

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

IN

TRANSFERRED COMPANY SCHEME PETITION NO 227 OF 2017

Marvel Promoters & Developers (Pune) Private Limited.....Petitioner/Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO 228 OF 2017

Marvel Realtors and Developers LimitedPetitioner/Transferee Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (corresponding sections 230 to 232 of the Companies Act 2013);

AND

In the matter of Scheme of Arrangement of Marvel Promoters & Developers (Pune) Private Limited (“Transferor Company”) with Marvel Realtors and Developers Limited (“Transferee Company”) and their respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in both Petitions.
Mr. Ramesh Gholap, Assistant Director in the office of Regional Director in both the Petitions.

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date: 8th June , 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has contravened any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Marvel Promoters & Developers (Pune) Private Limited with Marvel Realtors and Developers Limited and their respective shareholders.

3. The Counsel for the Petitioner submits that the Petitioner Companies are presently engaged in the business of development and construction of residential and commercial buildings.

4. The respective Boards of Directors feel that the Scheme of Amalgamation is beneficial to the respective shareholders, creditors, employees and all stakeholders of the Petitioner Company and the Transferee Company. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:
 - (a) *The amalgamation will enable pooling of resources of the companies involved in amalgamation to their common advantage, resulting in more productive utilization of the said resources and achieving economies of scale resulting into cost and operational efficiencies, which would be beneficial for all the stakeholders;*
 - (b) *The Transferee Company and the Transferor Company are part of the same management group and hence the amalgamation would bring synergies in procurement, administration and marketing operations;*
 - (c) *The amalgamation would facilitate inter-unit transfer of resources that would in turn result into operational synergies;*
 - (d) *The amalgamation would help in combining the administrative and marketing functions of the entities involved and consequently result into more efficient functioning of the merged entity in a cost effective manner;*
 - (e) *The amalgamation is expected to increase the financial strength of the companies enabling further growth and development of the Transferee Company;*
 - (f) *The amalgamation would bring greater management focus and would help in achieving uniform corporate policies and faster / effective decision making and its implementation;*
 - (g) *The amalgamation would help in avoiding duplication of regulatory and procedural compliances and consequently result into saving of time, resources and cost involved in such compliances;*
 - (h) *Post amalgamation, the Transferee Company will have better financial and operational prospects. The amalgamation shall be beneficial and in the best interests of the shareholders, creditors, employees of the companies involved and all concerned.*

5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing a Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.

6. The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court/ Tribunal and the necessary affidavits of compliance have been filed in the Court/Tribunal. Moreover, the Petitioner Companies through its Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
7. The Official Liquidator has filed his report on 28th April 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
8. The Regional Director has filed an Report dated 1st May, 2017 stating therein, save and except as stated in paragraph IV(a) to (e), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV, of the said Report it is stated that:
- (a) *In addition to compliance of AS-14(IND AS-103), the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
 - (b) *As per Part – I Definitions clause 1.3 of Scheme “**Appointed Date**” for the purpose of this Scheme of Amalgamation and for the purpose of Income Tax Act, 1961 means **April 1, 2015** or such other date as the High Court or National Company Law Tribunal or such other authority as may be applicable, may direct or approve. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st April, 2015;*
 - (c) *Regarding **Clause 12 of the Scheme** it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted in the reserves of the Transferee Company;*
 - (d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangement to the Income Tax Department for their comments. It appears that the company vide letter dated 3rd November, 2016 has served a copy of the company scheme petition No.739 & 740/2016 along with relevant orders etc., further this Directorate has also issued a reminder 24.04.2017, to IT Department.*

(e) *The tax implication if any arising out of the scheme is subject to 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 return filed by the transferee Company after giving to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*

9. As far as the observations made in paragraph IV(a) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel undertakes that the Transferee Company shall pass such accounting entries which are necessary in connection with the Scheme to comply with Accounting Standard – 14 (IND AS-103) or any other applicable Accounting Standard such as Accounting Standard – 5 (IND AS-8).
10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel clarifies that the Appointed Date for the purpose of the Scheme of Amalgamation and for the purpose of Income Tax Act, 1961 means 1st April, 2016.
11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Company through its counsel undertakes that in compliance of AS-14, on the Scheme becoming effective, surplus, if any arising out of the Scheme shall be credited to the Capital Reserve and deficit, if any shall be debited to Goodwill Account.
12. As far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Company submits that it has served a copy of Company Scheme Petition No.739 & 740 of 2016 to the Income Tax Department for their comments dated 3rd November, 2016.
13. As far as the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner submits that the Petitioner is 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.
14. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
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, Transferred Company Scheme Petition No 227 & 228 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) of the respective Petition.

17. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Company to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, 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.
19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Transferred Company Scheme Petition No. 227 of 2017 to pay a sum of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs be paid within four weeks from the date of Order.
20. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director/Registrar, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)