IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 53 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 892 OF 2015

Conwood Apartments & Resorts Private Limited…Petitioner/
1st Transferor Company

AND

COMPANY SCHEME PETITION NO. 54 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 893 OF 2015

International Gold Company Private Limited …Petitioner /
2nd Transferor Company

IN THE MATTER of Sections 391 to 394 of the Companies Act, 1956 (or under the relevant provisions of the Companies Act, 2013 upon the same being effective);
AND
IN THE MATTER of International Gold Company Private Limited
AND
IN THE MATTER of the Scheme of Amalgamation of
Conwood Apartments & Resorts Private Limited
(The "1st Transferor Company")
AND
International Gold Company Private Limited
(The "2nd Transferor Company")
With

Rosy Blue (India) Private Limited
(The “Transferee Company”)
AND
Their Respective Shareholders.

Called for hearing:-

Mr. Yogesh Adhia, advocate for the Petitioner in all the Petitions.
Mr. M. S. Chunawala i/b for Regional Director in all the Petitions.
Mr. S. Ramakantha, Official Liquidator, present in all the Petitions.

CORAM: S. C. GUPTE J.
DATE : 4th May 2016

PC:

1. Heard learned counsel for parties. None appears before the Court to oppose the Scheme, nor has any party controverted any averment made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956, to the Scheme of Amalgamation of Conwood Apartments & Resorts Private Limited (the “1st Transferor Company”) and International Gold Company Private Limited (the “2nd Transferor Company”) with Rosy Blue (India) Private Limited (the “Transferee Company”) and their respective shareholders.

3. The learned counsel appearing on behalf of the Petitioners submits that by order dated 4th December, 2015 passed in Company Summons for Direction Nos.892 and 893 of 2015 filed by Petitioner Companies, filing of a separate Company Summons for Direction and Company Scheme Petition in relation to the proposed Scheme by Rosy Blue (India) Private Limited, the Transferee Company, was dispensed with, as the Transferee Company is 100% holding Company of both the Transferor

Companies and no new shares are being issued by the Transferee Company and in view of the decision of this Court in Mahaamba Investments Limited Versus IDI Limited [(2001) 105 Company Cases (pages 16 to 18)].

4. The learned counsel for the Petitioner Companies states that the 1st Transferor Company is presently carrying on business of manufacturing & trading in several types of diamonds, precious & semi-precious stones. The 2nd Transferor Company is presently carrying on business as Consultants in the fields of realty, town planning, landscaping, interior designing and property valuation. The Transferee Company is presently carrying on business inter alia of sale of diamonds.

5. The learned counsel for the Petitioner Companies further states that the Scheme of Amalgamation between Conwood Apartments & Resorts Private Limited and International Gold Company Private Limited with Rosy Blue (India) Private Limited, and their respective shareholders will result into following benefits namely, the Transferee Company would stand to benefit by virtue of additional resources it acquires through the proposed amalgamation and the proposed amalgamation would also enable greater efficiency in cash management of the Transferee Company and the assets of the Transferor Companies shall be properly, gainfully and efficiently utilized, which would augment the asset base of the Transferee Company resulting in the optimal utilization of resources and greater revenue inflow and the proposed amalgamation would enhance financial and growth prospects for the shareholders and organizations connected with the Companies.

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

7. The learned Counsel for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Directions.

8. The Learned Counsel appearing on behalf of the Petitioners state that they have complied with all the requirements as per the directions of this Court and they have filed necessary Affidavits of compliances in the Court. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

9. The Regional Director has filed his Affidavit on 7th April 2016, inter alia, stating therein that save and except as stated in paragraphs 6a) to 6c) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs 6a) to 6c) of the said Affidavit, the Regional Director has stated that:

"a) Clause 6.3 of the Scheme provides for adjustment for differences in Accounting Policies between Transferor Companies and Transferee Company. In this regard, it is

submitted that in addition to 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) *The Income Tax Department vide its letter dated 04/03/2016, has brought to the notice of the Deponent herein that the Second Transferor Company and Transferee Company are having outstanding tax liabilities of Rs.92,78,010/- and Rs.31,54,31,820/- respectively and further stated that the interest of the Income Tax Department needs to be protected. Copy of the said letter is annexed herewith as Exhibit 'D1'. In this regard, the Transferor Companies and Transferee Company may be directed to safegard the interest of the Income Tax Department with respect to aforesaid income tax dues.*

c) *It is respectfully submitted that the Tax implication, If any, arising out of the Scheme is subject to the 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 Transferee Company."*

10. In so far as observations made in paragraph 6 a) of the Affidavit of Regional Director is concerned, the Petitioners through their Counsel undertake that in addition to the compliance of

Accounting Standard 14, the Transferee Company will pass such accounting entries as may be necessary in connection with the Scheme and shall also comply with any other accounting standards as may be applicable in that behalf.

11. In so far as observation made in paragraph 6 b) of the Affidavit of the Regional Director, the Counsels for the Petitioners states that the demands raised by the Income Tax Department are the subject matter of Appeal preferred by the Second Transferor Company and the Transferee Company. These appeals have not yet come up for the hearing. Pending appeals, the Second Transferor Company and the Transferee Company have deposited certain amounts before preferring the appeal. The Petitioner Companies also undertake to pay the outstanding demand of the Income Tax Authorities in accordance with law. The Petitioner Companies undertake that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. In so far as observation made in paragraph 6(c) of the Affidavit of the Regional Director, Petitioner Companies clarified that the approval of the Scheme by this Court shall not deter the Income Tax Authority to scrutinize the returns filed by the Transferee Company after giving effect to the scheme.

13. The Official Liquidator has filed his report on 27th April 2016 stating that the Affairs of the Petitioners /Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Hon'ble Court.

14. The Learned Counsel for Regional Director on instructions of Mr. M. Chandanamuthu, Joint Director, Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that he is satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by the Petitioner Companies is accepted.

15. From the material on record, the Scheme appears to be fair and reasonable and not violative of any provisions of law and is not contrary to public policy.

16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petitions are made absolute in terms of prayer clauses (a) and (c).

17. The Petitioner Companies are directed to lodge a copy of this order and the 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.

18. The Petitioner Companies are directed to file a copy of this order along with a copy of the amended 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.

19. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.10,000/- each to the Regional Director and Rs.10,000/- each

to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

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

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

(S. C. Gupte J.)

C E R T I F I C A T E

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

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