IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO.882 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 781 OF 2015

ASHRIT HOLDINGS LIMITED....Petitioner Company/Transferor Company

With

COMPANY SCHEME PETITION NO.883 OF 2015

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.782 OF 2015

ASHRIT REALITY PRIVATE LIMITED....Petitioner Company/Transferee Company

In the matter of 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 Arrangement of Ashrit Holdings Limited ('the Transferor Company')

WITH

Ashrit Reality Private Limited ('the Transferee Company')

AND

Their respective Shareholders

Called for hearing

Mr. Hemant Sethi, i/b M/s Hemant Sethi & Co. Advocate for the Petitioner Company
Mr. D.P Singh, i/b Mr. A.A. Ansari for Regional Director

CORAM: K.R. Shriram, J.

DATE: 26 February, 2016

PC:

1. Heard counsel for the parties. No objector has come before the court to oppose the Scheme of Arrangement 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 to the Scheme of Arrangement between Ashrit Holdings Limited and Ashrit Reality Private Limited and their respective Shareholders.

3. The Learned Counsel for the Petitioners states that Petitioner Company in Company Scheme Petition No. 882 of 2015 is engaged in the business of Trading and Investment & Financing and the Petitioner Company in Company Scheme Petition No. 883 of 2015 is into business of Real Estate & Leasing.

4. The Learned Counsel for the Petitioners states that the Scheme will result into following benefits namely Transferor Company, a Non-Banking Financial Company ('NBFC'), registered with the Reserve Bank of India and deploying majority of its funds into various kinds of investments such as bonds, debentures, stocks, properties, shares and fixed deposit. Amongst its other investments, it also holds certain immovable properties situated in Mumbai, which has currently been let out by Transferor Company ('Mumbai Let Out Assets'). Transferor Company is currently contemplating to streamline its operations and wants to carve out its Mumbai LOP

Assets. In the pursuit of such objective, Transferor Company intends to transfer its Mumbai Let Out Assets to Transferee Company.

5. The Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Counsel for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.

7. The Learned Counsel appearing on behalf of the Petitioner Companies 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 on 17 February, 2016 stating therein, save and except as stated in paragraphs 6 (a), 6 (b), 6 (c) and 6 (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6 (a), 6 (b), 6 (c) and 6 (d) of the said Affidavit, the Regional Director has stated that:-

"6. That the Deponent further submits that,

(a) With reference to clause 6.1 read with 6.2 of the scheme, it is submitted that in as much as the Demerged Company is reducing the book value of its

Mumbai LOP assets, correspondingly Resulting Company has to record the book value of Mumbai LOP assets in its books of accounts.

(b) *It has been observed that, for transferring the assets from the Demerged Company to Resulting Company, the Resulting Company has to make its consideration either to Demerged Company or to the shareholders of Demerged Company. There is no prohibition for increasing the holding of investment by the holding company in its subsidiary company whereas subsidiary company cannot increase its holding in its holding company. In the instant case, the Resulting Company being subsidiary company of Demerged Company is required to make consideration to its holding company. As the scheme is not providing for payment of consideration, the scheme is not a tax neutral scheme. In this regard, it is submitted 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/Resulting Company after giving effect to the arrangement. The decision of the Income Tax Authority is binding on the Demerged Company.*

(c) *As the Resulting Company is not making any consideration. Whether such transfer of assets is exempted from stamp duty or the market value of assets so transferred it subject to stamp duty or not is a matter within the domain of State Government. In this regard, any stamp duty liability arising on account of transfer of assets from Demerged Company to Resulting Company is subject to the decision of State Government and the decision of the State Government is binding on the Resulting Company.*

(d) As the Demerged Company is a NBFC Company registered with the Reserve Bank of India, Demerged Company may be directed to file a copy of the scheme along with the copy of this Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of the RBI Act."

9. As far as observations made in paragraph 6(a) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel submits that the Petitioner Company will not follow the accounting treatment mention in the para 6 of the Scheme. Instead, the accounting of the Scheme shall be done by recording the assets and liabilities of Mumbai LOP Undertaking at fair value at which they are acquired.

10. As far as observations made in paragraph 6(b) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel submits that the Scheme is for transfer of Mumbai LOP undertaking to its existing 100% subsidiary of the Transferor Company for a nil consideration and since the consideration is nil, no shares are issued or allotted to its shareholders. The Petitioner Company through its Counsel undertakes to comply with the provisions of Income tax Act, 1961, as may be applicable in that behalf and tax liability, if any, will be paid by the Petitioner Company.

11. As far as observations made in paragraph 6(c) of Affidavit of the Regional Director is concerned, the Petitioner Company through their Counsel submits that the Petitioner Company undertakes to comply with provision of Bombay Stamp Act, 1958, as may

be applicable in that behalf and stamp duty liability, if any, will be paid by the Petitioner Company.

12. As far as observations made in paragraph 6(d) of Affidavit of the Regional Director is concerned, the Petitioner/Transferee Company through their Counsel undertakes to file the copy of the Scheme along with copy of the Hon'ble Court's order with the RBI within 30 days and shall also comply with the other applicable provisions of RBI Act.

13. The Learned Counsel appearing for the Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director (Legal) in the Office of the Regional Director states that they are satisfied with the undertakings given by the Petitioner Companies. The said undertakings given by the Petitioner Company are accepted.

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.

15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions No. 882 of 2015 and 883 of 2015 are made absolute in terms of the prayer clause (a) to (d) and (a) to (d) of the respective Company Scheme Petition.

16. The Petitioner Companies are directed to lodge a copy of this order and Scheme duly authenticated by the Company Registrar, High Court, 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.

17. Petitioner 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 INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 1956 / 2013, whichever is applicable.

18. The Petitioners 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 today.

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

20. All concerned regulatory authorities to act on a copy of this order along with 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 current copy of original signed order.

Uploaded by: Shankar Gawde, Stenographer.