

IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH, KOLKATA

CP (CAA) No.704/KB/2018

CA (CAA) No.470/KB/2017

In the matter of:

An application under Sec.230 – 232 of the Companies Act, 2013 read with Rule 15 of the Companies (Compromise, Arrangement and Amalgamation) Rules, 2016

And

In the matter of:

Sattva Developers Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 41, Netaji Subhas Road, 4th Floor, Room No.404, Kolkata 700 001, West Bengal.

And

In the matter of:

Orchid Griha Nirman Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 7, Chittaranjan Avenue, Kolkata 700 072, West Bengal.

And

In the matter of:

Blue Heaven Griha Nirman Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 7, Chittaranjan Avenue, Kolkata 700 072, West Bengal.

And

In the matter of:

Command Constructions Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 7, Chittaranjan Avenue, Kolkata 700 072, West Bengal.

And

In the matter of:

- | | |
|---|-------------------------|
| 1. Sattva Developers Private Limited | : (Transferee Company) |
| 2. Orchid Griha Nirman Private Limited | : (Transferor Co. No.1) |
| 3. Blue Heaven Griha Nirman Private Limited | : (Transferor Co. No.2) |
| 4. Command Constructions Private Limited | : (Transferor Co. No.3) |

.....Applicant/Petitioners

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Order Delivered on 18th July 2018

For the Applicant/Petitioners : 1. Mrs. Manju Bhuteria, Advocate
2. Mr. N. Gurumurthy, FCA

ORDER

Per Madan Gosavi, Member (J)

This is a Joint Petition for sanctioning of the Scheme of Amalgamation of (1) Orchid Griha Nirman Private Limited, (2) Blue Heaven Griha Nirman Private Limited and (3) Command Constructions Private Limited (hereinafter referred to as the Transferor Company) and Sattva Developers Private Limited (hereinafter referred to as the Transferee Company) under Section 230 to 232 of the Companies Act, 2013 and their respective shareholders for obtaining sanction of this Tribunal regarding Scheme of Amalgamation.

2. The object of this petition is to obtain sanction of Tribunal to the Scheme of Amalgamation whereby and where under: -

i) The entire undertaking of the Transferor Companies together with all assets and liabilities relating thereto ongoing concern are proposed to be transferred to and vested in the Transferee Company with the appointed date on 1/4/2017 on the terms and conditions as fully stated in the Scheme of Amalgamation. A copy of the Scheme of Amalgamation has been annexed with the application as Annexure A.

3. It is stated in the petition that the Transferor Companies are engaged in the business of investing and funding activities. The Transferee Company is presently engaged in the business of real estate and investing activities. The business of the Transferor Companies and the Transferee Company can be combined and carried forward conveniently with combined strength.

4. It is further stated in the petition that the amalgamation will enable the

Transferee Company to consolidate its line of business by restructuring and re-organising its business activities and capital structure.

5. It is stated in the petition the amalgamation will enable the amalgamated company to broad base their business activities under the roof of the Transferee Company.

6. It is also stated in the petition, the amalgamation will result in economy of scale including reduction in overhead expenses, relating to management and administration in better and more productive utilisation of various resources.

7. The Scheme of Amalgamation will enable the establishment of a larger company with larger resources and a larger capital base enabling further development of the business of the company concerned.

8. The said scheme will enable the undertakings concerned to pool their resources and to expand their activities.

9. It is also stated in the petition, the scheme will enable the companies concerned to rationalise and streamline their management, business and finances and to eliminate duplication of work to their common advantages.

10. The scheme will have beneficial results for the companies concerned, their shareholders, employees and all concerned.

11. It appears from the record that pursuant to order dated 4/12/2017 and subsequently modified order dated 14/12/2017 and 26/2/2018, passed by this Tribunal in C.A. (CAA) No.470/KB/2017, this Tribunal directed the applicant companies to publish advertisement in the leading dailies in English and Bengali.

12. Pursuant to the said direction of the Tribunal, the applicant companies published advertisement in Form No.NCLT CAA-2. A separate meeting of the Equity Shareholders and Unsecured Creditors of the Transferee Company and the Transferor Companies were convened. The meeting was held on 13/4/2018. The reports of the Chairperson appointed by this Tribunal have been filed on

8/5/2018. Copy of the report of the Chairperson annexed with the application as Annexure P.

13. Ld. Counsel for the applicant companies submitted that the notice in terms of the order of the Tribunal dated 26/2/2018, along with all documents, as directed by this Tribunal to be served, was duly served notices in terms of Section 230 (5) of the Companies Act, 2013 on

(a) The Central Government through The Regional Director, Eastern Region, Ministry of Corporate Affairs;

(b) The Registrar of Companies, West Bengal;

(c) The Official Liquidator;

(d) Income Tax Officers including the Commissioner of Income Tax having jurisdiction over the petitioners.

