IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 884 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 787 OF 2015

AJITNATH HI-TECH BUILDERS PRIVATE LIMITED

………… Petitioner / the Demerged Company

AND

COMPANY SCHEME PETITION NO. 885 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 788 OF 2015

SHRI KAIILAS PROPERTIES AND AGROFARMS PRIVATE LIMITED

………… Petitioner / the Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 and other relevant provisions of the Companies Act, 1956;

AND

In the matter of Scheme of Arrangement between Ajitnath Hi-Tech Builders Private Limited and Shri Kaiilas Properties and Agrofarms Private Limited and their Respective Shareholders and Creditors

Called for Hearing

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

Mr. N. D. Sharma, i/b Mr. A. A. Ansari for Regional Director.

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 and other relevant provisions of the Companies Act, 1956 to the Scheme of Arrangement between Ajitnath Hi-Tech Builders Private Limited and Shri Kaiilas Properties and Agrofarms Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Petitioner in Company Scheme Petition No. 884 of 2015 is presently engaged in the business of real estate development and allied activities and Petitioner in Company Scheme Petition No. 885 of 2015 is also presently engaged in the business of real estate development and allied activities.

4. The rationale of the Scheme of Arrangement inter-alia is that considering the current business plan and strategy of the Demerged Company, it intends to demerge the entire undertaking acquired pursuant to the erstwhile amalgamation of Aasthavinayak Real Estate Private Limited ('AREPL') with Demerged Company since the parcel of land assumed pursuant to the amalgamation is relatively fragmented and small in the context of larger infrastructure development proposed to be undertaken by the Demerged Company. Considering the remaining land parcels of the Demerged Company, it cannot optimally utilize the land assumed pursuant to the amalgamation of AREPL with Demerged Company. The Management of the Demerged Company believes that pursuant to the demerger of the undertaking of erstwhile AREPL with the Resulting Company, it will be able to develop the said land parcel in an optimal and efficient manner and can separately monetize in the interest of all the stakeholders. The Demerged Company in the near future may raise funds, either

from financial investor or strategic investor to develop remaining land parcels and therefore in order to optimize the interest of all the stakeholders, it is believed that it would be prudent to demerge the undertaking acquired pursuant to the amalgamation of AREPL with Demerged Company to facilitate such fund raising.

5. The Petitioner Companies have approved the said Scheme by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The learned Advocate for the Petitioners state that Petitioner Companies have complied with all directions passed in Company Summons for Directions and that the Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

7. The learned Advocate appearing on behalf of the Petitioners has stated that they have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, 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 there under. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed an Affidavit dated 24th February, 2016 stating therein that save and except as stated in paragraph 6 (a) and 6(b) of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

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

   a) 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

Resulting Company and deficit if any arising shall be debited to goodwill account of Resulting Company.

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 Demerged Company after giving effect to the amalgamation The decision of the Income Tax Authority is binding on the Demerged Company.

9. In so far as observations made in paragraph 6(a) of the Affidavit of Regional Director is concerned, the Resulting Company through its Counsel clarifies that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account of Resulting Company and deficit if any arising shall be debited to goodwill account of Resulting Company.

10. As far as the observations raised by the Regional Director in paragraph 6(b) 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 Scheme will be met and answered in accordance with applicable income tax provisions.

11. 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 given by the Petitioner Companies. The said undertakings given by the Petitioners 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. None of the parties concerned has come forward to oppose the Scheme.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 884 of 2015 and 885 of 2015 filed by the Demerged Company and the Resulting Company respectively are made absolute in terms of prayer clauses (a) to (c) of the respective Petition.

14. The Petitioner Companies 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.

15. Petitioner Companies are 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 relevant provisions of the Companies Act 1956 / 2013 whichever is applicable.

16. The Petitioner Companies in both the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director, Western Region, Mumbai. 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 and the 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.

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