

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
AT NEW DELHI**

**Present: SMT. INA MALHOTRA, MEMBER (JUDICIAL)
& SHRI S.K. MOHAPATRA, MEMBER (TECHNICAL)**

C.P.No. 1173 of 2016

**COMPANY APPLICATION (MAIN) NO. 155 OF 2016
(TRANSFERRED FROM THE HON'BLE HIGH COURT OF DELHI)**

**In the Matter of Section 391 & 394 of the Companies Act, 1956
(Presently Sections 230-232 of the Companies Act, 2013)**

And In the Matter Of

SCHEME OF ARRANGEMENT

Between

1. SU ESTATES PVT. LTD.

Having its registered at:

A-11, 1ST FLOOR,

NEETI BAGH,

NEW DELHI-110049

.....PETITIONER NO. 1 / (TRANSFEROR COMPANY)

AND

2. IREO PVT. LTD.

Having its registered office at

A-11, 1ST FLOOR,

NEETI BAGH,

NEW DELHI-110049

.....PETITIONER NO. 2/ (TRANSFEREE COMPANY)

AND

3. SUNSINE REALBUILD PVT. LTD.

Having its registered office at:

304, 3RD FLOOR,

KANCHAN HOUSE, KARAMPURA

COMMERCIAL COMPLEX,

NEW DELHI-110015

.....PETITIONER NO. 3 / (RESULTING COMPANY)

FOR THE PETITIONERS: RAJEEV K. GOEL, ADVOCATE

**FOR REGIONAL DIRECTOR, (NR), MCA: Mr. C. Balooni,
Company Prosecutor**

FOR OFFICIAL LIQUIDATOR: Chetna Khandpal, Company Prosecutor

Date of Decision: 26th April 2017

ORDER

1. This joint petition filed by the companies above named has come up finally before us on 20.03.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor Company with Transferee Company and demerger of demerged undertaking of Transferee Company into Resulting Company.
2. The transferor company/Petitioner No. 1, Su Estates Pvt. Ltd. Was incorporated on 13th February, 2006 under the provisions of the Companies Act, 1956 in the National Capital Territory of Delhi and its registered office is situated at A-11, 1ST Floor, Neeti Bagh, New Delhi-110049.
3. The transferee company/ Petitioner No. 2, Ireo Pvt. Ltd. Was incorporated on 15th March 2004 under the name of "Orange Realty Pvt. Ltd" under the provisions of the Companies Act, 1956 in the National Capital Territory of Delhi. The name of the Company was subsequently changed to "Ireo Reality Pvt. Ltd." on 18.09.2009 and again the company changed its name to the present name "Ireo Pvt. Ltd." vide a fresh incorporation certificate dated 9th October 2009. Company's registered office is situated at A-11, 1st Floor, Neeti Bagh, New Delhi-110049.

4. The resulting company/ Petitioner No. 3, Sunshin Realbuild Pvt. Ltd. Was incorporated on 27th April 2009 under the provisions of the Companies Act, 1956 in the National Capital Territory of Delhi and its registered office is situated at 304, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi-110015.
5. A perusal of the petition discloses that initially the transferor, transferee and the Resulting Company had filed a joint first motion, application bearing C.A. No. (M) 155 of 2016, seeking directions for dispensing with the convening of meetings of shareholders, and creditors of the transferor, transferee and resulting company. Hon'ble High Court of Delhi vide its order dated 26th October 2016 dispensed with the requirement of convening all the meetings of equity shareholders and unsecured creditors of the Transferor company and the Resulting company. It is pertinent to state here that the transferor company and the resulting company did not have any secured creditor. In case of Transferee Company also the meetings of equity shareholder, preferential shareholders, debenture holders, secured creditors and unsecured creditors were dispensed with by the aforesaid order dated 26th October 2016 of Hon'ble High Court of Delhi.
6. Subsequent to the order of dispensation of the meetings ordered by the Hon'ble High Court of Delhi on 26.10.2016, the petitioners have filed their joint petitions for sanction of the Scheme of Arrangement before the

Hon'ble High Court of Delhi on 16.11.2016 under the erstwhile provisions of the Companies Act 1956.

