IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 739 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 589 OF 2015

Friends Development Corporation (Imperia) Private Limited

….Petitioner Company

AND

COMPANY SCHEME PETITION NO.740 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 590 OF 2015

Dosti Land Developers Private Limited … Petitioner Company

AND

COMPANY SCHEME PETITION NO. 741 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 591 OF 2015

In the matter of the Companies Act, 1956

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956.

AND

In the matter of the Scheme of Amalgamation of

Friends Development Corporation (Imperia) Private Limited, Transferor Company No. 1

Dosti Land Developers Private Limited, Transferor Company No. 2

with

Dosti Realty Limited, Transferee Company and their respective shareholders and creditors.

Dosti Realty Limited

….Petitioner Company

Called for Hearing

Mr. Sanjay Udeshi with Mr. Darshan Ashar i/b M/s Sanjay Udeshi & Co, Advocate for the Petitioners.

Mr. D.P. Singh i/b Mr. A.A. Ansari for the Regional Director.

Mr. Vinod Sharma Official Liquidator present in C.S.P. No. 739 and 740 of 2015.

CORAM: K.R. SHRIRAM, J

DATE : 26th February, 2016

P.C.:

1. Heard Counsel for the parties. None appears before the Court to oppose the Scheme nor any party has contraverted 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 Scheme of Amalgamation of Friends Development Corporation (Imperia) Private Limited the Transferor Company No. 1, Dosti Land Developers Private Limited the Transferor Company No. 2 with Dosti Realty Limited the Transferee Company and their respective shareholders and creditors.

3. The Learned Counsel for the Petitioners state that the Transferor Company No. 1 was formed to carry on the business of builders, developers, and as general construction contractors along with dealing in Transferable Development Rights (TDR) by way of sale, purchase or otherwise and do business of real estate developers, construction and estate agents, property dealers and to carry out such other related activities in India or any other part of the world. The Transferor Company No. 2 was formed to carry on the business of real estate development, builders and general construction contractors,

warehouses and other conveniences of public utility. The Transferee Company was formed to carry on the business of builders, developers and is basically in real estate development including projects relating and is to engaged in such other related activities including tender applications and execution in India or any other part of the world.

4. The Proposed Scheme of Amalgamation would, therefore be beneficial as the Transferor Company No. 1 and 2 are engaged in the business of real estate development and are basically builders and developers. The business activity carried out by the Transferor Company No. 1 and 2 are in similar line of Transferee Company and the same will help each other in the enhancement of business. The Transferor Company No. 1 and No. 2 do not wish to carry on their activities on standalone basis and also needs funds for carrying its activities and hence, merge with the Transferee Company for financial assistance. Also the Transferor Company No. 1 and No. 2 intends to re-organize and integrate its' operations with the activities of the Transferee Company as a part of group restructuring and hence it is proposed to merge Transferor Companies into Transferee Company by way of amalgamation under this Scheme. The Amalgamated Company will have greater efficiency in overall business including economies of scales, cash management of the amalgamated entity and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund investing and financing related activities and their growth opportunities in the businesses of the Companies, to maximize shareholder value. Amalgamation will result in cost saving for both the Transferor Companies and the Transferee Company as they are engaged in the related and interdependent activity which is expected to result in higher net worth for the Amalgamated Company and cost savings for the Amalgamated Company. The Amalgamated Company will have the benefit of the combined resources of the Transferor Companies and the Transferee Company i.e. market share, scale, efficiency, logistic and distribution

network, combined employees base, reserves, investments, and other assets, manpower, finances, customers, creditors, brands, mitigating competition, etc. The Amalgamated Company would be in a position to carry on consolidated operations through optimum utilization of its resources and avoidance of duplication. The Amalgamated Company will be in position to have more efficient and more cost effective management system in view of consolidation of operations and larger size. Also the Transferee Company will be expanding its operations as the future opportunities in this line of business activity are very good. The Amalgamated Company would also have a larger networth base, and greater borrowing capacity, which would provide it a competitive edge over others, especially in view of the increasing competition due to liberalization and globalization, which will be beneficial in more than one ways to both the Transferor Companies and the Transferee Company and their shareholders and creditors, as both the Transferor Companies and the Transferee Company plan to meet the competition in more effective way by combining their asset base and operations. The Board of Directors of the Transferor Companies and the Transferee Company are of the opinion that the amalgamation would benefit the shareholders, employees and other stakeholders of the Transferor Companies and the Transferee Company. The Board of Directors of the Transferor Companies and the Transferee Company are of the opinion that the amalgamation would motivate employees by providing better opportunities to scale up their performance with a corporate entity having large product portfolio, large turnover, resources, asset base etc which will provide impetus to corporate performance thereby enhancing overall shareholder value.

5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the respective Company Scheme Petition.

6. The Learned counsel for the Petitioner Companies 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 Summons for Direction.

7. Counsel appearing on behalf of the Petitioner Companies state that the Petitioners 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 Companies through its counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder. The said undertaking is accepted.

8. The Regional Director has filed an affidavit on 18th day of December, 2015 stating therein save and except stated in paragraph 6 (a) and (b), of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph 6 (a) and (b) of the said Affidavit, it is stated that;-

"6. That the Deponent further submits that,

(a) Clause 13 (c) 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 accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

(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 companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner companies.

9. As far as the content of paragraph 6 (a) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies states that in addition to compliance of Accounting Standard 14, the Petitioner Company will pass such accounting entries which may be necessary in connection with the Scheme to comply with other applicable accounting standards.

10. As far as the content of paragraph 6 (b) of the Affidavit of Regional Director is concerned, counsel appearing on behalf of the Petitioner Companies states that that the Transferor Companies and the Transferee Company are bound to comply with the applicable provisions of the income Tax Act and all tax issues arising out of Scheme will be met and answered in accordance with the law.

11. The Learned Counsel for the Regional Director on instructions of Mr. M. Chandana muthu, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with undertaking given by the Petitioner Companies mentioned hereinabove. The said undertaking is accepted.

12. The Official Liquidator has filed his report dated 12^{th} day of January 2016 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies 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, the Company Scheme Petition Nos. 739 to 741 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clause (a).

15. The Petitioner 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 this Order.

16. Petitioner is directed to file a copy of this order alongwith a copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form 21 / INC-28, in addition to physical copy, as per the provision of the Act.

17. Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai and to pay a sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay, in Company Scheme Petition No. 739 and 740 of 2015 towards their costs. Costs to be paid within four weeks from today.

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 alongwith the Scheme duly authenticated by Company Registrar, High Court, Bombay.

(K.R. Shriram J.)

Certificate

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