

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 23 OF 2017

Happy Highrises Limited

...Petitioner/ Transferor Company

In the matter of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Happy Highrises Limited with Godrej Properties Limited and their respective shareholders

CALLED FOR HEARING

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b. M/s Rajesh Shah & Co.,
for the Petitioner.

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

Shri V. Nallasenapathy, Member (Technical)

DATE: 29th March, 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 controverted 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 a Scheme of Amalgamation of Happy Highrises Limited ('Petitioner / Transferor Company') with Godrej Properties Limited ('Transferee Company') and their respective shareholders.
3. Learned Counsel for the Petitioner states that the Petitioner and Transeree Company are engaged in the business of real estate development.

4. The rationale for the scheme is that amalgamation of the Petitioner Company into the Transferee Company would lead to Integrations of operations resulting in rationalization of administrative and operating costs and Elimination of Multiple Entities
5. Learned Advocate for the Petitioner states that the Petitioner Company is wholly owned subsidiary of the Transferee Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and in view of the judgement of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition by Godrej Properties Limited, the Transferee Company was dispensed with, by order dated 9th December, 2016 passed in CSD NO. 970 of 2016 of the Bombay High Court.
6. The Petitioner Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Counsel appearing on behalf of the Petitioner states that the Petition have been filed in consonance with the orders passed in their respective Company Summons for Directions Nos. 970 of 2016 of the Bombay High Court.
8. The learned Counsel appearing on behalf of the Petitioner has stated that the Petitioner Company have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in this Court. Moreover, the Petitioner Company undertake 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 undertaking is accepted.

9. The Official Liquidator has filed his report on 1st March, 2017 inter alia, stating therein that the affairs of the Petitioner Company has been conducted in a proper manner and that the Petitioner Company may be ordered to be dissolved.
10. The Regional Director has filed his report on 15th March, 2017, *inter alia*, stating therein that save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, the Regional Director has stated that:-

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- 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 existing practice, the petitioner companies are required to serve notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 25.01.2017 has served a copy of company petition No. 23/2017 along with relevant orders etc., Further this Directorate has also issued a reminder letter dated 15.03.2017 to the Income Tax Department. 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 effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- c) *Petitioner in clause 6.1 of the Scheme has inter alia mentioned that , on the Scheme becoming effective, permanent staff and employees, if any, of HHL in service on the Effective Date, shall be deemed to have become staff and employees of GPL. In this regard it is*

submitted that, the petitioner company may be asked to amend the Scheme and delete 'if any'."

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(a) of his report is concerned, the Petitioner Company undertakes that it will comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Petitioner Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Petitioner Company submits that the Petitioner Company is 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.
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Petitioner Company undertakes that on the Scheme becoming effective, all the permanent staff and employees of Happy Highrises Limited, the Petitioner Company, in service on the Effective Date, shall be the staff and employees of Godrej Properties Limited, the Transferee Company. This bench hereby directs that the word "if any" from clause 6.1 of the Scheme stands deleted.
14. The Counsel for the Regional Director on instructions of Mr. R.K.Dalmia, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai states that they are satisfied with the explanations given by the Petitioner Company.

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, Company Scheme Petition No. 23 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clause (a) to (c) of the Petition.
17. Petitioner are 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 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 certified 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 applicable.
19. The Petitioner Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
20. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (T)