7. On 25.11.2016 the Hon'ble High Court of Delhi ordered issuance of notice, in the Second Motion petition in C.P. No.1173/2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme arrangement, to the Regional Director and the Official Liquidator. The Petitioners were also directed vide the said order to carry out publication in the newspapers 'Statesman' English edition as well as in 'Veer Arjun' Hindi edition, returnable on 10.03.2017.
8. While the joint petition in C.P.No.1173 of 2016 was pending disposal, since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 of the Companies Act, 2013 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred the records of the above petition to the Principal Bench, NCLT vide order dated 20.02.2017. Subsequently Principal Bench vide order dated 10th March, 2017 transferred the petition to the New Delhi Bench for our consideration.

9. In view of the above, the petition of Second Motion as filed by the joint petitioners before the Hon'ble High Court and subsequently transferred to this Tribunal is taken up finally for consideration. It is seen from the records that the Petitioners have filed an affidavit dated 06.03.2017 affirming compliance of the order passed by the Hon'ble High Court of Delhi dated 25.11.2016. A perusal of the affidavit discloses that the petitioners have affected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Statesman' English edition on 23.02.2017 as well as in 'Veer Arjun' Hindi edition on 23.02.2017 in relation to the date of hearing of the petition on 10.03.2017. Further, the affidavit also discloses that copies of petition have been duly served to the Registrar of Companies, Regional Director, Northern Region and the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 25.11.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed.
10. Additionally, the petitioners have also filed an affidavit dated 21.03.2017 before this tribunal affirming that the petitioners nor their Legal Counsels had received any objection/representation against the proposed scheme of Amalgamation till the date of such affidavit. The representation/affidavit of the Regional Director, NR, MCA dated 16.03.2017 and the Report of Official Liquidator dated 09.03.2017 have been placed before us.



11. The Official Liquidator has filed his report dated 09.03.2017, wherein he has stated that he did not receive any complaint against the proposed Scheme from any person/party interested in the Scheme in any manner and that the affairs of the Petitioners companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest.

12. We have heard the counsels for the petitioners and also considered the representations made by the Regional Director, Northern Region. An examination of the said representation/affidavit of Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi discloses that despite letter dated 19.12.2016 to the Principal Commissioner of Income Tax, New Delhi, no specific observation/comments have been received from the said office.

13. A Further perusal of the representation/report of the Regional Director would reveal the following principal points / observations:

i. That the Transferor Company does not have any foreign/ non-resident Shareholder, however, the transferee Company and the Resulting Company have foreign/ non-resident Shareholders. Accordingly, it is submitted that the petitioner companies may be directed to comply with the provisions of FEMA/RBI.

It is pertinent to mention here that the regional director in its report has admitted that the Petitioner Companies in their reply have stated that no prosecution proceeding against the Petitioner

Companies and their Directors is pending before any Court for violation of various laws such as Companies Act, 1956, FEMA, IPC, SEBI Act, RBI Act, etc.

- ii. *That the Registrar of Companies at Para 22 of his report has stated that that there is a complaint of Sh. Harikiran Singh Sandhu and Dr. Inderbir Kaur Sandhu against the transferee Demerged company alleging inter-alia that the company has been allowed to collect huge sums from prospective home buyers especially in absence of statutory clearances and it has issued receipts without narration of its registered office and CIN no. thereon.*

In this connection the report of Regional director states that the matter has been taken up with the company and the reply of the company is under examination in ROC office.

- iii. *That the Registrar of Companies at Para 31 of his report has observed as under:*

- a. *It has been observed that the statement of individual assets and liabilities of the demerged undertaking has not been found to be enclosed with the proposed scheme. Therefore, it could not be ascertained whether the assets and liabilities of the demerged undertaking are transferred at the value appearing at the*

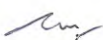
balance sheet immediately before the demerger to the resulting company.

b. It has also been observed that the Demerged Company (transferee company) is a subsidiary of IREO Investment Holding Ltd. Hence, it is submitted that the resulting company may be asked to give an undertaking in regard to requisite compliances from Reserve Bank of India as required under FEMA for payment of proposed consideration to the said foreign company/entities.