Copy of the acknowledgement evidencing service upon the Regulatory Authorities is annexed with the application as Annexure R.

14. Ld. Counsel for the applicant companies submits that in compliance with Sec.230(7) of the Act, the Auditor of the company has certified that the accounting treatment proposed in the Scheme of Amalgamation is in conformity with the accounting standards under Sec.133 of the Act. Copy of the certificate of the Chartered Accountant is annexed with the application as Annexure T.

15. List of equity shareholders as on 31/12/2017 of the applicant companies duly certified by the Chartered Accountant is annexed with the application as Annexure U.

16. List of secured and unsecured creditors as on 31/12/2017 of the Transferee Company duly certified by the Chartered Accountant is annexed with the application as Annexure V.

17. List of unsecured creditors and NIL secured creditors as on 31/12/2017 of the Transferor Company No.1 and Transferor Company No.2 is annexed with

the application as Annexure W.

18. NIL secured creditors and unsecured creditor as on 31/12/2017 of the Transferor Company No.3 is annexed with the application as Annexure X.

19. Ld. Counsel for the applicant companies further submitted that no proceedings are pending under Sections 206 to 213 of the Companies Act, 2013 against any of the Petitioner Companies as also no proceedings are pending under Sections 241 and 242 of the said Act or any other proceedings whatsoever.

20. There are no investigations or proceedings pending under Sections 235 to 251 of the Companies Act, 2013 against any of the Petitioner Companies.

21. The Board of Directors of the Transferee Company have at their Board Meetings held on 14/9/2017 and the Board of Directors of the Transferor Companies have at their Board Meetings held on 15/9/2017 have passed resolution approving the Scheme of Amalgamation of the applicant companies. Copy of the Board Resolution is annexed with the application as Annexure Y.

22. Ld. Counsel further submitted the Scheme of Amalgamation does not contain for any Corporate Debt Restructuring.

23. The petitioner companies have never issued nor agreed to issue any debenture.

24. Ld. Counsel for the applicant companies submitted that no one will be prejudiced if the proposed Scheme of Amalgamation is sanctioned and the sanction of the scheme will be beneficial and in the interest of the applicant companies, their shareholders, creditors, employees and all concerned.

25. Pursuant to the order of the Tribunal dated 26/2/2018, the petitioners have filed this petition for the relief as prayed for mentioned in the petition for sanctioning of the Scheme of Amalgamation.

26. Heard Ld. Counsel for the applicants. In view of absence of any objection and since all the requisite compliance has been fulfilled, the following order is

passed: -

ORDER

- (i) The date of hearing of the petition filed jointly by the Petitioners for the sanction of the Scheme is fixed on 31/8/2018.
- (ii) Notice of hearing of this petition in form NCLT 3A shall be advertised once in English daily "The Business Standard" and in Bengali "Aajkal" daily newspaper, not less than 10 days before the aforesaid date fixed for hearing.
- (iii) In addition to the above public notice, the petitioner companies shall serve notice of the petition on the following authorities, namely,
 - (a) Central government through Regional Director, Eastern Region, Ministry of Corporate Affairs,
 - (b) Registrar of Companies, West Bengal,
 - (c) The Income Tax Department of the office having jurisdiction over the respective petitioner companies,
 - (d) Official Liquidator and such other relevant and sectoral regulators/authorities, if applicable, which are likely to be affected by the proposed Scheme by sending the same by hand delivery through special messenger or by registered post or Speed Post within 7 days from the date of this order for filing their representations., if any, on the petition. Notice along with the copy of the application and other related documents with PAN Numbers of the Applicant Companies should be served upon the Chief Commissioner of Income Tax by Mail and Speed Post or by Messenger. Petitioner Companies are also directed to mention their respective PAN Number everywhere.

- (iv) The notice shall specify that representations, if any should be filed before this Tribunal within 30 days of date of receipt of the notice with a copy of such representations being sent simultaneously to the petitioners and/or their Authorised Representatives. If no such representations are received by the Tribunal within the said period, it shall be presumed that such authorities have no representations to make on the Scheme of Amalgamation.
- (v) Petitioner Companies at least 7 days before the date of hearing of the petition shall file an affidavit of service in relation to the paper publication as well as service of notices and the Authorities specified above including the Sectoral Regulators.

27. The Company Petition being CP (CAA) No.704/KB/2018 [in CA (CAA) No.470/KB/2017], is directed to be listed for further hearing on 31/8/2018.

28. There shall be no order as to costs.

29. Urgent certified copies of this order, if applied for, be supplied to the parties upon compliance of all requisite formalities.

Sd/- 31/7/2018

Madan Gosavi
Member (J)

Signed on 18th July 2018