

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH

CO. APPL.(CAA) 164/ND/2018

IN THE MATTER OF:

M/s Gyankunj Colonizers Private Limited
Applicant No.1/Transferor Company

AND

M/s Gyan Jyoti Colonizers Private Limited
Applicant No.2/Transferor Company

AND

M/s Supratik Eparks Private Limited
Applicant No.3/Transferor Company

WITH

M/s Sun Buildmart Private Limited
Applicant No. 4/ Transferee Company

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

PRESENT- Ms. Rekha Mittal, PCS

Order Delivered on- 05.10.2018

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ORDER
PER SMT. INA MALHOTRA, MEMBER (J)

This is a joint petition filed by way of a 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by M/s Gyankunj Colonizers Private Limited (Applicant No.1/Transferor Company), M/s Gyan Jyoti Colonizers Private Limited (Applicant No.2/Transferor Company) and M/s Supratik Eparks Private Limited in connection with the Scheme of Amalgamation (hereinafter referred to as 'the Scheme') for merging its business with M/s Sun Buildmart Private Limited (Applicant No. 4/ Transferee Company).

2. As per averments, the registered offices of the Transferor as well as that of the Transferee Companies are situated in the National Capital Territory of Delhi, falling within the territorial jurisdiction of this Court.

3. The Applicant No. 1 / Transferor No. 1 Company was incorporated under the Act on 20th November, 2013 under the name and style of "Gyankunj Colonizers Private Limited " having CIN U70100 DL2013 PTC260405. Its authorized share capital is Rs. 50,00,000/- while its and issued, subscribed and paid up capital is Rs. 41,90,910/-divided into 4,19,091 equity shares of Rs. 10/-each.

The main object of Applicant No.1 Company/Transferor Company is to carry on the business of real estate.

4. The Applicant No. 2 / Transferor No. 2 Company was incorporated under the Act on 13th November, 2013 under the name and style of "Gyan

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Jyoti Colonizers Private Limited” having CIN U70109 DL2013 PTC260228. Its authorized and issued, subscribed and paid up share capital is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each. Its main object is to carry on the business of real estate.

5. The Applicant No. 3 / Transferor No. 3 Company was incorporated under the Act on 23rd August, 2013 under the name and style of “Supratik Eparks Private Limited” having CIN U70100 DL2013 PTC256878. Its authorized and issued, subscribed and paid up share capital is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each. Its main object is to carry on the business of real estate.

6. The Transferee Company/ Applicant No. 4 was incorporated under the Act on 22nd October, 2008 under the name and style of “Sun Buildmart Private Limited” having CIN U45200 DL2008 PTC184429. Its authorized and paid up share capital is Rs.10,00,000 /- divided into 1,00,000 equity shares of Rs.10/-each. Its main object is to carry on the business of real estate.

7. As per averments, the Transferor Companies are desirous of amalgamating with the Transferee Company and have formulated a Scheme of Amalgamation.

8. Copies of the Memoranda of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2018 and reports of the Statutory Auditors of all the Applicant Companies have been filed.



It has also been certified by the Statutory Auditors of each of the applicant companies that the Accounting Treatment as in the Scheme is in compliance with the Accounting Standards prescribed u/s 133 of the Companies Act 2013.

9. It has been stated on behalf of the Applicant Companies that the Scheme of Amalgamation is necessitated and justified on grounds that it:-

- a. The Transferor and Transferee Companies are closely held group Companies under common control and management and would result in consolidation and pooling off their resources and business synergy;
- b. Would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity;
- c. Would result in usual economies of a centralized and a large company holding elimination of duplicate work, reduction in overheads, better and more productive utilization of human and other resource and enhancement of overall business efficiency;
- d. Would enhance the shareholders value of the Transferor and Transferee Company;
- e. Would have beneficial impact on all the Transferor and Transferee Companies, their shareholders, employees and other stakeholders and all concerned.

