

**In the National Company Law Tribunal
Kolkata Bench, Kolkata**

Company Petition (CAA) No. 174/KB/2020

Connected With
C. A.(CAA) No. 1248/KB/2019

In the matter of:

The Companies Act, 2013 - Section 230(6)

And

In the Matter of :

Lok Realtors Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U70101WB2007PTC117616 and its registered office at 7,Rabindra Sarani, 1st Floor, Room No 2, Kolkata- 700001, in the State of West Bengal.

... Transferor Company No. 1

And

Nigam Housing Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U70109WB2012PTC184091 and its registered office at 2/6, Sarat Bose Road, 2nd Floor, Room No 203, Kolkata- 700020 in the State of West Bengal.

... Transferor Company No. 2

And

Nigam Projects Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U70101WB2007PTC117729 and its registered office at 2/6, Sarat Bose Road, 2nd Floor, Room No 203, Kolkata- 700020 in the State of West Bengal.

... Transferor Company No. 3

And

Nigam Realtors Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U70101WB2007PTC117729 and its registered office at 2/6, Sarat Bose Road, 2nd Floor, Room No 203, Kolkata- 700020 in the State of West Bengal.

... Transferor Company No.4

And

One Point Tradelink Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U74120WB2010PTC150046 and its registered office at 2/6, Sarat Bose Road, 2nd Floor, Room No 203, Kolkata- 700020 in the State of West Bengal.

... Transferor Company No. 5

And

Step Up Commerce Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB2008PTC127859 and its registered office at 2/6, Sarat Bose Road, 2nd Floor, Room No 203, Kolkata- 700020 in the State of West Bengal.

... Transferor Company No.6

And

ABS Portfolio Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U65910WB1995PTC068678 and its registered office at 2/6, Sarat Bose Road, 2nd Floor, Room No 203, Kolkata- 700020 in the State of West Bengal.

... Transferee Company

And

In the matter of:

1. Lok Realtors Private Limited,
2. Nigam Housing Private Limited,
3. Nigam Projects Private Limited,
4. Nigam Realtors Private Limited,
5. One Point Tradelink Private Limited,
6. Step Up Commerce Private Limited and
7. ABS Portfolio Private Limited

. Petitioner(s)

Date of Hearing: 02/07/2021

Date of pronouncement: 13/07/2021

Coram:

Shri Rajasekhar V.K : **Member (Judicial)**
Shri Harish Chander Suri : **Member (Technical)**

Counsel on Record for the Petitioner(s):

1. Mrs. Jyoti Mandal, Pr. Chartered Accountant
2. Mrs. Swati Bajaj, Pr. Company Secretary

O R D E R

Per Rajasekhar V.K., Member (Judicial)

1. The instant petition has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 for sanction of the Scheme of Amalgamation of **Lok Realtors Private Limited (Transferor Company No.1), Nigam Housing Private Limited (Transferor Company No.2), Nigam Projects Private Limited (Transferor Company No.3), Nigam Realtors Private Limited (Transferor Company No.4), One Point Tradelink Private Limited (Transferor Company No.5), Step Up Commerce Private Limited (Transferor Company No.6),** with **ABS Portfolio Private Limited (Transferee Company)** whereby and whereunder the entire undertaking of the Transferor

Companies together with all assets and liabilities relating thereto as an ongoing concern are proposed to be transferred to and vested in the “Transferee Company” with appointed date being **1st April 2018** on the terms and conditions fully stated in the Scheme of Amalgamation.

2. Ld. Counsel for the Petitioner Companies submits that:-

- (a) The Board of Directors of the Petitioner Companies in their respective Board meetings held on 22nd January 2019 unanimously approved the scheme of amalgamation. Extract copies of the board resolution are annexed with the petition marked as Annexure ‘F’.
- (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, with a view to consolidate business of LRPL, NHPL, NPPL, NRPL, OPTPL and SUCPL into APPL, to create a larger entity, to achieve economy of scale, and to rationalize, streamline the ownership structure of APPL, the Amalgamation of LRPL, NHPL, NPPL, NRPL, OPTPL and SUCPL into APPL is being envisaged. The Amalgamation, if approved, would enable achievement of various objectives, including Reduction in overheads and administrative, managerial and other expenditure; provide greater efficiency and more optimal utilization of resources; reduce legal and regulatory compliances; create enhanced value for all stakeholders of the respective companies; reorganize businesses to optimize for operational efficiency, rationalize for cost and streamline for growth, since all the Companies are situated in West Bengal, i.e., a single State.
- (c) It is stated that the Statutory Auditors of the Petitioner Nos.1 to 7 have by their certificates dated 21.06.2019 confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.

