

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 22 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 874 OF 2015

VATSAL HOSPITALITY PRIVATE LIMITED

...Petitioner/ First Transferor Company

COMPANY SCHEME PETITION NO. 23 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 875 OF 2015

DHARMANATH BUILDTECH AND FARMS PRIVATE LIMITED

...Petitioner/ Second Transferor Company

COMPANY SCHEME PETITION NO. 24 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 876 OF 2015

JAY MA DURGA BUILDTECH FARMS PRIVATE LIMITED

...Petitioner/ Third Transferor Company

COMPANY SCHEME PETITION NO. 25 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 877 OF 2015

LODHA ATTRACTIVE CONSTRUCTIONS AND FARMS PRIVATE
LIMITED

...Petitioner/ Fourth Transferor Company

COMPANY SCHEME PETITION NO. 26 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 878 OF 2015

LODHA LAND SCAPES PRIVATE LIMITED

...Petitioner/ Fifth Transferor Company

COMPANY SCHEME PETITION NO. 27 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 879 OF 2015

LODHA ANTIQUE BUILDTECH AND FARMS PRIVATE LIMITED
...Petitioner/ Sixth Transferor Company

COMPANY SCHEME PETITION NO. 28 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 880 OF 2015

LODHA ACHIEVER BUILDCON AND FARMS PRIVATE LIMITED
...Petitioner/ Seventh Transferor Company

COMPANY SCHEME PETITION NO. 29 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 881 OF 2015

LODHA BRAND HOLDINGS PRIVATE LIMITED
...Petitioner/ Eighth Transferor Company

COMPANY SCHEME PETITION NO. 30 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 882 OF 2015
LODHA CONSTRUCTION PRIVATE LIMITED
...Petitioner/ Transferee Company

In the matter of the Companies Act, 1956

AND

In the matter of Section 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') between Vatsal Hospitality Private Limited and Dharmanath Buildtech and Farms Private Limited and Jay Ma Durga Buildtech Private Limited and Lodha Attractive Constructions and Farms Private Limited and Lodha Land Scapes Private Limited and Lodha Antique Buildtech and Farms Private Limited and Lodha Achiever Buildcon and Farms Private Limited and Lodha Brand Holdings Private Limited and Lodha Construction Private Limited and their respective shareholders and creditors

Called for hearing

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

Mr. Vinod Sharma, Official Liquidator, present in CSP No 22, 23, 24, 25, 26, 27, 28 & 29 of 2016

M.S. Chunawala with Mr. A.A. Ansari, for Regional Director in all 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 between Vatsal Hospitality Private Limited and Dharmanath Buildtech and Farms Private Limited and Jay Ma Durga Buildtech Private Limited and Lodha

Attractive Constructions and Farms Private Limited and Lodha Land Scapes Private Limited and Lodha Antique Buildtech and Farms Private Limited and Lodha Achiever Buildcon and Farms Private Limited and Lodha Brand Holdings Private Limited and Lodha Construction Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the First Transferor Company, Second Transferor Company, Third Transferor Company, Fourth Transferor Company, Fifth Transferor Company, Sixth Transferor Company, Seventh Transferor Company, Eighth Transferor Company and the Transferee 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 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 7th April, 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:

a) Clause 6.4 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 such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 etc.

b) That the Deponent further submits that the tax issue arising if any 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.

9. As far as observations made in paragraph 6(a) of the Affidavit of Regional Director are concerned, the counsel for the Petitioners clarifies that the Transferee Company has in terms of clause 6 of the scheme adopted

‘pooling of interest’ method of accounting in compliance of Accounting Standard 14. Accordingly, therefore no goodwill will be generated pursuant to scheme of amalgamation. Further, the Transferee company will pass such accounting entries which may be necessary in connection with the scheme to comply with other applicable accounting standards such as AS-5 etc.

10. In so far as observations made in paragraph 6(b) of the Affidavit of Regional Director are concerned, 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.

11. 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 undertaking is accepted.

12. The Official Liquidator has filed his report on 18th April, 2016 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 by this Court.

13. 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.

14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 22, 23, 24, 25, 26, 27, 28, 29 & 30 of 2016, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

15. 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.

16. 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.

17. The Petitioner Companies in all Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Companies in Company Scheme Petition No 22, 23, 24, 25, 26, 27, 28 & 29 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.

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

19. 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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