

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**COMPANY PETITION NO. (CAA)-399 of 2017**

**CONNECTED WITH**

**COMPANY APPLICATION NO. CA (CAA)-55 (PB)/2017**

**Judgement delivered on 25.09.2018**

**Coram:**

**CHIEF JUSTICE (Rtd.) M.M.KUMAR**

**Hon'ble President**

**SHRI S.K. MOHAPATRA**

**Hon'ble Member (T)**

**In the matter of:**

Sections 230 and 232 and other applicable sections and provisions of the  
Companies Act, 2013 read with Companies (Compromises, Arrangements, and  
Amalgamations) Rules, 2016

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**BETWEEN**

**Hometrail Estate Private Limited**



C.P (CAA)399/PB/2017  
Connected with  
C.A (CAA) 55/PB/2017

(PETITIONER COMPANY NO. 1/ TRANSFEROR COMPANY)

AND

**Hometrail Buildtech Private Limited**

(PETITIONER COMPANY NO.2/TRANSFEREE COMPANY)

AND

**Their respective Shareholders and Creditors**

**MEMO OF PARTIES**

**Hometrail Estate Private Limited**

Company registered under the Companies Act, 1956

Having Registered Office at:

Max House, 1, Dr. Jha Marg, Okhla,

New Delhi- 110020

CIN: U45400DL2008PTC176963

... Petitioner Company No.1 / Transferor Company

**Hometrail Buildtech Private Limited**

Company registered under the Companies Act, 2013

Having Registered Office at:



C.P (CAA)399/PB/2017

Connected with

C.A (CAA) 55/PB/2017

Max House, 1, Dr. Jha Marg, Okhla,

New Delhi- 110020

CIN: U45400DL2008PTC176962

..... Petitioner Company No. 2/ Transferee Company

**For the Petitioners:** Mr. P. Nagesh, Mr Dhruv Gupta, Advocates

**For the Income Tax Department:** Ms Lakshmi Gurung, Standing Counsel

**For the OL:** Mr. Rohit Saroj, Mr. Amish Tandon, Standing Counsel

**For the RD (NR):** Ms Sonam Sharma, C.P.

**ORDER**

**M.M. KUMAR, PRESIDENT**

1. This joint application has been filed by the Petitioner Companies under Sections 230 and 232 of the Companies Act, 2013 read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation amongst the Petitioner Companies.
2. A perusal of the Petition shows that the First Motion petition seeking direction for convening the meeting of Shareholders and Unsecured Creditors was filed before this Tribunal being CA (CAA) No. 55 (PB) 2017

under Sections 230-232 of the Companies Act, 2013. In this petition directions were issued for dispensing with convening of the meetings of Shareholders and Creditors of both the Petitioner Companies.

3. On 09.02.2018 the Petitioners were directed to carry out a publication in the English Daily 'Business Standard' Delhi edition as well as Hindi Daily 'Jansatta' Delhi edition. In addition to the public notice, notices were directed to be served on to the Regional Director (Norther Region), Registrar of Companies, NCT of Delhi and Haryana, Official Liquidator, and to the other concerned sectoral regulators.
4. It is seen from the records that the Petitioners have filed an affidavit dated 16.03.2018 affirming compliance of the order passed dated 09.02.2018 by us. A perusal of the affidavit discloses that the petitioners have effected newspaper publication as directed in one issue of the 'Business Standard' as well as in 'Jansatta' on 22.02.2018 in relation to the date of hearing of the petition.
5. The Regional Director has filed its representation dated 11.04.2018 in wherein he has made certain observations. The first observation is that the Scheme does not clearly provide whether or not the fees be paid by the



amalgamated company on its authorised share capital subsequent to the sanction of the Scheme in terms of provisions of Section 232 (3)(i) of Companies Act 2013. Secondly, he has observed that clause 26 of Part IV of the Scheme is not in consonance with the provisions of Section 232(6) of the Companies Act 2013 as the appointed date from which the Scheme is to become effective has not been mentioned. Thirdly, the RoC at paragraph 32 of his report has stated that equity shareholders of transferor company shall be issued 266 fully paid up equity shares of Rs. 10 each at a premium of Rs. 32.62/- each of the transferee company for every 100 fully paid up equity shares of Rs. 10 each held by such equity shareholders in the transferor company as on record date. The RoC has pointed out that in the resolution passed in the board meeting held on 30.01.2017, there was no mention about the payment of premium of Rs. 32.62/- per share.

6. The Petitioner Companies have filed a rejoinder affidavit on 20.04.2018 wherein they have stated that the fees paid by the transferor company towards its present authorised share capital is sufficient to set-off the fees payable by the transferee company on its increase of authorised capital subsequent to amalgamation. The evidence acknowledging the payment of fees for authorised share capital has been annexed. Secondly, the Companies have pointed out that sub-clause (iv) of clause 37 in part IV



states that the Scheme of Amalgamation shall become applicable and come into operation from the Appointed Date. Thirdly, with respect to the observation raised by RoC, the company has reproduced the relevant excerpt from the said board resolution wherein payment of premium of Rs. 32.62/- was clearly mentioned.

7. The Official Liquidator has filed a report on 23.04.2018 wherein he has stated that as per the share valuation report, no clause regarding any premium amount was mentioned. The company, vide a rejoinder affidavit dated 25.04.2018 has replied to this observation stating that the Board Resolution passed on 06.03.2018 acknowledges that Equity Shares of Transferee Company shall be issued at a premium to the Equity Shares of the Transferor Company in line with Clause 12 of the Scheme. Secondly the Official Liquidator has observed that the Transferor Company had changed the registered office without furnishing any information or document. The company, vide a rejoinder affidavit dated 25.04.2018 has replied to this observation by placing on record the relevant MCA form INC 22 for change of the registered office.

