

IN THE NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

C.P(CAA) NO 704/KB/2018

CONNECTED WITH

C.A(CAA) NO 470/KB/2017

In the matter of

A petition for sanction of Scheme of Amalgamation made under Sections 230 to 232 and other applicable provisions of the Companies Act , 2013 read with the Companies (Compromises, Arrangements and Amalgamations Rules) , 2016

AND

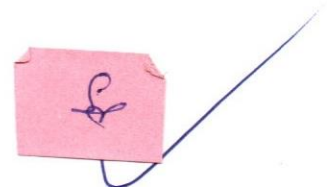
In the matter of

SATTVA DEVELOPERS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 41, Netaji Subhas Road, 4th Floor, Room No. 404, Kolkata-700001 in State of West Bengal within the aforesaid jurisdiction

- AND -

In the matter of

ORCHID GRIHA NIRMAN PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 7, Chittaranjan Avenue, Kolkata- 700072 in State of West Bengal within the aforesaid jurisdiction;



- AND -

In the matter of

BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 7, Chittaranjan Avenue, Kolkata- 700072 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of

COMMAND CONSTRUCTIONS PRIVATE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 and having its Registered Office at 7, Chittaranjan Avenue, Kolkata- 700072 in State of West Bengal within the aforesaid jurisdiction;

- AND -

In the matter of:

1. SATTVA DEVELOPERS PRIVATE LIMITED : (TRANSFEREE COMPANY)
2. ORCHID GRIHA NIRMAN PRIVATE LIMITED : (TRANSFEROR COMPANY NO 1)
3. BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED : (TRANSFEROR COMPANY NO 2)
4. COMMAND CONSTRUCTIONS PRIVATE LIMITED : (TRANSFEROR COMPANY NO 3)

... .. APPLICANT/PETITIONER

Coram : Shri Madan B Gosavi, Member(Judicial)

FOR THE PETITIONERS :

1. Mr. Joy Saha , Advocate
2. Ms. Manju Bhuteria , Advocate ,
3. Mr. Madan Kumar Maroti , FCA

Sd

4. **Mr. N.Gurumurthy , FCA**

Mr. Shiv Chandra Prasad - For Income Tax Department

Ms Ishani Pandya, Assistant Registrar of Companies, WB, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs

Date of pronouncement of order: _____ / 09 / 2018

ORDER

Per Shri Madan B Gosavi, Member(Judicial)

1. This joint petition has been filed for sanctioning of the proposed Scheme of Amalgamation of ORCHID GRIHA NIRMAN PRIVATE LIMITED, the Petitioner No 2 above named, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED the Petitioner No 3 above named , COMMAND CONSTRUCTIONS PRIVATE LIMITED the petitioner No 4 above named, the " TRANSFEROR COMPANIES " and SATTVA DEVELOPERS PRIVATE LIMITED, being the Petitioner No 1 above named, the " TRANSFEREE COMPANY ".
2. The object of this petition is to obtain sanction of Tribunal to the Scheme of Amalgamation whereby and where under 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 appointed date being 01st April, 2017 on the terms and conditions fully stated in the Scheme of Amalgamation



a copy whereof is annexed hereto and marked with the **ANNEXURE -"B"** to this petition .

