

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 92 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 884 OF 2015**

Ardent Properties Private Limited

... Petitioner Company

AND

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 93 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 885 OF 2015**

Gurgaon Infratech Private Limited

... Petitioner Company

AND

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 94 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 886 OF 2015**

Landscape Structures Private Limited

... Petitioner Company

AND

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY SCHEME PETITION NO. 95 OF 2016
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTION NO. 887 OF 2015

Tata Housing Development Company Limited

... Petitioner Company

In the matter of:

The Companies Act, 1956 and the Companies Act, 2013

And

In the matter of:

Sections 391 to 394 of the Companies Act, 1956 read with Section 52 of the Companies Act 2013 and Sections 100 to 104 of the Companies Act 1956 (including any statutory modification or re-enactment or amendment thereof)

And

In the matter of:

Tata Housing Development Company Limited, a company incorporated under the provisions of the Indian Companies Act 1913 having its registered office at 12th Floor, Times Tower, Kamala Mills Compound, Senapati Bapat Marg, Lower Parel (West), Mumbai 400013.

And

In the matter of:

The Scheme of Amalgamation and Arrangement for amalgamation of Gurgaon Infratech Private Limited and Landscape Structures Private Limited (“**Amalgamating Companies**”) with Tata Housing Development Company Limited, and for demerger of the APPL Gurgaon Undertaking of Ardent Properties Private Limited (“**Demerging Company**”) into Tata Housing Development Company Limited.

Called for hearing:

Mr. Sayantan Banerjee and Mr. Yuvraj Choksy instructed by Veritas Legal, Advocates for the Petitioner Company.

Mr. A. A. Ansari, Advocate for the Regional Director in all the Company Scheme Petitions.

Mr. Vinod Sharma for the Official Liquidator in Company Scheme Petition Nos. 93 of 2016 and 94 of 2016.

Coram: S. C. Gupte, J

Date: April 29, 2016

MINUTES OF ORDER

1. Heard Learned Counsel for the Petitioner Companies. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Court is sought under Sections 391 to 394 of the Companies Act, 1956 to Scheme of Amalgamation and Arrangement for amalgamation of Gurgaon Infratech Private Limited and Landscape Structures Private Limited with Tata Housing Development Company Limited, and for demerger of the APPL Gurgaon Undertaking of Ardent Properties Private Limited into Tata Housing Development Company Limited and their respective shareholders.
3. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies presently carry on the business of construction, development and sale of real estate and that the Transferor Companies are subsidiaries of the Petitioner Company.
4. The Learned Counsel for the Petitioner Companies states that the composite Scheme of Amalgamation and Arrangement shall achieve synergistic integration and consolidation of the businesses presently being carried on by the Transferor Companies and in particular to provide complete and direct control over a contiguous land parcel in prime location and enable development of the property under a single luxury housing project, which shall be beneficial to the shareholders, creditors and employees of such companies and to the interests of the public at large, as such a composite amalgamation and arrangement would integrate the businesses of the companies into a single entity and would enable them to have access to better financial resources as well as increase the managerial efficiencies, while effectively pooling technical, distribution and marketing skills in one entity.
5. The Learned Counsel for the Petitioner Companies further states that the Board of Directors of the Petitioner Companies have passed respective resolutions for approval of the composite Scheme of Amalgamation and Arrangement which are annexed to the Company Scheme Petitions filed by the Petitioner Companies.
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

Directions and that all of the Company Scheme Petitions have been filed in consonance with the order passed in the respective Company Summons for Directions.

