

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY SCHEME PETITION NO. 18 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 826 OF 2015

IN THE MATTER of the Companies Act, 1 of 1956 (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of Scheme of Merger between ADESHWAR REALTY PRIVATE LIMITED (Transferor Company) with ARIHANT SUPERSTRUCTURES LIMITED (Transferee Company) and their respective shareholders;

Adeshwar Realty Private Limited)
 company incorporated under the Companies))
 Act, 1956 having its Registered Office at 302)... Petitioner
 Persepolis Building, Plot No. 74, Sector 17, Vashi, Navi Mumbai – 400 703)/Transferor Company.

HIGH COURT, BOMBAY**Called for Hearing**

Mr. Venu K.V. i/b M/s Iyers Chambers., Advocates for the Petitioners

Mr. Shivraj Patil i/b Pankaj Kapoor for Regional Director

Mr. Vinod Sharma Official Liquidator

Coram : B.P. COLABAWALLA J.

Date: 22nd July, 2016

MINUTES OF THE ORDER

1. Heard the learned Advocates for the Petitioners. No objector has come before the Court to oppose the Scheme and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 391 to 394 of the companies Act, 1956 (or any corresponding provisions of Companies Act, 2013, as may be notified) to the Scheme of Amalgamation between Adeshwar Realty Private Limited ("Adeshwar" or the "Transferor Company") and Arihant Superstructures Ltd. ("Arihant" or the "Transferee Company") and their respective shareholders and creditors.
3. Learned Advocate has stated that the Transferor Company and Transferee Company are engaged in the business of real estate.
4. The rationale for the scheme of amalgamation is that
 - (a) the Transferor Company and the Transferee Company pursue correlated activities. Thus, the consolidation of capital and capital investments of both the companies can translate into better customer service for both the entities which can lead to better operational efficiency and achievement of Valuation Creation.

- (b) The amalgamation will result in economies of scale and reduction in overheads, managerial and other expenditure, operational rationalization and optimum utilization of various resources.
 - (c) The proposed amalgamation will result in administrative and operational rationalization, organizational efficiencies, reduction in overheads and other expenses and optimal utilization of various resources. It will prevent cost duplication and the resultant operations would be substantially cost efficient.
 - (d) The proposed amalgamation will reduce duplication of various operating, managerial and administrative functions.
 - (e) The amalgamation will result in greater value for stakeholders than could be delivered as separate companies.
 - (f) The scheme will provide strategic fit that is required to counter the competitive environment of the industry.
 - (g) The Scheme will enable the Transferee Company to consolidate its land bank such that more attractive valuations may be possible for attracting equity/debt investments into Transferee Company for its future capital intensive projects.
5. The Petitioner Company have approved the said Scheme Amalgamation by passing the Board Resolution in its extra ordinary general meeting held on the date 05th August, 2014 as Exhibit 'G' which is annexed to the Company Scheme Petition filed by the Petitioner Company.
6. The learned Advocate for the Petitioner Company states that Petitioner have complied with all directions passed in Company Summons for Directions and that the Company Scheme Petition has been filed in consonance with the order passed in Company Summons for Directions.
7. Advocate appearing on behalf of the Petitioner Company has stated 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, Petitioner Company 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 given by the Petitioner is accepted.

8. The Regional Director has filed an Affidavit on 23rd June, 2016 stating there 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, it is stated that :

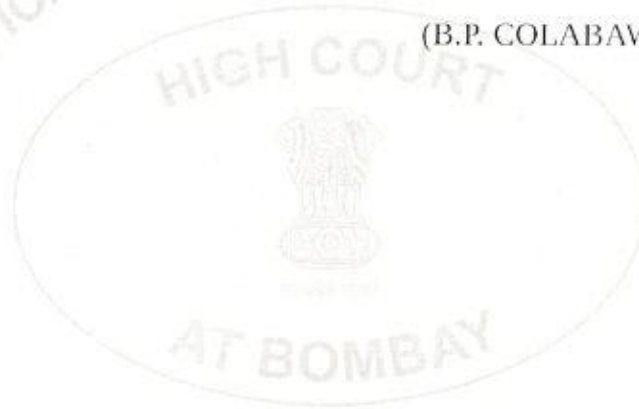
(a) That the Deponent further submits that, the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Company after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the petition company.

9. In so far as observations made in paragraph 6 of Affidavit of the Regional Director is concerned, the Advocate for the Petitioner Company submits that they are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. The Learned Counsel appearing for the Regional Director on instructions Shri S. Ramakantha of Joint Director in the office of the Regional Director states that they are satisfied with the undertakings given by the advocate on behalf of the Petitioner Companies. The above undertakings are accepted.
11. The Official Liquidator has filed his report on 22nd June, 2016 stating that the affairs of the Transfer Company has been conducted in a proper manner and that Transferor Company may be ordered to be dissolved without being wound up.
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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 18 of 2016 is made absolute in terms of prayer clause (a), (b), (c).
14. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme and the Form of Minutes with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy as per the relevant provisions of the Companies Act, 1956/2013 whichever is applicable.

HIGH COURT, BOMBAY

15. The Petitioner Companies to lodge a copy of this order and the Scheme and Form of Minutes, 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.
16. The Petitioner Companies to pay costs of Rs. 10,000/- each to the Regional Director, Western Region, Mumbai, and the Petitioner in the Company Scheme Petition No. 18 of 2016 filed by the Transferor Company to pay costs of Rs. 10,000/- to the Official Liquidator, High Court, Bombay.
17. Costs to be paid within four weeks from today.
18. Filing and issuance of the drawn up order is dispensed with.
19. All concerned regulatory authorities to act on a copy of this order along with the Scheme and form of minutes duly authenticated by the Company Registrar, High court, Bombay.

(B.P. COLABAWALLA, J.)



HIGH COURT, BOMBAYCERTIFICATE

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

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Section Officer
High Court, Appellate Side
Bombay

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