

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 776 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 713 OF 2015.
TRIF KOCHI PROJECTS PRIVATE LIMITED
....Petitioner/ the First Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 777 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 714 OF 2015.
VALARY DEVELOPERS PRIVATE LIMITED
....Petitioner/ the Second Transferor Company

AND
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 778 OF 2015.
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 715 OF 2015.
TATA REALTY AND INFRASTRUCTURE LIMITED
....Petitioner/ the Transferee Company

In the matter of the Companies Act, 1 of 1956
and other relevant provision of the 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
TRIF KOCHI PROJECTS PRIVATE LIMITED
And VALARY DEVELOPERS PRIVATE
LIMITED With TATA REALTY AND
INFRASTRUCTURE LIMITED and THEIR
RESPECTIVE SHAREHOLDERS AND
CREDITORS

Called for hearing

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

Nisha Valani i/b Mr. A.A. Ansari for the Regional Director.

Mr. Vinod Sharma, the Official Liquidator present.

CORAM: K. R. Shriram, J.

DATE: 26th February, 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 TRIF KOCHI PROJECTS PRIVATE LIMITED And VALARY DEVELOPERS PRIVATE LIMITED With TATA REALTY AND INFRASTRUCTURE LIMITED and THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS, under Sections 391 to 394 and other relevant provisions of the Companies Act, 2013.
3. The Learned Counsel for the Petitioners states that the First Transferor Company at present carry on the business of real estate and infrastructure development and the Second Transferor Company is carrying on the business of Real Estate and Infrastructure Development and the Transferee Company carry on the business in India of development of real estate and infrastructural facilities. The proposed scheme of Amalgamation will enable the Transferor Companies to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of all the companies into a single Company for synergistic linkages and the benefit of combined financial resources which will be reflected in the profitability of the Transferee Company and that this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Companies and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common

operating platform and that the Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies and the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each others core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company and that the Transferor Companies are direct / indirect wholly owned subsidiaries of the Transferee Company. The shareholders would consolidate their holdings and leverage the share value consequent to higher profitability.

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 Official Liquidator has filed his report on 12th day of January, 2016 in Company Scheme Petition Nos. 776 and 777 of 2015 stating that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
8. The Regional Director has filed an Affidavit on 30th day of December, 2015 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

(a) Clause 12.5 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 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 company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petitioner company.

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

10. So far as the observation in paragraph 6(b) 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 Mr. M. Chandana Muthu, Joint Director Legal 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. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 776 and 777 of 2015 are made absolute in terms of prayers clause (a) to (d) and 778 of 2015 is made absolute in terms of prayer clauses (a) to (c).
14. 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.

15. 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.
16. 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 Nos. 776 and 777 of 2015 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.
17. Filing and issuance of the drawn up order is dispensed with.
18. 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.

(K. R. Shriram, J.)

CERTIFICATE

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

Uploaded by : Shankar Gawde, Stenographer.