

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 39 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 869 OF 2015

LODHA HOME DEVELOPERS PRIVATE LIMITED
...Petitioner/ First Transferor Company

AND

COMPANY SCHEME PETITION NO. 40 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 870 OF 2015

LODHA DESGINER CONSTRUCTION PRIVATE LIMITED
...Petitioner/ Second Transferor Company

In the matter of the Companies Act, 1956

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956 and other applicable
provisions of the Companies Act, 1956 and
of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation
(‘Scheme’) of Lodha Home Developers
Private Limited and Lodha Designer
Construction Private Limited with Shree
Sainath Enterprises Construction and
Developers Private Limited and their
respective shareholders

Called for hearing

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners in both Petitions.

Mr. Vinod Sharma, Official Liquidator, present in CSP No 39 & 40 Of 2016

Mr. M.S Chunawalla with Mr. A.A. Ansari, for Regional Director in both the Petitions.

CORAM: B. P. COLABAWALLA, J.

DATE : 22ND April, 2016

PC:

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Petition and to contravene averments made in the Petition.
2. The sanction of the Court is sought to a Scheme of Amalgamation of Lodha Home Developers Private Limited and Lodha Designer Construction Private Limited with Shree Sainath Enterprises Construction and Developers Private Limited ('Transferee Company') and their respective shareholders and creditors.
3. Learned Counsel for the Petitioners states that the First Transferor Company and the Second Transferor Company have been engaged in real estate development related activities. The Transferee Company is also engaged into real estate development and construction related activities.
4. The proposed Scheme of Amalgamation will have the benefit of consolidation and simplification of the group structure, elimination of multiple entities in the group, reducing operational and compliance cost, achieving operational and management efficiency and synergies arising out of consolidation of business, such as, enhancement of net worth of the combined

business to capitalise on future growth potential, optimal utilisation of resources.

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

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

7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under. The said undertaking is accepted.

8. The Regional Director has filed an Affidavit on 11th March, 2016 stating therein that save and except as stated in paragraph 6 of the said Affidavit, 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:

The Deponent further submits that:-

6. That the Deponent further submits that the tax implication, if any, arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax returns filed

by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Transferor Companies and the Transferee Company.

9. In so far as observations made in paragraph 6 of the Affidavit of Regional Director is concerned, the Transferee Company & the Petitioner Companies are bound to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.

10. The Learned Counsel for Regional Director on instructions of Mr. Chandanamuthu, Joint Director legal in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking and clarification given by the Petitioner Company. The above undertakings are accepted.

11. The Official Liquidator has filed his report on 16th April, 2016 stating therein that the Affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved by this Court.

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 have come forward to oppose the Scheme.

13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 39 of 2016 and 40 of 2016, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

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 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.

16. The Petitioner Companies in both Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Companies in Company Scheme Petition No 39 of 2016 and 40 of 2016 to pay sum of Rs.10,000/- each to the Official Liquidator, High Court, Bombay. The Costs to be paid within four weeks, from date of this Order.

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

18. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Company Registrar, High Court (O. S.), Bombay.

(B. P. COLABAWALLA, J.)

CERTIFICATE

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

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