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8. The Department of Income Tax has filed its response to the Scheme on 13.08.2018. The objections raised by the department have already been dealt vide order dated 13.09.2018 which reads as under:

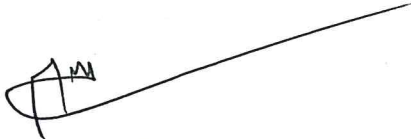
“The objections by the Income Tax Department have been raised by filing a report on 13.08.2018. The aforesaid objections are reads as under:-

“4. *The revenue department would like to submit following observations/comments/objections to protect the interest of revenue.*

*i. The Income Tax Department has objection to the Scheme on the ground that the Scheme is intended to avoid taxes. Since, both the companies was incorporated on 21/04/2018, they have the common directors and they are aware of all the affairs/decisions/planning of both companies. M/s Hometrail Buildtech Pvt. Ltd. (Transferee Company) has accumulated huge losses since beginning and has never shown the upward trend. This loss will be adjusted with the income of M/s Hometrail Estates Pvt. Ltd. (Transferor Company). This the whole planning behind the curtain to evade the tax and the ultimate effect of the scheme shall lead to tax avoidance.*

*Further, it is observed that as per the valuation report dated submitted by applicant vide annexure-12 dated 23<sup>rd</sup> January, 2017, the applicant has valued the equity share of the transferor company i.e. Hometrail Estate Pvt. Ltd. to be Rs. 113.34 at page no. 284. However, the same has been calculated at Rs. 61.86/- using Net Assets method from the balance sheet figures as on 31.12.2016 filed by the applicant in the same annexure.*

*In view of the above, it is stated that the Hon'ble Tribunal should not approve the proposed scheme.”*



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The objections have been explained by the affidavit filed on behalf of the applicant company No. 2 dated 04.09.2018. It has been explained. With regard to the first objections, the explanation has been tendered by citing judgment of the *Vodafone Infrastructure Limited and Ors filr (2013) 11 Delhi 1561* and the scheme has to be subject to the aforesaid observation.

“c) Further, w.r.t. the issue of income tax objections to a scheme of amalgamation on grounds of tax planning/avoidance, the reliance has been placed on the judgment rendered in the case of *Vodafone Infrastructure Limited and Ors filr (2013) 11 Delhi 1561* to state that a Scheme may be sanctioned whilst relegating the parties to the relevant fora to determine the issue of tax liability. The Income Tax Department has not yet framed any assessment much less raising of demand. Further, once the assessment is framed, then its correctness would be decided by the appropriate fora, in accordance with law. Hence, it has been submitted that the said observations are *non-est* and premature.

d) Also, relevant extracts of the decision of Hon’ble High Court in the case of *Department of Income Tax vs Vodafone Essar Gujarat Ltd (SLP No 29819/2012 (SC))* are as under:

*“In short, the right of the Income Tax Department is kept intact to take out appropriate proceedings regarding recovery of any tax from the transferor or transferee company as the case may be and pending cases before the Tribunal shall not be affected in view of the sanction of the Scheme.”*

In respect of the objection No. 2, the method of valuation adopted by the applicant has been adopted by the Income Tax Department. We dispose of objections by the observing that it is always relevant to find out any lacuna which violate any provision providing for tax liability. The

aforesaid protection is always granted which can be seen to various orders passed by this Tribunal. Accordingly, it shall be open to the Income Tax Department to raise any query or objections and the approval of the scheme by us would stand in the way of the relevant. Even otherwise undertaking by the respondent has been filed by filing affidavit of 04.09.2018.”

It is further clarified that there shall be no limitation on the power of the Income tax Department for recovery, including imposition of penalties etc. as provided in law.

9. Certificate of Statutory auditor of Transferee Company has been placed on record to the effect that Accounting Treatment proposed in the Scheme of Amalgamation is in conformity with the Accounting Standard prescribed by the Central Government in this regard under Section 133 of the Companies Act, 2013.
10. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of Corporate Affairs, the report of Official Liquidator, and Department of Income Tax, 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. The



Petitioners shall however remain bound to comply with the statutory requirements in accordance with law.

11. 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 would not come in the way of action being taken, albeit in accordance with law, against the concerned persons, company, directors and officials of the petitioners.

12. 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, GST, 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.

1. **THIS TRIBUNAL DO FURTHER ORDER :**

**(A) WITH RESPECT TO TRANSFEROR COMPANY AND  
TRANSFeree COMPANY**

1. That the Transferor Company stands dissolved without being wound-up; and



2. That all the property, rights and powers of all 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 interests of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and
3. That all the liabilities and duties of the Transferor Company be transferred without further act or deed, to 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
4. That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
5. That all the employees of the Transferor Company in service, if any, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date shall become the employees of the Transferee Company on such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in concerned Transferor

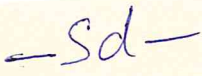


Company on the said date.

6. That Petitioner companies 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 Company for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Company shall place all documents relating to the Transferor Company registered with him on the file kept by him in relation to the Transferee Company and the files relating to all the petitioner companies shall be consolidated accordingly.


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.

  
(M.M. KUMAR)

PRESIDENT

25.9.2018

  
(S.K. MOHAPATRA)  
MEMBER(T)

(Vidya)