- (d) It is stated that no proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioner(s).
- (e) It is stated that the exchange ratio of shares in consideration of the Amalgamation has been fixed on a fair and reasonable basis and on the basis of the Report thereon of M/s Manish Gadia, Registered Valuers.
- (f) It is submitted by the petitioners that vide order of this Tribunal dated 28th November, 2019 in Company Application (CAA) No.1248/KB/2019, the meeting of the equity shareholders and creditors of all the petitioner companies were dispensed with.
- (g) In compliance with the order dated 17th November 2020, passed in CP(CAA) No. 174/KB/2020, the Petitioner Companies have filed affidavit of service affirmed on 26/12/2020, evidencing service of notice to Statutory Authorities and publication of notice in the newspapers and service upon the Statutory Authorities.
- (h) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
3. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”) and Official Liquidator, High Court, Calcutta and have filed their representations before this Tribunal.
4. The Official Liquidator has filed his report dated 07/08/2020 and concluded as under:-
- “(10) *That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/the Companies Act, 2013 whichever is applicable.*
- (11) *That in view of the submission made above the Hon’ble National Company Law Tribunal may like to pass such order/orders as deemed fit and proper in the facts and circumstance of the case.”*
5. The Regional Director, Eastern Region, Ministry of Corporate Affairs at Kolkata vide its affidavit affirmed on 08.02.2021 has reported as below:-

(a) In regard to para 2(b) of the earlier representation dated 05/01/2021, the contention of the Petitioner Companies made in para 5 of the rejoinder dated 05/02/2021 states that the Petitioner Companies while approving the proposed Scheme of amalgamation at their respective Board meeting held on 22/01/2019, fixed the Appointed Date as 1st April, 2018 and at that point of time the latest adopted financial results was as at 31/03/2018. Further, such appointed date was fixed in the Board Meeting dated 22/01/2019 much before the Circular No. 09/2019 dated 21/08/2019 issued by the Ministry of Corporate Affairs. However, the Petitioner Companies is willing to accept any other date i.e. 01/04/2019 or even 01/04/2020 as Appointed Date. In view of such submission and willingness, Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

(b) In regard to para 2(c) of the earlier representation dated 05/01/2021, the Petitioner Companies by para 6(a) of the rejoinder dated 05/02/2021 undertakes to comply with the provision of section 232(3)(i) of the Companies Act, 2013 in regard to adjustment of fees upon clubbing of Authorized Share Capital of the Transferor Companies with the Authorized Share Capital of the Transferee Company in post amalgamation and they will pay fees, where applicable in case of increase in Authorized Share Capital of the Transferee Company. In view of such undertaking to comply with the provision of section 232(3)(i) of the Companies Act, 2013, Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

(c) In regard to para 2(e) of the earlier representation dated 05/01/2021, the Petitioner Companies by para 6(b) of the rejoinder dated 05/02/2021 undertakes to pay stamp duty, if applicable, on the transfer of the immovable properties from the Transferor Companies. In view of such undertaking, Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

(d) In regard to para 2(d) of the earlier representation dated 05/01/2021, the Petitioner Companies by para 7 of the rejoinder dated 05/02/2021 submitted that due to inadvertent error of omission, the transferor company Step up Commerce Private Limited could not annexed the list of investments in unquoted shares as a separate list along with the financial statements for the financial year 2018-19. However, the said Transferor Company has filed FORM AOC-4 in respect of Financial Statements for the year 2019-20 attaching therewith complete details, including list of investments in unquoted shares and this list of investments is similar and same with the list of investments for 2018-19 and 2017-18 in terms of investee company, nature and quantum of investments. However, the fact remains that the financial statement for 2018-19 filed in MCA portal would continue to host the incomplete financial statement. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

(e) In regard to para 2(f) of the earlier representation dated 05/01/2021, the Petitioner Companies by para 8 of the rejoinder dated 05/02/2021 submitted that RBI had issued NOC on 17/01/2020 with 6(six) months validity but during the period of lockdown as declared due to Covid-19 pandemic, the validity of said NOC expired and also submitted that this pandemic situation be taken note of while calculating the **6(six)** months validity of the NOC issued by RBI. In view of such submission, Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.

