

Per: R.P.Nagrath, Member (Judicial)

Judgement

This is a joint second motion petition under Section 230-232 of the Companies Act, 2013 (for brevity, the 'Act') filed by the petitioner companies in terms of Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') for the sanction of Scheme of Amalgamation (for brevity, the 'Scheme') of Caraf Builders & Constructions Private Limited (CBCPL), Transferor Company with DLF Cyber City Developers Limited (DCCDL), Transferee Company. The joint petition is maintainable in terms of Rule 3(2) of the Rules.

2. The First Motion Petition bearing CA (CAA) No. 26/Chd/Hry/2017 was disposed of by this Tribunal on 09.02.2018 whereby the meetings of equity and preference shareholders, secured creditors of both the companies and unsecured creditors of the transferor company were dispensed with. Further direction for calling and convening of meeting of unsecured creditors of the Transferee Company on 31.03.2018 was issued along with other directions as mentioned in the order dated 09.02.2018 passed in First Motion Application which is at Annexure A-11.

3. The Affidavit dated 13.03.2018 with regard to compliance of all the directions given in the order dated 09.02.2018 was filed in the record of CA (CAA) No. 26/Chd/Hry/2017 by Diary No. 788 dated 16.03.2018 by Mr. Naveen Kedia, the authorized signatory of the Transferor and Transferee Companies along with newspaper publications in 'Financial Express' CP(CAA)No. 9/Chd/Hry/2018

(English)(Delhi NCR Edition) and 'Jansatta' (Hindi) (Delhi NCR Edition) both dated 27.02.2018 and notices sent to Statutory Authorities including Income Tax Department.

4. Report dated 31.03.2018 of the Chairperson along with the report of Scrutinizer in respect of the meetings of unsecured creditors of the Transferee Company was filed by Diary No. 1067 dated 09.04.2018. The Chairperson reported that the unsecured creditors of the Transferee Company have unanimously approved the Scheme. Thereupon the instant petition was filed for approval of the Scheme in terms of Rule 15 of the Rules.

5. The main objects, authorised and paid-up share capital and rationale of Scheme have been discussed in detail in the order disposing of the first motion petition on 09.02.2018.

6. The Scheme also takes care of the interest of employees for which a detailed reference was made in paragraph 29 of the order dated 09.02.2018. From the relevant clause of the Scheme, there seems to be no adverse impact on the service conditions of the employees of the Transferor Company. The clause relating to legal proceedings was also referred while passing the First Motion order dated 09.02.2018.

7. The certificate of S.R. Batliboi & Co. LLP, auditor of the transferee company stating therein that the accounting treatment specified in the Scheme is in compliance with the provisions of Section 133 of the Companies Act, 2013 read with the Companies (Indian Accounting Standards) Rules, 2013 read with the Companies (Indian Accounting Standards) Rules,

2015 and other generally accepted accounting principles, is at Annexures A-10 (page 497 of the paper book).

8. The audited accounting statement of the petitioner-companies upto 31.03.2017 and the supplementary accounting statements upto 31.12.2017 are at Annexure A-3 (colly) and A-7 (colly), respectively.

9. As per the Scheme, the appointed date has been fixed as closing hours of March 31, 2016. Further, on sanctioning the Scheme of Amalgamation, it has been provided that under Clause 8.1, Part VII of the Scheme of Amalgamation (Annexure A1) that the Transferor Company is the wholly owned subsidiary of the Transferee Company. Upon sanctioning of the Scheme, the present entire issued, subscribed and paid-up Share Capital of the Transferor Company shall stand automatically cancelled and extinguished and the Transferor Company shall stand dissolved without the process of winding up. Since, the Transferor Company is the wholly owned subsidiary of the Transferee Company, there would be no issue and allotment of Shares by the Transferee Company.

10. When the petition was listed on 04.05.2018, the following order was passed:-

“4. “The petition be listed for hearing for 03.07.2018. Notice of hearing be advertised in the same newspapers as were mentioned in the first motion petition i.e. “Financial Express” (English, Delhi/NCR Edition) and “Jansatta” (Hindi, Delhi/NCR Edition) not less than 10 days before the aforesaid date fixed for hearing.

