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NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

CP(CAA) No. 130/NCLT/AHM/2017
CA(CAA) No. 160/NCLT/AHM/2017

Coram: **Hon'ble Mr. BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.02.2018

Name of the Company: Vishal Foods & Investments Pvt Ltd.
Megha Estates Pvt Ltd
Madhur Housing & Development Co. (A Private Company with unlimited Liability)
DLF Investments Pvt Ltd
Kohinoor Real Estates Company (A Private Company with unlimited Liability)
Panchsheel Investment Company (A Private Company with unlimited Liability)
Haryana Electrical Udyog Pvt Ltd
Buland Consulants & Investments Pvt Ltd
Sidhant Housing and Development Company (A Private Company with unlimited Liability)
Yashika Properties and Development Company (A Private Company with unlimited Liability)
Rajdhani Investments & Agencies Pvt Ltd.

Section of the Companies Act: Section 230-232 of the Companies Act, 2013

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	NAVEEN DAHIYA	Advocate	PETITIONER COMPANIES	
2.	KIRAN SHAH	FCA		Kiran Shah

ORDER

Learned Advocate Mr. Naveen Dahiya with Learned FCA Mr. Kiran Shah present for Petitioners. None present for Income Tax Department.

Order pronounced in open court. Vide separate sheets.

MANORAMA KUMARI
MEMBER JUDICIAL

BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 21st day of February, 2018.

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

C.P. (CAA) No. 130/NCLT/AHM/2017

CONNECTED WITH

CA (CAA) NO. 160/NCLT/AHM/2017

In the matter of:

1. Vishal Foods and Investments Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat
..... **Petitioner No.1/Transferor Company No. 1**

AND

2. Megha Estates Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat
..... **Petitioner No.2/Transferor Company No. 2**

AND

3. Madhur Housing and Development Company
(A Pvt. Co. with Unlimited Liability)
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat
..... **Petitioner No.3/Transferor Company No. 3**

AND

4. DLF Investments Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat
.....**PetitionerNo.4/Transferor Company No. 4**

AND

5. Kohinoor Real Estates Company
(A Pvt. Co. with Unlimited Liability)
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat

.....PetitionerNo.5/
Transferee Company No.1/Transferor Company No. 5

AND

6. Panchsheel Investment Company
(A Pvt. Co. with Unlimited Liability)
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat

.....Petitioner No.6/Transferor Company No. 6

AND

7. Haryana Electrical Udyog Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat

.....Petitioner No.7/Transferor Company No. 7

AND

8. Buland Consultants & Investments Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat

.....Petitioner No.8/Transferor Company No. 8

AND

9. Sidhant Housing and Development Company
(A Pvt. Co. with Unlimited Liability)
a Company incorporated under the
provisions of the Companies Act, 1956 and

Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat.

.....Petitioner No.9/Transferor Company No. 9

AND

10. Yashika Properties and Development Company
(A Pvt. Co. with Unlimited Liability)
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat

.....Petitioner No.10/Transferor Company No. 10

AND

11. Rajdhani Investments & Agencies Private Limited
a Company incorporated under the
provisions of the Companies Act, 1956 and
Having their Registered Office at
MC Shah House, 1/B, FF, Avantika Society,
Nr. Naranpura Railway Crossing, Naranpura,
Ahmedabad- 380013, Gujarat

...Petitioner No. 11/
Transferee Company No. 2/ Ultimate Transferee Company

Order Delivered on 21st February, 2018

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)
And
Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Dr. U.K. Chaudhary, Senior Advocate with Mr. Naveen Dahiya, Advocate and Mr. Kiran Shah, FCA for Petitioner Companies

FINAL ORDER

[Per:Bikki Raveendra Babu, Member (J)]