3. This Tribunal vide their order dated 04TH December,2017 passed in Company Application C.A.(CAA)NO.470/KB/2017 had directed to convene and hold separate meetings of Equity Shareholders of TRANSFEREE COMPANY and TRANSFEROR COMPANIES to consider the said Scheme of Amalgamation.
4. This Tribunal vide their order dated 04TH December,2017 passed in Company Application C.A.(CAA)NO.470/KB/2017 had directed to convene and hold separate meetings of Unsecured Creditors of TRANSFEREE COMPANY and TRANSFEROR COMPANIES to consider the said Scheme of Amalgamation.
5. This Tribunal vide their order dated 04TH December,2017 passed in Company Application C.A.(CAA)NO.470/KB/2017 had directed to convene and hold separate meetings of Secured Creditors of TRANSFEREE COMPANY to consider the said Scheme of Amalgamation.
6. This Tribunal vide their order dated 04TH December,2017 passed in Company Application C.A.(CAA)NO.470/KB/2017 had recorded that meeting of Secured Creditors of all the TRNASFEROR COMPANIES did not arise, as there are no Secured Creditors of the TRANSFEROR COMPANIES.
7. Pursuant to the said order 04TH December,2017 passed in Company Application C.A.(CAA)NO.470/KB/2017 the Applicant Companies filed a Interlocutory Application C.A. .NO 545/KB/2017 seeking enlargement of time and shifting of venue.

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8. This Tribunal vide their order dated 14TH December,2017 passed in Interlocutory Application C.A. .NO 545/KB/2017, connected with Company Application C.A.(CAA)NO.470/KB/2017, granted enlargement of time and change of venue as sought in the application.
9. This Tribunal vide their order dated 26TH February,2018 recorded that Retd. Justice SRI UMA NATH SINGH , appointed as Chairperson vide its order 04TH December,2017 declined to accept the appointment and therefore the directions contained in the order dated 14th December, 2017 in Company Application NO 545/KB/2017, connected with Company Application C.A.(CAA)NO.470/KB/2017, could not be carried out and executed within the time mentioned in the said order as there was no Chairperson .
10. This Tribunal vide their order dated 26TH February,2018 passed in I.A NO.40/KB/2018, arising out of Company Application C.A.(CAA)NO.470/KB/2017, had appointed Chartered Accountant **Sri Mukesh Banka** as Chairperson for the meeting of equity shareholders and Unsecured Creditors of the TRANSFEREE COMPANY and TRANSFEROR COMPANIES and Secured Creditors of the TRANSFEREE COMPANY.
11. This Tribunal vide their order dated 26TH February,2018, passed in I.A NO.40/KB/2018, arising out of Company Application C.A.(CAA)NO.470/KB/2017, had directed to convene and hold separate meetings of Equity Shareholders of TRANSFEREE COMPANY and TRANSFEROR COMPANIES to consider the said Scheme of Amalgamation on Friday 13th April , 2018.

Sd

12. This Tribunal vide their order dated 26TH February,2018 passed in I.A NO.40/KB/2018, arising out of Company Application C.A.(CAA)NO.470/KB/2017, had directed to convene and hold separate meetings of Unsecured Creditors of TRANSFEREE COMPANY and TRANSFEROR COMPANIES to consider the said Scheme of Amalgamation on Friday 13th April , 2018.
13. This Tribunal vide their order dated 26TH February,2018 passed in I.A NO.40/KB/2018, arising out of Company Application C.A.(CAA)NO.470/KB/2017, had directed to convene and hold separate meetings of Secured Creditors of TRANSFEREE COMPANY to consider the said Scheme of Amalgamation on Friday 13th April , 2018.
14. This Tribunal recorded that Chartered Accountant, **Sri Mukesh Banka**, Chairperson appointed for the meetings has drawn his report and filed the same duly sworn by his affidavit with this Tribunal on 08th May,2018.
15. Upon compliance, the Petitioner Companies made this Petition bearing CP(CAA) No. 704/KB/2018, connected with CA(CAA) No. 470/KB/2017, before this Tribunal for its sanctioning by way of confirmation of the Scheme.
16. That the Petitioner Companies have, in Compliance with the order passed by this Tribunal on 18th July , 2018 in C.P.(CAA) NO. 704 / KB/ 2018, connected with CA(CAA) No. 470/KB/2017, filed affidavit of Compliance duly affirmed, wherein they have annexed copies of publication made in Business Standard and Aajkal on 20TH July,2018 evidencing service upon the Regional Director , Eastern

Region , Ministry of Corporate Affairs , Registrar of Companies , West Bengal , Official Liquidator , High Court Calcutta and Income Tax Authorities having jurisdiction over the affairs of the Company.