14. In relation to the above objections raised by the Regional Director, a detailed reply has been filed by the petitioners dated 17.03.2017 along with annexures. In relation to the observations relating to compliance of provisions of FEMA/ RBI, Petitioners have affirmed that the requisite compliance with the applicable provisions of FEMA and the RBI regulations (including filing of necessary forms/returns, etc., if any) will be made by the respective Companies with regard to issue of shares to foreigners/non-resident persons, pursuant to the Scheme of Arrangement by the concerned Companies. However it is stated that such issue of shares is covered under the Automatic Route and no approval is required to be obtained from the RBI or any other authority for issue of shares to the foreign/non-resident shareholders, pursuant to the Scheme. An Affidavit

on behalf of the Resulting Company, confirming that it will comply with the applicable provisions of FEMA and the RBI Regulations (including filing of necessary forms/returns, etc., if any) with regard to issue of shares to foreigners/non-resident persons, pursuant to the Scheme of Arrangement, has been placed on record. Perusal of the same discloses that the resulting company has~~to~~ filed the required undertaking and therefore it can be held that the objection in this regard has been duly taken care of.

15. In connection with the observations of the Registrar of Companies that there is a complaint of Sh. Harikiran Singh Sandhu and Dr. Inderbir Kaur Sandhu against the transferee Demerged company alleging inter-alia that the company has allowed to collect huge sums from prospective home buyers especially in absence of statutory clearances and it has issued receipts without narration of its registered office and CIN number thereon, it is submitted by the petitioners that the aforesaid persons have booked a flat in the Project of the Transferee Company namely "Ireo Gurgaon Hills" at Gurgaon, Haryana. It is contended that in terms of the Flat Buyers Agreement, the aforesaid customers are required to make further payment against the said booking which they had not paid. It is further alleged that to put pressure on the Company against taking any coercive action, these customers have made fabricated complaint against the Company. It is pertinent to mention here that the reply of Transferee Company against the aforesaid complaint is under consideration of ROC. It is further seen that the



aforesaid customers are not affected by the sanctioning of the present Scheme, as the concerned real estate project is not the subject matter of merger/ de-merger. The Transferee Company will remain in existence even after the sanction of the Scheme and the said real estate project will remain in the Transferee Company. Additionally, the company contends that there exist sufficient assets in the Transferee Company, even post demerger of the Demerged Undertaking. In view of the above it is observed that the sanction of the scheme will not prejudice the complainants in any manner.

16. In respect of observation of the de-merger of various assets and liabilities of the demerged undertaking of the Transferee Company into the Resulting Company, the petitioners confirm that all the assets and liabilities of the demerged undertaking will be transferred to the Resulting Company at the book value as appearing in the Balance Sheet on the day immediately preceding the appointed date. Further the Scheme of Arrangement clearly provides that all the assets and liabilities of the demerged undertaking will be transferred to the Resulting Company at the book value as appearing in the Balance Sheet on the day immediately preceding the appointed date in accordance with Para 2.1.5, Para 2.4.2 and Para 5.1.2 of the Scheme.

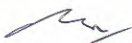
17. It is also pertinent to note here that despite due notice, the Income Tax Authorities have not placed any specific observation/objection against the scheme for our consideration.



18. The proposed scheme of Arrangement provides as follows:
- a. *All assets, and liabilities including all other statutory liabilities, if any, of the Transferor Company will be transferred and vest to the Transferee Company.*
 - b. *All the assets and liabilities including all other statutory liabilities, if any, of the demerged undertaking of Transferee Company will be transferred and vest in the resulting company.*
 - c. *All the employees of the transferor company in service on the effective date, if any, shall become the employees of the Transferee Company on and from such date, without any break or interruption in service and upon terms and conditions not less favorable than those applicable to them in the transferor company, on the effective date.*
 - d. *Similarly, All the employees employed in the demerged undertaking of transferee company, in service on the effective date, if any, shall become the employees of the Resulting Company on and from such date, without any break or interruption in service and upon terms and conditions not less favorable than those applicable to them in the resulting company, on the effective date.*