7. The Learned Counsel for the Petitioner Companies states that they have complied with all requirements as per directions of this Court and they have filed necessary affidavit of compliance in the Court. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956 and the rules made thereunder and/ or the Companies Act, 2013 whichever is applicable. The undertaking is accepted.
8. The Learned Counsel for the Petitioner Companies submits that in Company Scheme Petition Nos. 92 of 2016 and 95 of 2016 it is stated that the Scheme includes reduction of the Share Capital by utilizing Securities Premium Account, which shall be effected as an integral part of the Scheme and that the same does not involve either diminution of liability in respect of unpaid share capital and that it also does not involve compromise or arrangement with any creditors of the Petitioner Companies thereto. The Petitioner Companies had undertaken to provide an original certified true copy of the extract of the Special Resolution passed by the Petitioner Companies at their Extraordinary General Meeting prior to the admission of the Company Scheme Petition Nos. 92 of 2016 and 95 of 2016. The Petitioner Companies in Company Scheme Petition Nos. 92 of 2016 and 95 of 2016 have filed an Additional Affidavit dated January 11, 2016, *inter alia*, stating that in their respective Extra Ordinary General Meeting held on January 8, 2016, a special resolution has been passed approving the utilization of the Securities Premium Account. In view of the aforesaid, the procedure prescribed under section 101(2) of the Companies Act, 1956 is dispensed with and as per the undertaking given the Petitioner Companies, the special resolution dated January 8, 2016 has been annexed to the Additional Affidavit dated January 11, 2016 filed by Mr. Amit Shah on behalf of the Petitioner Companies in Company Scheme Petition Nos. 92 of 2016 and 95 of 2016. A copy of Form of Minutes is also annexed as Exhibit “B” to the Additional

Affidavit dated January 11, 2016 filed by Mr. Amit Shah filed on behalf of the Petitioner Companies in Company Scheme Petition Nos. 92 of 2016 and 95 of 2016.

9. The Regional Director has filed an affidavit on April 7, 2016 in all of the Company Scheme Petitions stating therein that save and except what is stated in paragraph 6 sub-paragraphs (a), (b) and (c) thereof, it appears that the subject Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 sub-paragraphs (a), (b) and (c) of the aforesaid Affidavit, the Regional Director has stated that:

“6. That the Deponent further submits that,

(a) Clause 17.6 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) It has been observed from clause 1.1.14 and 1.1.15 of the scheme, that license have been issued by the Government of Haryana to Demerged Company/ Transferor Company with respect to the development of the pat of the Gurgaon land. The petitioner company shall ensure that necessary approval be obtained from the concerned authority for transferring the license to Transferee Company.

(c) That the Deponent further submits 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 petitioner company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Demerged Company/ Resulting Company.”

10. So far as the observation made by the Regional Director in paragraph 6 sub-paragraph (a) of the affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertake 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 and to comply with other applicable Accounting Standard such as AS-5 etc.
11. So far as the observation made by the Regional Director in paragraph 6 sub-paragraph (b) of the affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertake that the Petitioner Companies shall ensure that necessary approval be obtained from the concerned authority for transferring the license(s) in favour of the Transferee Company.
12. So far as the observation made by the Regional Director in paragraph 6 sub-paragraph (c) of the affidavit of the Regional Director is concerned, the Petitioner Companies through its Counsel undertake that the Petitioner Companies are bound to comply with all the 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.
13. The Learned Counsel of Regional Director on instructions of Mr. Chandana Muthu, Joint Director Legal in the Office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Learned Counsel appearing for the Petitioner Companies. The undertakings given by the Petitioner Companies above are accepted.
14. The Official Liquidator has filed his report dated 18th April, 2016 in the Company Scheme Petition Nos. 93 of 2016 and 94 of 2016 stating therein that the affairs of the Amalgamating Companies/ Petitioner Companies have been conducted in a proper

manner and that the Amalgamating Companies/ Petitioner Companies therein may be ordered to be dissolved by this Court.

15. 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.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 93 of 2016 and 94 of 2016 are made absolute in terms of prayer clauses (a) to (f); and Company Scheme Petition Nos. 92 of 2016 and 95 of 2016 are made absolute in terms of prayer clauses (a) to (h).
17. The Petitioner Companies shall file 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 the Order.
18. The Petitioner Companies are directed to file a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form 21 or INC 28 in addition to physical copy within 30 days from the date of issuance of the order by the Registry as per the relevant provisions of the Companies Act, 1956.
19. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs. 10,000/- to the Regional Director, Western Region, Mumbai and Petitioner Companies in Company Scheme Petition No. 93 of 2016 and 94 of 2016 to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
20. Filing and issuance of the drawn up order is dispensed with.

21. All concerned regulatory 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.)

CERTIFICATE

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

Uploaded by: Shankar Gawde, Stenographer