1. This is a joint petition under Sections 230 and 232 of the Companies Act, 2013 filed by the petitioner companies seeking sanction of this Tribunal to a Scheme of Arrangement ("Scheme"

for short) in the nature of amalgamation of Vishal Foods and Investments Private Limited (Petitioner No. 1/ Transferor Company No. 1), Megha Estates Private Limited (Petitioner No. 2/Transferor Company No. 2), Madhur Housing and Development Company (A Pvt. Co. with Unlimited Liability) (Petitioner No. 3/Transferor Company No. 3), DLF Investments Private Limited(Petitioner No. 4/ Transferor Company No. 4), into Kohinoor Real Estates Company (A Pvt. Co. with Unlimited Liability) (Petitioner No. 5/Transferee Company No. 1/Transferor Company No. 5) and amalgamation of Panchsheel Investment Company (A Pvt. Co. with Unlimited Liability)(Petitioner No. 6/Transferor Company No. 6), Haryana Electrical Udyog Private Limited(Petitioner No. 7/Transferor Company No. 7),Buland Consultants & Investments Private Limited (Petitioner No. 8/Transferor Company No. 8),Sidhant Housing and Development Company (A Pvt. Co. with Unlimited Liability)(Petitioner No. 9/Transferor Company No. 9), Yashika Properties and Development Company (A Pvt. Co. with Unlimited Liability)(Petitioner No. 10/ Transferor Company No. 10) into Rajdhani Investments & Agencies Private Limited (RIAPL), (Petitioner No. 11/Transferee Company No. 2/the Ultimate Transferee Company), and simultaneously amalgamation of Kohinoor Real Estates Company (A Pvt. Co. with Unlimited Liability) (Petitioner No. 5/Transferee Company No. 1 /Transferor Company No. 5)into Rajdhani Investments &

Agencies Private Limited (Petitioner No. 11/Transferee Company No. 2/Ultimate Transferee Company).

2. The Petitioner Companies had initiated proceedings before this Tribunal in the form of a joint application, being CA (CAA) No. 160/NCLT/AHM/2017. By the said Application the Petitioner Companies sought dispensation of meetings of Shareholders and Unsecured Creditors of the respective Petitioner Companies. It was submitted that there were no secured creditors in the Petitioner Companies. The Petitioner Companies had submitted written consent letters of the respective shareholders on affidavits approving the proposed Scheme. The unsecured creditors of the Petitioner Companies had also submitted written consent letters on affidavits approving the proposed Scheme. Hence, this Tribunal vide order dated 22.11.2017 passed in CA (CAA) No. 160/NCLT/AHM/2017, dispensed with convening and holding of meetings of shareholders and unsecured creditors of the Petitioner Companies in view of the consent affidavits given by them. This Tribunal also observed that there was no need to hold meeting of secured creditors as there were no secured creditors of Petitioner Companies. This Tribunal also directed issuance of notices to Regional Director, Registrar of Companies, Income Tax Authorities, Official Liquidator and Reserve Bank of India stating that the representation, if any, to be made by them, should be made within a period of 30 days from the date of receipt of such notice. In compliance of the order dated 22.11.2017, the

Petitioner Companies duly served notices to all the statutory authorities. The requisite proof of service along with original acknowledgement receipts confirming the compliance of said directions were filed along with the present petition. In response to the said notices, a common representation dated 05.01.2018 was received from the Regional Director, North Western Region. No other representation was received from any other regulatory authorities.

3. The present petition was filed on 11.12.2017 by Petitioner Companies and the same was admitted on 22.01.2018. The date of hearing was fixed as 13.02.2018. Directions were issued to publish notice of hearing of the Petition in newspapers viz. "Indian Express" English Daily Ahmedabad Edition and "Sandesh"Ahmedabad Edition not less than 10 days before the date fixed for hearing, calling for objections, if any, on or before the date of hearing. Further directions were also issued to serve notice of hearing of the Petition to statutory authorities viz.the Regional Director, Official Liquidator and the concerned Income Tax Authorities informing the date of hearing of Petition.

4. Pursuant to the said directions, notices were duly served by the Petitioner Companies on the statutory authorities viz. the Regional Director, Official Liquidator and Reserve Bank of India on 24.01.2018 and to the respective Income Tax Authorities on 24.01.2018 & 25.01.2018. Further, the Petitioner Companies published the notice of hearing of the Petition in the English

Daily Newspaper "Indian Express" and Gujarati daily Newspaper "Sandesh" on 29.01.2018. An affidavit of compliance containing the information of service and publication of notices was filed by the Petitioner Companies on 08.02.2018 and the same has been placed on record.

5. Pursuant to the order dated 22.01.2018 and issuance of notices to the Regional Director, Income Tax Authorities and Official Liquidator and publication of notice in local dailies, a common representation from the Regional Director and representations from the office the Official Liquidator, in respect of the Transferor Companies and Income Tax Officers of Petitioner No.1, Petitioner No.4, Petitioner No.8 and Petitioner No.11; i.e. ultimate Transferee Company, have been received.