17. The petitioners Companies have come before the Tribunal with this Company Petition and submitted the following documents along with the Company Petition for confirmation and sanctioning of the Scheme :
- i) Synopsis and List of Dates have been annexed at pages 1 to 5
 - ii) Copy of the Scheme of Amalgamation have been annexed and marked as **ANNEXURE " B "** at pages 33 to 62.
 - iii) Copies of Audited Balance Sheet as on **31ST MARCH, 2017 and interim Balance Sheet as at 30TH November , 2017** of Petitioner Companies have been annexed and marked as **ANNEXURE " D "** , **ANNEXURE " E "** , **ANNEXURE " G "** , **ANNEXURE " H "** , **ANNEXURE " J "** , **ANNEXURE " K "** , **ANNEXURE " M "** and **ANNEXURE " N "** at pages 125 to 150, pages 151 to 158 , pages 177 to 194, pages 195 to 200, pages 218 to 236, pages 237 to 242, pages 261 to 278 and pages 279 to 284 of the petition.
 - iv) Copies of Memorandum and Articles of Association of all Petitioner Companies have been annexed and marked as **ANNEXURE " C "** , **ANNEXURE " F "** , **ANNEXURE " I "** and **ANNEXURE " L "** , at pages 94 to 124, pages 159 to 176, pages 201 to 217 and pages 243 to 260 of the petition.
 - v) Copy of Letter evidencing submission of Report by the Chairperson has been annexed and marked as **ANNEXURE " O "** at pages 285.



- vi) Copies of advertisement published in dailies for meeting convened has been annexed and marked as **ANNEXURE " Q "** at pages 797 to 798.
- vii) Copy of evidence for service upon the Regulatory authorities have been annexed and marked as **ANNEXURE " R "** at pages 799 to 819
- viii) Copy of the share valuation report has been annexed and marked as **ANNEXURE " S "** at pages 909 to 921.
- ix) Copy of Certificate from the Company's Chartered Accountants confirming that the Accounting Standard prescribed in terms of Sec 133 of the Companies Act have been annexed and marked as **ANNEXURE " T "** at pages 922 to 923.
- x) List of shareholders of TRANSFEREE COMPANY and TRANSFEROR COMPANIES duly certified by the Statutory Auditors have been annexed and marked as **ANNEXURE " U "** at pages 924 to 927.
- xi) List Of Creditors Of THE TRANSFEREE COMPANY duly certified by the Statutory Auditor have been annexed and marked as **ANNEXURE " V "** at pages 928 to 936.
- xii) LIST of Unsecured Creditors and NIL Secured Creditors of the ORCHID/TRANSFEROR COMPANY NO 1 and BLUE HEAVEN/TRANSFEROR COMPANY NO.2 duly certified by the Statutory Auditor have been annexed and marked as **ANNEXURE " W "** at pages 937 to 938.
- xiii) NIL Creditor of the COMMAND/TRANSFEROR COMPANY NO.3 duly certified by the Statutory Auditor have been annexed and marked as **ANNEXURE " X "** at pages 939.
- xiv) Copies of necessary Board resolutions dated 14th day of September, 2017 of the TRANSFEREE COMPANY and the TRANSFEROR COMPANIES approving the Scheme of



Amalgamation has been annexed to the petition and marked as **ANNEXURE " Y "** at pages 940 to 947 of the petition .