(f) *In regard to para 2(g) of the earlier representation dated 05/01/2021, the Petitioner Companies by para 9 of the rejoinder dated 05/02/2021 submitted that though there is no demand raised on the Transferor Company Step Up Commerce Private Limited, however, the Transferee Company undertakes to take responsibility of any liability or any other outstanding demand including future demand of the Income Tax Department in respect of any Transferor Companies. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.*

(g) *It is further submitted that on 13/01/2021, this deponent has received one mail along with few pages of unsigned attachments from Shri Ashok Kumar Jhunjunwala, Advocate, High Court, Mumbai wherein he has made some observations/views on Balance Sheet/ Financial Statements in respect of financial years from 2007-08 to 2018-19 and other non-compliances of the Companies Act, 1956 in respect of Lok Realtor Private Limited, one of the transferor companies in the proposed scheme. However, he has not stated in the said mail/observations how he is interested/involved in the proposed Scheme. On receipt of the said observations/views, this Deponent, by letter dated 15/01/2021 has taken up the matter with Registrar of Companies, West Bengal for his examination and submit his representation/report in the matter, which is still awaited. In this regard, it is pertinent to refer to valued orders of Hon'ble National Company Law Tribunal, Kolkata Bench in CP(CAA) No. 144/KB/2020 connected with CA(CAA) No. 1527/KB/2019 and also in CP (CAA) No. 418/KB/2020 connected with CA(CAA) No. 1526/KB/2019 where Shri Ashok Kumar Jhunjunwala, Advocate, High Court, Mumbai made his observations /objections on the financial statements/balance sheet of the respective petitioner Companies, the Hon'ble National Company Law Tribunal, Kolkata Bench passed order sanctioning the Scheme of Amalgamation overruling such objection of Shri Jhunjunwala subject to rider that the Registrar of Companies, West Bengal shall look into the matter at his level and take appropriate action in case violation of the Statutory provision is found. In view of this, Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper.*

6. Heard the Ld. Practising Chartered Accountant and Company Secretary for the Petitioner Companies and authorised representative of Regional Director, Eastern Region, Ministry of Corporate Affairs, the report of the Regional Director, Eastern Region, Ministry of Corporate Affairs, the report of Official Liquidator. There appears to be no impediment in sanctioning the present Scheme. Consequently sanction is hereby granted to the Scheme under section 230 & 232 of the Companies Act, 2013 upon the following directions:-

- (i) The Scheme of Amalgamation mentioned in this petition being Annexure "A" to the petition, is sanctioned by this Tribunal to be binding on all the equity shareholders of the petitioner companies and all concerned with effect from 01/04/2018. The appointed date is retained as it is since the financials as at 31.03.2018 would have been the basis of the Valuation Report.

- (ii) All the properties, rights, interests, benefits, advantages, liabilities and obligations of the Transferor Companies including those specified in the Schedule of Assets be transferred to and vested in without further act or deed in the Transferee Company and accordingly the same shall pursuant to section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the debts, liabilities, duties and obligations of the Transferee Company.
- (iii) The employees of the Transferor Companies shall be engaged by the Transferee Company, as provided in the Scheme;
- (iv) All legal proceedings and/or suits and/or appeals, if any, now pending by or against the Transferor Companies be continued by or against the Transferee Company.
- (v) The Transferee Company do without further application issue and allot to such members of the Transferor Companies herein the shares in the Transferee Company to which they are entitled as per the said Scheme of Amalgamation.
- (vi) That the Transferor Companies and the Transferee Company shall each within thirty days of the date of the receipt of this order, cause a certified copy thereof to be delivered to the Registrar of Companies for registration and on such certified copies being so delivered the Transferor Companies shall be dissolved without winding up.
- (vii) The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
- (viii) The **Company Petition (CAA) No. 174/KB/2020 connected with C.A. (CAA) No. 1248/KB/2019** is disposed of accordingly.

- (ix) Urgent certified copy of this order, if applied for, be issued upon compliance of all requisite formalities.

Harish Chander Suri
Member (Technical)

Rajasekhar V K
Member (Judicial)

Signed on the 13th July, 2021

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