

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.A.(CAA)/757/2018

In the matter of Sections 230 to 232 of
the Companies Act, 2013 and other
applicable provisions of the Companies
Act, 2013

AND

In the matter of Scheme of Merger by
Absorption of Prakhhyat Infraprojects
Private Limited ("PIPL" or "the Transferor
Company") with Prakhhyat Land
Developers Private Limited ("PLDPL" or
"the Transferee Company") and their
respective shareholders

PRAKHHYAT INFRAPROJECTS PRIVATE LIMITED

...the Transferor Company/ First Applicant Company

PRAKHHYAT LAND PROJECTS PRIVATE LIMITED

...the Transferee Company/ Second Applicant Company

Order delivered on 30th August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s.
Rajesh Shah & Co., Advocate for the Petitioner.

Per : V. Nallasenapathy, Member (T)

ORDER

UPON the application of the Applicant Companies above named by a
Company Scheme Application AND UPON HEARING Mr. Rajesh Shah with Mr.
Ahmed M Chunawala i/b M/s. Rajesh Shah & Co, Advocates for the Applicant
Companies, AND UPON READING the Affidavit dated 27th day of July, 2018 of
Mr. Praveen Shetty, Authorized Signatory of the Applicant Companies, in
support of Company Scheme Application and the Exhibits therein referred to,
IT IS ORDERED THAT:

1. A meeting of the Equity Shareholders of the First Applicant Company shall be convened and held at 505, Gupta Bhavan, Ahmedabad Street, Karnac Bunder, Mumbai - 400009, on Monday, 15th Day of October, 2018 at 10:30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Merger by absorption of Prakhhyat Infraprojects Private Limited ("PIPL" or "the Transferor Company") with Prakhhyat Land Developers Private Limited ("PLDPL" or "the Transferee Company") and their respective shareholders.
2. A meeting of the Equity Shareholders of the Second Applicant Company shall be convened and held at 505, Gupta Bhavan, Ahmedabad Street, Karnac Bunder, Mumbai - 400009 on Monday, 15th Day of October, 2018 at 11:30 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Merger by absorption of Prakhhyat Infraprojects Private Limited ("PIPL" or "the Transferor Company") with Prakhhyat Land Developers Private Limited ("PLDPL" or "the Transferee Company") and their respective shareholders.
3. At least 30 clear days before the said meeting of the Equity Shareholders of all the Applicant Companies to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail or by courier or by speed post or by hand delivery to each of the equity shareholders of all the Applicant Companies at their respective registered or last known addresses or by e-mail to the registered e-mail address of the equity shareholders as per the records of the Applicant Companies or can be obtained free of charge at the Registered Office of the Applicant Companies as aforesaid. All the Applicant Companies shall publish the notice convening the meeting of equity shareholders in 'Free Press Journal' in English and 'Navshakti' in Marathi having circulation in Mumbai.
4. The Applicant Companies undertakes to:
 - i. issue Notice convening meeting of the shareholders as per Form No.

CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

- ii. issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- iii. issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
- iv. advertise the Notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

5. That Mr. Rakesh Jain, Director of the First Applicant Company, shall be the Chairperson of the meeting of equity shareholders of the First Applicant Company and failing him, Mr. Sandeep Bagla, Director of the first Applicant Company, shall be the alternate Chairperson of the said meeting. The Scrutinizer for the meeting of the First Applicant Company shall be Mr. Praveen Sethia, a Practicing Chartered Accountant having Membership Number: 158053 and his remuneration is fixed at Rs. 10,000/-.
6. That Mr. Prakashchand Jain shall be the Chairperson of the meeting of equity shareholders of the Second Applicant Company and failing him, Mrs. Shraddha Bagla shall be the alternate Chairperson of the said meeting. The Scrutinizer for the meeting of the Second Applicant Company shall be Mr. Praveen Sethia, a Practicing Chartered Accountant having Membership Number: 158053 and his remuneration is fixed at Rs. 10,000/-.
7. The Chairperson appointed for the aforesaid equity shareholders of the Applicant Companies to issue the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).

8. The quorum for the aforesaid meeting of the Equity Shareholders of the Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013.
9. The voting by proxy or authorised representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with all the Applicant Companies at their respective Registered Office not later than, 48 hours before the aforesaid equity shareholders and preference shareholders meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
10. The value and number of the shares of each member shall be in accordance with the books/ register of all the Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairperson of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
11. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days of the conclusion of the meeting, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
13. That Counsel for all the Applicant Companies submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting of the equity shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013.

14. This Bench hereby directs the First Applicant Company to issue notice to all its Secured Creditors and also directs the First and Second Applicant Companies to issue notice to all its Unsecured Creditors, as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the respective Applicant Companies.
15. Both the Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. Both the Applicant Companies to serve the notice upon the concerned Registrar of Companies pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. Both the Applicant Companies to serve the notice on the concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned Income Tax Authorities within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authorities has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

18. The First Applicant Company ('the Transferor Company') to serve the notice upon the Official Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Chartered Accountant, M/s. Mukund Sabale & Co., with remuneration of Rs. 60,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of the notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. The Applicant to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

SD/-

V. NALLASENAPATHY
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN
MEMBER (J)