6. Heard learned Senior Advocate, Dr. U.K. Chaudhary with learned advocate Mr. Naveen Dahiya, for the Petitioner Companies and learned advocate Mr. Karan Sanghani for Income Tax Department.

7. It has been submitted that the representation in form of common affidavit dated 05.01.2018 received from the Regional Director does not contain any adverse observations with regard to the proposed Scheme. Vide para 2(a) and (b), it confirms the receipt of notice, nature of proposal and consideration. Vide para 2(c), it is pointed out that Petitioner Companies be directed to comply with Section 232(3)(i) of the Companies Act, 2013. Vide para 2(e), it is pointed out that Petitioner Companies be directed

to undertake that there is no unaccounted money created through securities premium account during any of the previous years and that the petitioner companies have paid applicable Income Tax and other legal dues on the said Securities Premium collection. Vide para 2(f), it is pointed out that Petitioner No.6 Company is registered with RBI as NBFC and therefore, the Petitioner Companies be directed to ensure compliance of guidelines issued by RBI from time to time. Vide para 2(h), it is pointed out that the Registrar of Companies has confirmed that there are no complaints against any of the Petitioner Companies and no complaint/representation against the Scheme is being received. The Regional Director vide para 2(i) has confirmed that the proposed Scheme is not prejudicial to the interest of shareholders of the Petitioner Companies and public at large and the Regional Director has no other observation/submission with respect to proposed Scheme. With respect to aforesaid observations, the Petitioner Companies have filed a detailed undertaking/affidavit on 08.02.2018 undertaking the compliances as sought by the Regional Director. In view of above, this Tribunal is of the view that the observations of the Regional Director stands satisfied.

8. In response to the notice of the petition served upon the Office of the Official Liquidator for the Transferor Companies, representation dated 19.01.2018 has been filed by the Official Liquidator. After referring to the proposals of the Scheme, it has been observed by the Official Liquidator that the said office has

not received any complaint against the Scheme and this Tribunal may pass suitable orders dissolving the Petitioner transferor companies in accordance with the Scheme and without following the process of winding up. However, the Official Liquidator has sought directions to be issued to preserve the books of accounts, papers and records and not to dispose of the same without prior permission of the Central Govt. as per the provisions of Section 239 of the Companies Act, 2013. The Official Liquidator has also sought directions with respect to compliance of all applicable laws and filing of Form INC-28 with concerned ROC. In this regard, the Petitioner Companies have filed an affidavit/undertaking on 08.02.2018 to comply with provisions of Section 239 of the Act and all other applicable laws. Accordingly, the Transferee Company is hereby directed to preserve the books of accounts, papers and records of the Transferor Company and not to dispose of the same without prior permission of the Central Government as required under Section 239 of the Companies Act, 2013. It is hereby further directed that even after the Scheme is sanctioned, the Transferor Company shall comply with all the applicable provisions of law and shall not be absolved from any of their statutory liability.

9. In response to the notice of the petition served upon the respective Income Tax Authorities of Petitioner Companies, representations dated 25.01.2018, 05.02.2018, 09.01.2018 of respective Income Tax Officers of Petitioner No.1 Company,

Petitioner No.4 Company, Petitioner No.8 Company and Petitioner No.11 Company/ultimate Transferee Company, have been filed. The Income Tax Officers of Petitioner No.4 Company, Petitioner No.8 Company and Petitioner No.11 Company/ultimate Transferee Company have no objections to the proposed Scheme of Arrangement, as stated in their representations. However, theIncome Tax Officer of Petitioner Company No.1 in its representation dated 25.01.2018 has raised an observation with respect to accounting treatment of investments of the Petitioner No.1 Company at Fair Market Value. The learned counsel for the Income Tax submitted that it may result in some tax savings in future in the hands of the ultimate Transferee Company, in case the Transferee Company sell those investments in future. In response to the said observation, the learned Senior Advocate for the Petitioner Companies submitted that the proposed Accounting Treatment is in accordance and conformity with prevailing Accounting Standards, and the said fact is not disputed by the learned counsel appearing for the Income Tax Department. In this regard, the learned Senior Advocate also relied on the certificate dated 04.10.2017 given by the Statutory Auditors of the Petitioner Companies confirming that the accounting treatment envisaged under the Scheme of Arrangement is in compliance with the applicable Accounting Standards notified by the Central Government under Section 133 of the Companies Act, 2013. The same have been placed on record as Annexure-'A-48(Colly)' to the

