IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 33 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 904 OF 2015

LODHA IDEAL BUILDCON PRIVATE LIMITED
...Petitioner/ Transferor Company

COMPANY SCHEME PETITION NO. 34 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 905 OF 2015

SURYAKRUPA CONSTRUCTION PRIVATE LIMITED
…Petitioner/ Transferee Company

In the matter of the Companies Act, 1956

AND

In the matter of Section 391 to 394 read with section 100 to 103 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 and Arrangement ('Scheme') between Lodha Ideal Buildcon Private Limited and Suryakrupa Constructions Private Limited and their respective shareholders and creditors

Called for hearing

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

Mr. Vinod Sharma, Official Liquidator, present in CSP No 33 & 34 Of 2016

Mr. M.S. Chunawala 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 and Arrangement between Lodha Ideal Buildcon Private Limited and Suryakrupa Constructions Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioners states that the Transferor Company has been engaged in real estate related activities. The Transferee Company is also engaged into real estate activities.

4. The proposed Scheme 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 operations, such as, enhancement of net worth of the combined business to capitalize on future growth potential, optimal utilization of resources.

5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective 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 16th 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:

a) *Clause 8.6 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 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 Transferee Company through their Counsel undertakes that in addition to compliance of Accounting Standard 14, 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 undertakings are accepted.

12. The Official Liquidator has filed his report on 16th April, 2016 stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company 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. 33 of 2016 and 34 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 both Petitions to pay costs of Rs.10,000/- each to the Regional Director. The Petitioner Company in Company Scheme Petition No 33 to pay sum of Rs.10,000/- 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.

Uploaded by: Shankar Gawde, Stenographer