

THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

CO. APPL.(CAA) 163/ND/2018

IN THE MATTER OF:

M/s Milestone Safeshelter Private Limited
Applicant No.1/Transferor Company

AND

M/s Milestone Devprojects Private Limited
Applicant No.2/Transferor Company

WITH

M/s Milestone Mega City Private Limited
Applicant No. 3/ Transferee Company

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)
MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

PRESENT- Ms. Rekha Mittal, PCS

Order Delivered on-05.10.2018

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 Milestone Safeshelter Private Limited (Applicant No.1/Transferor Company No.1), M/s Milestone Devprojects Private Limited (Applicant No.2/Transferor Company No.2) in connection with the Scheme of

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Amalgamation (hereinafter referred to as 'the Scheme') for merging its business with M/s Milestone Mega City Private Limited (Applicant No. 3/ 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 23rd May, 2008 under the name and style of "Milestone Safeshelter Private Limited" having CIN U45201 DL2008 PTC322525. Its authorized share capital is Rs. 1,00,00,000/- while its issued, subscribed and paid up capital is Rs. 10,00,000 divided into 1,00,000 equity shares of Rs. 10/-each.

The main object of Applicant No.1 Company/Transferor Company is to carry on the business of providing service of warehousing and storage.

4. The Applicant No. 2 / Transferor No. 2 Company was incorporated under the Act on 23rd May, 2008 under the name and style of "Milestone Devprojects Private Limited" having CIN U45200 DL2008 PTC322526. Its authorized share capital is Rs. 1,00,00,000/- while its issued, subscribed and paid up capital is Rs. 1,11,110 divided into 11,111 equity shares of Rs.10/- each. Its main object is to carry on the business of real estate.

5. The Transferee Company/ Applicant No. 3 was incorporated under the Act on 24th March, 2008 under the name and style of "Milestone Mega

City Private Limited” having CIN U45202 DL2008 PTC 322522. Its authorized share capital is Rs. 1,00,00,000 /- while its issued, subscribed and paid up capital is Rs. 1,19,090/- divided into 11,909 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.

The Memorandum and Articles of Association of each company provides for entering into a Scheme of such Amalgamation.

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 1st August 2018, issued by Nitisha & Associates., Chartered Accountants, Dehradun, 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. 359 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 10000 equity shares of

Rs.10/- each fully paid up to the shareholders of Milestone Safeshelter Private Limited (Transferor Company No.1);

- b. 8347 Equity Shares of Rs. 10/- each to be issued and allotted by the Transferee Company in lieu of every 10000 equity shares of Rs.10/- each fully paid up to the shareholders of Milestone Devprojects Private Limited (Transferor Company No.2);

11. The Board of Directors of each of the applicant companies vide their respective meetings held on 2nd August, 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 2 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 creditors, who have accorded their consent vide affidavits placed on record.

In view of the consent affidavits of its 2 shareholders and 2 unsecured creditors being on record, the requirement of convening the meeting of the shareholders and unsecured

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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.
- 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.

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

- It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has 1 Secured creditor who has accorded its consent vide affidavit placed on record.



- It has 17 unsecured creditors, 10 of whom have been paid of the remaining 6 having more than 99% in value, have accorded their consent.

In view of the consent accorded by its 2 Shareholders, 1 Secured and 90% in value of the unsecured creditors, the requirement of convening the meetings of the shareholders, secured and unsecured creditor are dispensed with.

In view of the above, the prayer for dispensing with the requirement of publication is also allowed.

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.




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)