present petition. In addition to above, the Petition Companies have filed an undertaking/affidavit dated 12.02.2018 explaining the object of the Scheme. In para 6 of the said undertaking, it is submitted that sanctioning of the Scheme *ipso facto* would not grant any immunity to the Petitioner Companies qua any liabilities that may be imposed on it under relevant provisions of Income Tax Act or any other Statute, in accordance with law. In the said undertaking, the Petitioner Companies undertake to discharge all liabilities both present and future including but not limited to tax liabilities of all the companies involved in the present Scheme, as and when same falls due and payable in accordance with law. The petitioner companies also undertake to comply with all applicable laws. Moreover, the objection of the Income Tax Department is based on the hypothesis that the Transferee Company is going to sell the shares to some other company and in which case, it will only take the market value as reflected in the Scheme but not the Book value in the books of Transferor company. Even if the Transferee Company sells the shares, the liability of the Transferee Company to pay Income Tax on the profit derived will be governed by the provisions of the Income Tax Act. It is for the Income Tax Authorities to decide whether in such a case book value of the shares of the Transferor Company has to be taken into consideration or market value that reflected in the proposed Scheme has to be taken into consideration. In any event, the Transferee Company cannot escape the liability of Income Tax as per the provisions of the

Income Tax Act. In fact, the Transferee Company in its reply gave a clear undertaking in paragraph No.7. In view of above, this Tribunal is of the view that the observations of the Income Tax Department stand satisfied.

10. Accordingly, there are no adverse observations from the aforesaid authorities and the petitioners have filed proper affidavits in reply accepting to comply with all the legal requirements. No representation has been received from any other Regulatory Authorities. Hence, it is assumed that the said authorities have no observation to the proposed Scheme.

11. In compliance with the proviso to sub-section (7) of Section 230, the Petitioner Companies have already produced on record, the certificates issued by the Statutory Auditors stating that the accounting treatment envisaged in the Scheme is in compliance with all the applicable Accounting Standards notified by the Central Government under Section 133 of the Companies Act, 2013.

12. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 2013 are satisfied. The Scheme appears to be genuine and bona fide and in the interest of the shareholders and creditors and the same deserves to be sanctioned.

13. In the result, this Petition is allowed. The Scheme of Arrangement which is at Annexure A1 to the Petition is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies namely, Vishal Foods and Investments Private Limited, Megha Estates Private Limited, Madhur Housing and Development Company(A Pvt. Co. with Unlimited Liability), DLF Investments Private Limited, Kohinoor Real Estates Company (A Pvt. Co. with Unlimited Liability), Panchsheel Investment Company (A Pvt. Co. with Unlimited Liability), Haryana Electrical Udyog Private Limited, Buland Consultants & Investments Private Limited, Sidhant Housing and Development Company (A Pvt. Co. with Unlimited Liability), Yashika Properties and Development Company (A Pvt. Co. with Unlimited Liability) and Rajdhani Investments & Agencies Private Limited, their shareholders, creditors and all concerned under the Scheme. The Transferor Companies shall stands dissolved without winding up in accordance with the Scheme.

14. Fees of the Official Liquidator are quantified at Rs.10,000/- each in respect of the Transferor Companies. The said fees shall be paid by the Petitioner Transferee Company.

15. Filing and issuance of drawn up order is hereby dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this Tribunal. The Registrar of this Tribunal shall issue the

authenticated copy of this order along with the Scheme immediately.

16. The Petitioner No. 11/Ultimate Transferee Company is further directed to lodge a copy of this order and the Scheme duly certified by the Registrar with all the concerned authorities, as required, for the purpose of the Transfer of rights and obligations to the Ultimate Transferee Company, wherever applicable.

17. The petitioner companies shall comply with Rule 17(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with respect to filing of a copy of this order, along with a copy of the Scheme with the concerned Registrar of Companies, electronically in form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act, 2013.

18. This Petition is disposed of accordingly.

Ms. Manorama Kumari,
Member (J)

Bikki Raveendra Babu,
Member (J)

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