18. The Regional Director , Eastern Region , Ministry Of Corporate Affairs has vide his affidavit affirmed on 24th August,2018 has reported that the

" That it is submitted that on the examination of the report of the Registrar of Companies , West Bengal it appears that no complaint and/or representation has been received against the proposed Scheme of Amalgamation . the petitioner Companies are also up-dated in filing their statutory returns . It is further submitted that on examination of the proposed Scheme of Amalgamation , it appears that the proposed Scheme is not prejudicial to the interest of members/ shareholders and/or public . The Central Government has therefore , decided that the instant petition/ Scheme need not be opposed . "

" It is submitted that as per instructions of the Ministry of Corporate Affairs , New Delhi , a copy of the Scheme was forwarded to the Income Tax Department on 15.03.2018 with a request to forward their comments / observations/ objections , if any . However the said authority has not forwarded their report to this Directorate till date.

- 19.The Official Liquidator attached to Hon'ble High Court, Calcutta vide his report dated 28-08-2018 has observed that after scrutiny of the report submitted by the Chartered Accountant appointed by him and other relevant papers and records etc., submitted by the Advocate-on-Record of the Petitioners, the Official Liquidator is of



the opinion that the affairs of the Transferor Company, namely, Orchid Griha Nirman Private limited, Blue Heaven Griha Nirman Private Limited and Command Constructions Private Limited, have not been conducted in a manner prejudicial to the interest of their members or to public.

20.The Ld. Counsel representing the Income Tax Department submitted that the Income Tax Department has No Objection to the sanctioning of the Scheme and also placed before this Tribunal Letter issued by the Principle Chief Commissioner Of Income Tax Dated 04.09.2018.

21.Heard the arguments of Ld. Senior Counsel for the Petitioner Companies, the Ld. Counsel for the Income Tax Department and the Ld. Assistant Registrar of Companies, West Bengal, Office of the Regional Director, Eastern Region, Ministry of Corporate Affairs.

22.In view of the facts stated above and in absence of any objection and since all requisite compliance has been fulfilled, the following orders in terms prayers made in the petition, with modification by this Tribunal are passed :

- a. The Scheme of Amalgamation mentioned in this Petition being Annexure "A" hereto is sanctioned by this Tribunal

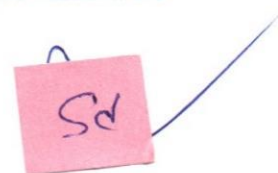
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to be binding with effect from 1st day of April, 2017 on ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED with SATTVA DEVELOPERS PRIVATE LIMITED and their shareholders and all concerned ;

- b. All the properties, rights and interest of ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED are transferred to and vested in without further act or deed in SATTVA DEVELOPERS PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in SATTVA DEVELOPERS PRIVATE LIMITED for all the estate and interest of ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED but subject nevertheless to all charges, now affecting the same ;
- c. All the liabilities and duties of ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED are transferred without further act or deed to SATTVA DEVELOPERS PRIVATE LIMITED and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of SATTVA DEVELOPERS PRIVATE LIMITED ;

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- d. That all the proceedings and/or suit appeals now pending by or against ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED shall be continued by or against SATTVA DEVELOPERS PRIVATE LIMITED ;
- e. The Transferee Company do issue and allot shares to the shareholders of ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED as envisaged in the said Scheme of Amalgamation and for that, if necessary, to increase the authorized share capital ;
- f. The schedule of assets in respect of ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED be filed within a period of 60 days from the date of the order to be made herein ;
- g. The Transferor Companies of ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED shall stand dissolved without winding up from the appointed date ;
- h. SATTVA DEVELOPERS PRIVATE LIMITED, ORCHID GRIHA NIRMAN PRIVATE LIMITED, BLUE HEAVEN GRIHA NIRMAN



PRIVATE LIMITED and COMMAND CONSTRUCTIONS PRIVATE LIMITED shall within 30 days after the date of obtaining the Certified Copy of this order cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;

23. The Company Petition CP (CAA)NO. 704/KB/2018, connected with C.A (CAA) NO. 470/ KB/2017, is disposed of.

24. Urgent Photostat copy of this order , if applied for , be supplied to the parties, subject to compliance with all requisite formalities .

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19/12/18

Madan B Gosavi
Member(Judicial)

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