5. *Notice be also served upon to Objector(s) or to their representative as contemplated under sub-section (4) of Section 230 of the Act who may have made representation and who have desired to be heard in their representation along with a copy of the petition and the annexures filed therewith at least 15 days before the date fixed for hearing.*
6. *In addition to the above public notice, each of the Petitioner shall serve the notice of the petition on the following Authorities namely, (a) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs (b) Registrar of Companies, NCT of Delhi & Haryana, Ministry of Corporate Affairs (c) Income Tax Department within whose jurisdiction the petitioners-companies are assessed by mentioning the PAN of both the companies (d) Official Liquidator, Punjab, Chandigarh and Haryana along with copy of this petition by speed post immediately and to such other Sectoral Regulator(s) who may govern the working of the respective companies involved in the Scheme.*
7. *Both the petitioners shall at least 7 days before the date of hearing of the petition file an affidavit of service regarding paper publication effected as well as service of notices on the authorities specified above including the sectoral regulator as well as to objectors, if any. Objections, if any, to the scheme contemplated by the authorities to whom notice has been given on or before the date of hearing fixed herein may be filed, failing which it will be considered that there is no objection to the approval of the Scheme on the part of the authorities by this Tribunal and subject to other condition being satisfied as may be applicable under the Companies Act, 2013 and relevant rules framed thereunder.*
8. *The petitioner companies shall individually comply with proviso to sub-section (3) of section 232 or proviso to sub-section (7)*

of Section 230, as may be applicable under the circumstances on or before the date fixed for hearing by filing the certificate of company's auditor. Registry shall also report before the date fixed as to whether any objection has been received to the proposed Scheme in the registry."

11. Mr. Navin Kedia, the authorised representative of both the companies filed his affidavit dated 15.06.2018 by Diary No. 2211 dated 20.06.2018 stating the compliance of the aforesaid directions. Copies of the paper publications made in the Financial Express (English) and Jansatta (Hindi) both dated 22.05.2018 have been attached, apart from postal receipts in proof of notices to all the statutory authorities. It is stated in this affidavit that the petitioner-companies are not regulated by any other Sectoral Regulators. Further that the petitioner-companies have not received any objection to the Scheme from any stakeholders. The Certificate of Auditor of Transferee-Company about the accounting treatment in the Scheme has also been filed with this affidavit. The learned counsel for the petitioner companies also filed his own affidavit by diary No. 2211 dated 20.06.2018 stating therein that he has not received any objection from any stakeholder as counsel for the petitioner-companies. The Registry has also reported on 02.07.2018 that no objection was received from any quarter in this Tribunal to the proposed Scheme.

12. It has also been stated in the affidavit of authorized representative of petitioners that the notices were sent to the statutory authorities on 10.05.2018. When the matter was listed on 03.07.2018, the petitioners were also directed to send 'Dasti' notice of next date of hearing i.e. 14.08.2018 to

the Income Tax Department through the Nodal Officer – Principal Chief Commissioner of Income Tax, NWR, Aaykar Bhawan, Sector 17-E, Chandigarh. In compliance of this order, an additional affidavit dated 10.07.2018 was filed by the authorised representative of the petitioner companies on 13.07.2018 by Diary No. 2488, wherein the petitioner companies filed the tracking reports along with the copies of notices issued to various statutory authorities and speed post receipts as Annexure A2 (Colly) of the additional affidavit. It was also stated in the said additional affidavit that 'Dasti' notice was served upon the Income Tax Department through the Nodal office viz. the Principal Chief Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector-17-E, Chandigarh on 06.07.2018. The acknowledgement receipt is attached as Annexure A3 of the additional affidavit.

13. We have heard the learned Senior Counsel for petitioners, Mr. O.P. Sharma, Official Liquidator for himself as well as representing the Regional Director, Northern Region, Ministry of Corporate Affairs and Mr. Yogesh Putney, Advocate for the Income Tax Department, and perused the record.

14. Mr. Kamal Harjani, Registrar of Companies, NCT of Delhi and Haryana stated in his report dated 15.06.2018 that there are no proceedings pending against any of the petitioner-companies. Also no inspection has been carried out against any of the companies.

15. In his report filed by diary No. 2226 dated 27.06.2018, the Official Liquidator, Chandigarh has stated that no investigation or proceeding under the Companies Act, 2013 or under the erstwhile Companies Act, 1956

is pending neither against the Transferor Company or the Transferee Company involved in the present Scheme of Amalgamation. It is also stated that the Transferor/Transferee Company shall apply to the Development Commissioner(s), Special Economic Zones, Ministry of Commerce for such sanctions and approvals as may be required under applicable law (including Special Economic Zones regulations) from the Board of Approvals, Ministry of Commerce for permitting change in the shareholding and Board composition of the subsidiary of the Transferor Company, prior to effecting any change in shareholding or Board composition of the subsidiary of the Transferor Company.

