company) with Cinepolis India Private Limited, (Transferee Company)

Called for Hearing

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

Mr. G Hariharan i/b Mr. A. A. Ansari for Regional Director.

Mr. Vinod Sharma , Official Liquidator, present

CORAM: K.R. Shriram, J.

DATE: 8th January 2016

1. Heard the learned counsel for the Petitioner Company. 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 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Fun Multiplex Private Limited, (Transferor Company) with Cinepolis India Private Limited, (Transferee Company).

3. The learned counsel for Petitioners states that 3 of the Unsecured creditors namely Raja Ram Mistry, Ramesh Chand Meena and Shri Om Interiors who had initially raised objections to the Scheme have given their no objection to the proposed Scheme being sanctioned by this Court.

4. The learned Counsel for the Petitioner Company is engaged in business of running, conducting operating and managing multiplex theatres and activities of operating game parlors/video games, bowling alleys and designing, establishing, providing, maintaining and engaging in construction and development of malls, multiplex theatres and other infrastructure related projects. The Transferee Company is engaged in the business of movie theater exhibition including running, conducting, operating and managing multiplex theatres in India.

5. The management proposes to merge the Petitioner Company with Transferee Company in view of the following benefits:

> a) *CIPL is a private limited company having its registered office at 3rd Floor, Plot No. 58, Sector - 44, Gurgaon – 122003, Haryana. CIPL is engaged in the business of movie theater exhibition including running, conducting, operating and managing multiplex theatres in India. CIPL is an Indian company of Cinepolis worldwide group, which is the fourth largest multiplex exhibitor in the world.*
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> *(b) Fun Multiplex Private Limited ("FMPL") is a private limited company having its registered office at Plot No. 844/4, Shah Industrial Estate, Off New Link Road, Andheri (West) Mumbai – 400053 and is a subsidiary of CIPL. FMPL is engaged in the business of cinema exhibition including running, conducting, operating and managing multiplex theatres in India. Corporate name of FMPL was changed from E-City Retail (India) Private Limited to its present name with effect from 27th September, 2007.*
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> *(c) FMPL's equity share capital is presently held by CIPL (99.94%) and Centros de Entretenimien to Latinoamericanos, S.A. DE C.V. (0.06%), a Mexican entity that is part of the Cinepolis worldwide group.*

(d) Both CIPL and FMPL are engaged in same line of business and most of their respective activities are closely similar and/ or ancillary to each other's business. Thus, amalgamation of FMPL with CIPL would augment the combined operational strength of the merged entity, thereby enabling it to inter-alia expand its operations across India by creating presence in regions where the entities do not have a presence and by improving the quality of their offering and services at the existing locations.

6. The Petitioner Company approved the said Scheme by passing Board Resolution which is annexed to the Company Scheme Petition.

7. The learned Advocate for the Petitioner states that Petitioner Company has complied with all directions passed in Company Summons for Directions and that the Petition has been filed in consonance with the order passed in the Company Summons for Directions.

8. The learned Advocate appearing on behalf of the Petitioner has stated that it has 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 / the Companies Act, 2013 and the Rules made there under. The said undertakings given by the Petitioner Company is accepted.

9. The Regional Director has filed an Affidavit dated 9th day of October, 2015 stating therein that save and except as stated in paragraph 6(a), 6(b) and 6(c) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

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

   (a) Shareholders of Transferor Company are foreign body corporate. Hence for allotment of new shares to the shareholders of Transferor Company, the Transferee Company

may be directed to comply with FEMA/RBI regulations as applicable in this regard.

(b) *Clause 7.1 of the Scheme provides for issue of shares by the Transferee Company to the shareholders of Transferor Company. In this regard, it is observed that Transferee Company is holding 99.94% of equity share capital of transferor company amounting to Rs. 1,04,95,267 no of equity shares which will get cancelled and no shares is required to be issued. The Transferee Company shall accordingly allot equity shares only to the shareholders of transferor company other than transferee Company.*

(c) *Clause 8.1 of the Scheme provides for transferring the assets and liabilities of Transferor Company to Transferee Company on fair value basis. In this regard, it is observed that 99.94% equity share capital of the transferor company is held by the transferee company itself and therefore, the transferor company is an extended arm of liabilities of the transferee company on book value basis following the pooling of interest method applicable to amalgamation in the nature of merger".*

(d) *The registered office of the Transferee Company is situated in the State of Haryana. Hence the Transferee Company has to file similar petition before the Hon'ble High Court of Punjab and Haryana for approving the said scheme.*

(e) *That the Deponent further submits that the Tax issue if any arising out this scheme shall be 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.*

10. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Petitioner through their Counsel undertakes that for allotment of new shares to the shareholders of Transferor Company, the Transferee Company shall comply with FEMA/RBI regulations as applicable in this regard.

11. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Transferee Company undertakes that it shall allot equity shares only to the shareholders of Transferor Company other than Transferee Company.

12. In so far as observations made in paragraph 6(c) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner states the Petitioner Company has adopted another method as prescribed by the Accounting Standard 14 as it intends to take the assets at their fair values and hence adopted the "Amalgamation in the nature of Purchase", which has been duly approved by the shareholders of the Transferor Company and the Transferee Company. The counsel for the Petitioner states that the Petitioner Company has filed Affidavit in rejoinder and has annexed thereto certificate from statutory auditors that accounting treatment as set out in clause 8.1 of the Scheme is in compliance of Accounting Standard (AS-14). The Counsel for the Petitioners further states the effective to the Accounting Treatment is to be given in its books by the Transferee Company who registered office is at Gurgaon. The Punjab and Haryana High court vide order

dated 20th October 2015 sanctioned the Scheme without any modifications.

13. In so far as observations made in paragraph 6(d) of the Affidavit of Regional Director is concerned, the Counsel for the Petitioner states that Punjab and Haryana High Court has already sanctioned the Scheme on20th October 2015.

14. As far as the observations raised by the Regional Director in paragraph 6(e) of his Affidavit, the Petitioner Company through its Counsel submits that the Petitioner is bound to comply with all applicable provisions of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with applicable income tax provisions.

15. The Counsel for the Regional Director on instructions of Mr. M Chandanamuthu, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the submissions /undertaking given by the Petitioner Company. The said undertakings given by the Petitioner are accepted.

16. The Official Liquidator has filed his report dated 30th November, 2015 in Company Scheme Petition No. 685 of 2015 stating therein that the affairs of the Petitioner Company have been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.

17. 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.

18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 685 of 2015 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) of the Petition.

19. The Petitioner Company to lodge 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 issuance of Order.

20. 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 21 / E-Form INC 28 in addition to physical copy as per the provisions of the Companies Act 1956 / 2013.

21. 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 today.

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

23. All concerned authorities to act on a copy of this order along with Scheme and Form of Minutes 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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