- e. *Share Exchange/swap ratio for amalgamation: the transferee company will issue 1917 equity shares of Rs. 10 each, credited as fully paid up, for every 110 equity shares of Rs. 10 each held in the Transferor Company.*
- f. *Share exchange/swap ratio for demerger: the resulting company will issue a total of 50,000 equity shares of Rs. 10 each, credited as fully paid up, on a proportionate basis, to all the equity shareholders of the Transferee Company as on the record date-2, as defined in the scheme. Further the resulting company will issue a total of 1,000 equity shares of Rs. 10 each, credited as fully paid up, on a proportionate basis, to all the preference shareholders of the transferee company.*

19. Thus, the Scheme itself provides for the discharge of not only liability but also other statutory liabilities as well, of the Transferor Company and Transferee Company. Above paragraph in a nutshell brings out the effect of amalgamation and the records produced before us by the petitioners and taking into consideration the overall scheme, in general and in particular, the interest of the revenue appears to be sufficiently protected.



20. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and the affidavit filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, whereby no serious objections have been raised to the proposed Scheme, there appears to be no impediment to grant sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under Sections 230-232 of the Companies Act, 2013 (corresponding Section 391 and 394 of the Companies Act, 1956). The sanctioned Scheme of arrangement shall be binding on the Transferor, Transferee and resulting Companies and on all their respective shareholders and creditors. The Petitioners shall however remain bound to comply with the statutory requirements in accordance with law including necessary compliance of the applicable provisions of FEMA / RBI.

21. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioner companies.

22. While approving the Scheme as above, we further clarify 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.


23. THIS TRIBUNAL DO FURTHER ORDER

- 1) That transferor company/Petitioner No.1, shall stand dissolved without being wound up.
- 2) That all the property, rights and powers of the transferor company be transferred without further act or deed to the transferee company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vest in the transferee company for all the estate and interest of the transferor company therein but subject nevertheless to all charges now affecting the same; and
- 3) That all the property, rights and powers of the demerged undertaking of transferee company be transferred without further act or deed to the resulting company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and vest in the resulting company for all the estate and interest of the transferee company in respect of demerged undertakings therein but subject nevertheless to all charges now affecting the same; and
- 4) That all the liabilities and duties of the transferor company be transferred without further act or deed to the transferee company and



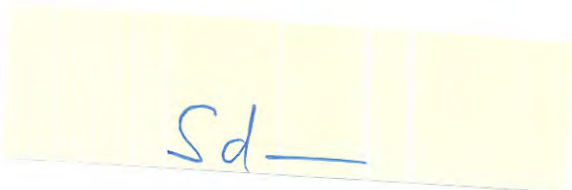
accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and

- 5) That all the liabilities and duties of the demerged undertaking of transferee company be transferred without further act or deed to the resulting company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the resulting company ; and
- 6) That all proceedings now pending by or against the transferor company be continued by or against the transferee company; and
- 7) That all proceedings now pending by or against the demerged undertaking of transferee company be continued by or against the resulting company; and
- 8) That the Transferee Company do without further application allot to such members of the Transferor Company, as is required by Scheme Of Arrangement herein the shares in the transferee company to which they are entitled under the said Scheme of Arrangement and
- 9) That the resulting Company do without further application allot to such members of the demerged undertaking of the transferee company, as is required by Scheme of Arrangement herein the shares in the resulting company to which they are entitled under the said Scheme of Arrangement.



- 10) That transferor company shall within thirty days of the date of the 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 and the Registrar of Companies shall place all documents relating to the transferor company and registered with him on the file kept by him in relation to the transferee company and the files relating to both the said companies shall be consolidated accordingly. Similarly Registrar of companies shall also place all documents relating to the transferee company in respect of demerged undertaking and registered with him on the file kept by him in relation to the Resulting company and shall consolidate them accordingly; and
- 11) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

The Petition stands disposed of in the above terms.



Sd—

(S. K. MOHAPATRA)
MEMBER (T)



Sd—

(INA MALHOTRA)
MEMBER (J)

(Shipra Mittal)