The Appointed Date of the Scheme is 1st April, 2018.

10. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 14th September 2018, issued by Jitender Garg & Associates., Chartered Accountants, New Delhi, as per the settled principles of valuation.

As per the Share Exchange ratio, based on net asset value, the Chartered accountants have proposed the following:-

- a. 1079 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 1000 equity shares of Rs.10/- each fully paid up to the shareholders of Gyankunj Colonizers Private Limited (Transferor Company No.1);
- b. 1112 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 1000 equity shares of Rs.10/- each fully paid up to the shareholders of Gyan Jyoti Colonizers Private Limited (Transferor Company No.2);
- c. 1203 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 1000 equity shares of Rs.10/- each fully paid up to the shareholders of Supratik Eparks Private Limited (Transferor Company No.3);

11. The Board of Directors of each of the applicant companies vide their respective meetings held on 14th September, 2018 have



unanimously approved the proposed Scheme of Amalgamation. Copy of the board resolutions passed have been filed.

12. Vide the present application, a prayer is made for dispensation of convening meetings in view of the following facts:-

A. In respect of the Transferor Company No.1 / Applicant Company No.1:-

- It has 3 shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured creditor as certified by the Chartered Accountant.
- It has 3 Unsecured creditors, who have accorded their consent vide affidavits placed on record.

In view of the consent affidavits of its 3 shareholders and 3 unsecured creditors being on record, the requirement of convening the meeting of the shareholders and unsecured creditor is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

B. In respect of the Transferor Company No.2/ Applicant Company No.2:-

- It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured creditor as certified by the Chartered Accountant.

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- It has 3 Unsecured creditor who have accorded their consent vide affidavits placed on record.

In view of the consent accorded by its 2 Shareholders and 3 unsecured creditors, the requirement of convening the meeting of the shareholders and unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

C. In respect of the Transferor Company No.3/ Applicant Company No.3:-

- It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured creditor as certified by the Chartered Accountant.
- It has 2 Unsecured creditor who have accorded their consent vide affidavits placed on record.

In view of the consent accorded by its 2 Shareholders and 2 unsecured creditors, the requirement of convening the meeting of the shareholders and unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

D. In respect of the Transferee Company No.4/ Applicant Company No.4:-

- It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.

- It has no Secured creditor as certified by the Chartered Accountant.
- It has 14 Unsecured creditors who have been paid off.

In view of the consent accorded by its 2 Shareholders, and payment proof of 14 unsecured creditors, the requirement of convening the meetings of the shareholders and unsecured creditor are dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

13. The proposed Scheme of Amalgamation is annexed along with the present application.

14. It is submitted that the proposed arrangement is sought to be made under the provisions of Section 230 to 232 of the Companies Act, 2013 and the Scheme if sanctioned by this Tribunal, will take effect from the date of on which certified copy of the order of sanctioning of proposed Scheme, passed by this Tribunal is filed with the Registrar of Companies after obtaining necessary sanctions, orders or approvals.

15. It has also been submitted that there are no proceedings pending inquiry or investigation in respect of the applicant company.

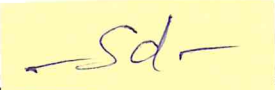
16. Further, it has been stated that the scheme will be beneficial to the applicant companies and their respective shareholders and creditors.


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17. While dispensing with the meetings, this Bench also directs that notices be sent to the Central Government through the office of the Regional Director (Northern Region), the Income Tax Authorities, Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator and other sectoral regulators or authorities as required under sub-section (5) of section 230 of the Companies Act, 2013 who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangement, and Amalgamation) Rules, 2016. Copies of the notices along with the proof of dispatch be filed before this Bench along with the affidavit of compliance.

18. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies (Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicant.

As sequel to the above, the present application stands allowed by dispensing with the meetings of shareholders and creditors of the applicant companies.


Deepa Krishan
Member (T)


InaMalhotra
Member (J)