IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICITON

COMPANY SCHEME PETITION NO. 799 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.710 OF 2015

SURANA REALTY PRIVATE LIMITED ...Petitioner/Transferor Company

AND

COMPANY SCHEME PETITION NO. 800 OF 2015
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO.711 OF 2015

ABHISHAKE MILLENNIUM
CONTRACTS PRIVATE LIMITED ...Petitioner/Transferor Company

In the matter of 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 Scheme of Amalgamation of Surana Realty Private Limited with Abhishake Millennium Contracts Private Limited and their respective Shareholders and Creditors

Called for Hearing:

Mr. Avinash Joshi, i/b M/s. Aviansh Joshi & Co., Advocates for the Petitioners.

Mr. Dushyant Kumar, i/b Mr. A.A. Ansari, for Regional Director in both the Company Scheme Petitions.

Mr. Vinod Sharma, Official Liquidator, present in Company Scheme No.799 of 2015.

Coram: K.R. Shriram, J.

Dated: 26th February 2016

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 under Section 391 to 394 of the Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Surana Realty Private Limited with Abhishake Millennium Contracts Private Limited and their respective Shareholders and Creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 799 of 2015 on its incorporation initiated action for commencing the business of real estate and construction and the Petitioner in Company Scheme Petition No. 800 of 2015 is engaged in the business of undertaking contracts for plumbing and installation of fire fighting systems in various establishments on pan India basis. Learned Counsel for the Petitioners further states that the rationale of the Scheme of Amalgamation are inter alia that the amalgamation of group companies and business are desirable for achieving better results and growth. Post amalgamation it would be advantageous to combine the activities and operations in a single Company since it would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the Transferee Company. Further, the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies, which will be conducive to enhance its capability to face competition in the market place more effectively. With the enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility to compete more effectively and a larger and

growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

4. Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the order passed in the respective Company Summons for Directions.

5. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies 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 undertake to comply with all statutory Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act,1956 / the Companies Act, 2013 and the Rules made thereunder, whichever is applicable. The said undertakings are accepted.

6. The Official Liquidator has filed his report on 5th January, 2016 in the Company Scheme Petition No. 799 of 2015 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Court.

7. The Regional Director has filed an Affidavit on 7th day of January, 2016 stating therein, that save and except as stated in paragraphs 6(a) to 6(c) of the said affidavit, it is appears that the Scheme is not prejudicial to the interest of shareholders and public.

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

6. That the Deponent further submits that,

(a) It has been observed from Clause 10.1 of the scheme, that the Transferee Company will allot shares to the shareholders of Transferor Company. It has been stated therein that 310 fully paid up equity shares of Rs.10/- each will be allotted for every 1 equity share of Rs.10/- each held in the Transferor Company. This share exchange ratio is not in consonance with that of the share exchange ratio suggested by the valuer, as per which 1 share of Transferee Company will be allotted for every 310 equity shares of Rs.10/- each held in the Transferor Company. It is therefore suggested that the share exchange ratio provided in the Clause 10.1 of the scheme be substituted as follows:-

'1 (One) fully paid-up equity share of Rs.10/- each of Abhishek for every 310 (Three hundred and ten) fully paid-up equity shares of Rs.10/- each held in Surana."

(b) With reference to Clause 11.4 of the scheme, it is submitted that the surplus if any, arising out of the scheme shall be credited to Capital Reserve Account of Transferee Company and deficit if any, arising shall be debited to goodwill account of the Transferee Company.

(c) 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.

8. In so far as observations made in paragraph 6(a) of the Affidavit of the Regional Director is concerned, the Petitioner Companies through their Counsel undertake to amend the Clause 10.1 of the Scheme so as to read as under :

"1(One) fully paid-up equity share of Rs.10/- ach of Abhishek for every 310 (Three Hundred and ten) fully paid up equity shares of Rs.10/- each held in Surana."

The said undertaking is accepted. Hence, the learned Counsel for the Petitioner prays for amendment and to replace clause 10.1 of the Scheme as above. Leave to amend granted to be carried out within two weeks.

9. So far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioner Companies through their Counsel undertakes that in addition to the compliance of Accounting Standard 14, the Transferee Company shall pass such accounting entries whereby the surplus if any, arising out of the scheme shall be credited to Capital Reserve Account of the Transferee Company and deficit if any, arising shall be debited to goodwill account of the Transferee Company. The said undertaking is accepted.

10. As far as the observation raised by the Regional Director in paragraph 6 (c) of his Affidavit, the Petitioner Companies through their Counsel submits that the Petitioners 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 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 undertakings given by the Petitioner Companies. The said 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. 799 of 2015 and 800 of 2015 are made absolute in terms of prayer clause (a) of the respective Company Petition.

14. The Petitioner Companies are directed 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 issuance of Order.

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

16. The Petitioner Companies in both the Company Scheme Petitions to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai, and in Company Scheme Petition No.799 of 2015 to pay costs of Rs.10,000/- to the Official Liquidator, High Court. Costs 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 alongwith the Scheme duly authenticated by the Company Registrar, High Court (O.S.), Bombay

(K.R. Shriram J.)

C E R T I F I C A T E

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

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