16. The Regional Director, Northern Region, Ministry of Corporate Affairs in his report stated that the Petitioner Companies have not made specific disclosure about certain pending cases under various tax laws. It is also stated that as on the date of the Scheme there was no foreign/non-resident interest in the transferor and transferee company. However, as on December 26, 2017, Reco Diamond Private Limited, a company organized under the laws of Singapore, having its registered office at 168 Robinson Road, #37-01, Capital Tower, Singapore 068912 has acquired 33.34% equity shares of the Transferee Company. In response to the same, the Petitioner Companies have filed reply by way of affidavit dated 10.07.2018 of Mr. Navin Kedia, authorised representative of the petitioner-companies stating that the Petitioner Companies have complied with the provisions of Section 230(2)(a) of the Act. It is stated in the said affidavit that as per para 13.2 of the Scheme and para 33(b) of the Petition, there are no investigations or proceedings under the Companies Act, 2013 or under the erstwhile Companies Act, 1956 pending CP(CAA)No. 9/Chd/Hry/2018

neither against the Transferor Company nor Transferee Company. The details of the cases mentioned by the Regional Director filed by the Petitioner Companies against the tax authorities along with their updated status have also been given in the affidavit. The petitioner companies also undertook to pay the stamp duty as may be applicable, consequent upon the transfer of assets due to the amalgamation of undertaking assets.

17. The reports of the Income Tax Department in respect of both the companies were filed by Diary No. 1153 dated 14.08.2018. Copies of the same reports were again filed by Diary No. 1182 dated 20.08.2018. The learned counsel for the Income Tax Department submitted that there is no outstanding demand from these companies but it was contended that the Transferor-Company had deposited the extraordinary sum of ₹1,16,72,886/- with ICICI Bank, Connaught Place during demonetization period from 08.11.2016 to 30.12.2016 which aspect is under verification. We are, however, of the view that in the absence of any proposed action on that account or bringing on record the fact, the explanation furnished by the Transferor-Company, no adverse view of this can be taken. Even otherwise if there is any scope of taking any penal action on that account, that will always be open as the Transferee-Company can be proceeded against apart from officers of Transferor-Company despite the process of amalgamation

18. In view of the above, there is no impediment to the Scheme of amalgamation, the Scheme (Annexure 1) is approved. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of Stamp Duty, Taxes or

any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. The petitioner-companies in any case would be bound to comply with the provisions of FEMA and RBI guidelines. With the sanction of the Scheme the share capital of the Transferor Company shall stand automatically cancelled and extinguished and the transferor company shall stand dissolved without the process of winding up. Since the transferor-company is the wholly owned subsidiary of the transferee-company, there would be no issue and allotment of shares by the transferee-company.

THIS TRIBUNAL DO FURTHER ORDER

- i. That all the property, rights and powers of the Transferor Company stand transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and
- ii. That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- iii. That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and

- iv. The Transferor Company shall be dissolved without the process of winding up; and
- v. That all the employees of the Transferor Company shall be transferred to the Transferee Company in terms of the 'Scheme'; and
- vi. That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
- vii. That the Petitioner Companies do, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered, the Transferor Company shall be dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on the file relating to the Transferee Company and files relating to the said Transferor, Transferee Companies shall be consolidated accordingly, as the case may be; and
- viii. That the Transferee Company shall deposit an amount of ₹ 1,00,000/- (Rupees one lac only) in the Prime Minister's National Relief Fund and ₹ 40,000/- in favour of The Company Law Tribunal Bar Association, Chandigarh within a period of three weeks from receipt of certificate copy of this order, the payment of which shall be ensured by the Registrar of Companies prior to further steps; and

- ix. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

As per the above directions Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on filing of the Schedule of Property i.e. (i) freehold property of the Transferor-Company; and (ii) leasehold property of the Transferor-Company by way of affidavit of the Transferor Company.

Sd/-

(Pradeep R.Sethi)
Member (Technical)

Sd/-

(Justice R.P.Nagrath)
Member (Judicial)

September 27, 2018

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