IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO 869 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 776 OF 2015

Golden Ark Real Estates Private Limited

………Petitioner/ First Transferor Company

AND

COMPANY SCHEME PETITION NO 870 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 777 OF 2015

New India TransTrade Limited

….Petitioner/Second Transferor Company

AND

COMPANY SCHEME PETITION NO 871 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO 778 OF 2015

Elder Builders Private Limited

…...Petitioner/Transferee Company

In the matter of the 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 Golden Ark Real Estates Private Limited and New India TransTrade Limited with Elder Builders Private Limited and their respective shareholders

Called for Hearing

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

Mr. Anil D Yadav, i/b Mr. A. A. Ansari for Regional Director.

Mr. Vinod Sharma, Official Liquidator Present.

CORAM: K.R. Shriram, J.

DATE: 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 Sections 391 to 394 of the Companies Act, 1956 or any corresponding provisions of the Companies Act, 2013 to the Scheme of Amalgamation of Golden Ark Real Estates Private Limited and New India TransTrade Limited with Elder Builders Private Limited and their respective shareholders.

3. The learned Counsel for Petitioners state that the first Transferor Company and the Second Transferor Company is presently engaged in the business of holding and making investments. The Transferee Company has not commenced its business as on date.

4. The Scheme of Amalgamation is proposed for the following benefits that shall accrue to the Group:, (a) Consolidation of businesses of the Group (b) Reduction in number of companies and regulatory compliances thereof (c) Ease of management (d) Reduction of operating and administrative costs and (e) Streamlining the holding structure.

5. The Petitioner Companies approved the said Scheme by passing Board Resolution which are annexed to the respective Company Scheme Petition.

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

7. 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 Companies 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 Companies are accepted.

8. The Regional Director has filed an Affidavit on 7th January 2016 stating therein that save and except as stated in paragraph 6 (a) to (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) Clause 6.6 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 accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5 etc.

   (b) The authorized capital of the Transferee Company post amalgamation is not sufficient to issuing such number of preference shares as provided in clause 5 of the Scheme. Hence the Transferee Company has to increase its authorized share capital suitably to allot new preference shares and comply with the provisions of section 94/97 of Companies Act, 1956 corresponding to section 61/64 of the

Companies Act. 2013, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

(c) As per clause 5 of the Scheme, the Transferee Company will allot only preference shares to the equity shareholders of 1st and 2nd Transferor Companies. Whether allotment of such preference shares in lieu of equity shares held in the Transferor Company is incompliance of Income Tax Provisions 2(1(B) of the Act or not is a matter within the domain of income Tax Department. In this regard it is respectfully submits 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 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 Income tax Authority is binding on the Petitioner Company.

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Transferee Company through their Counsel undertakes that in addition to the compliance of Accounting Standard -14, the transferee Company shall pass accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standard such as AS-5 etc.

10. As far as observations made in paragraph 6(b) of the Affidavit of Regional Director is concerned, the Petitioners through their Counsel undertakes to increase its authorized share capital suitably to allot new preference shares and comply with the provisions of section 94/97 of Companies Act, 1956 corresponding to section 61/64 of the Companies Act. 2013, in respect of filing of necessary forms with the Registrar of Companies after payment of necessary filing fee and stamp duty as applicable on the said forms.

11. As far as the observations raised by the Regional Director in paragraph 6(c) 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.

12. 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.

13. The Official Liquidator has filed his report on 22nd February, 2016 in Company Scheme Petition Nos. 869 of 2015 and 870 of 2015 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.

14. 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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 869 to 871 of 2015 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) of the respective Petitions.

16. 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 receipt of the order.

17. 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.

18. The Petitioners to pay cost of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition No. 869 and 870 of 2015 to pay cost of Rs 10,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

20. 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.

Uploaded by: Shankar Gawde, Stenographer.