

**NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
COURT NO.1**

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
BENGALURU BENCH, BENGALURU, HELD ON 08.10.2018

PRESENT: 1.Hon'ble member (J) **Shri Rajeswara Rao Vittanala**,
2. Hon'ble member (T) **Dr. Ashok Kumar Mishra**

CP/CA No	Purpose	Section	Name of Petitioner	Petitioner Advocate	Name of Respondent	Respondent Advocate
CP(CAA)No.28/B B/2018	For pronouncement of order	Sec 230-232	M/s Shriprop Housing Pvt Ltd	Uday Shankar Associates		

SL. NO.	NAME (IN CAPITAL) & PHONE NUMBER	REPRESENTATION TO WHOM	SIGNATURE
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PETITIONER/s :
Uday Shankar Associates
Asmita Deshpande
Sub Chandel

Petitioner
Petitioner

Deshpande
Juhi

RESPONDENT/s :

ORDER

Heard Ms. Asmita Deshpande along with Ms. Juhi Chandel, Learned Counsels for the Petitioner.
 CP(CAA)No.28/BB/2018 is disposed of vide separate order.

Amit
 Member (T)

Law
 Member (J)

Krishna

K

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P (CAA) No. 28/BB/2018

U/S 230 to 232 of the Companies Act, 2013

Order Delivered on: 08th October 2018

**IN THE MATTER OF SCHEME OF AMALGAMATION
BETWEEN
SHRIPROP HOUSING PRIVATE LIMITED
(Petitioner/ "Transferor Company")
AND
SHRIRAM PROPERTIES PRIVATE LIMITED
("The Transferee Company")
AND
THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashok Kumar Mishra, Member (Technical)

Shriprop Housing Private Limited
No. 40/43, 8th Main,
4th Cross, RMV Extension,
Sadashivnagar, Bengaluru-560080

Petitioner /Transferor Company

Parties Present : 1) Mr. Uday Shankar R.M.,
M/s Uday Shankar Associates
Advocate for the Petitioner Company

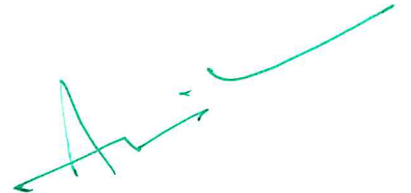
Per: **Hon'ble Shri Ashok Kumar Mishra, Member (Technical)**

Heard on: 23.04.2018, 03.05.2018, 07.05.2018, 29.05.2018, 17.07.2018, 28.08.2018,
12.09.2018

ORDER

A. The Company Petition was filed on behalf of the Petitioner Company/Transferor Company under Section 230 to 232 of the Companies Act, 2013 praying for the following reliefs:

C.P (CAA) No. 28/BB/2018



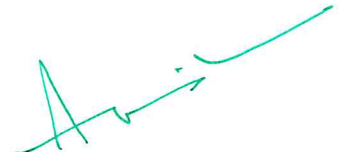
- (i) That the said scheme of Amalgamation as detailed in Annexure A may be sanctioned by the Tribunal as to be binding on all the Shareholders and the Secured and Unsecured Creditors of the Petitioner Company and on the said Petitioner Company.
- (ii) Pass an order that upon the Scheme of Amalgamation becoming effective the Petitioner/Transferor Company be deemed to be wound up and shall be dissolved without any further winding up proceedings.

B. The averments made in the Company Petition are briefly described hereunder:-

1. The Petitioner Company seeks an order for sanctioning the Scheme of Amalgamation whereby Shriprop Housing Private Limited (Petitioner/Transferor Company) is proposed to be amalgamated with Shriram Properties Private Limited (Transferee Company). The Scheme of Amalgamation is shown as **Annexure -A**.
2. The Petitioner/Transferor Company was incorporated on 23rd January, 2008 under the name and style of '*Shriprop Housing Private Limited*' under the jurisdiction of the Registrar of Companies, Karnataka bearing CIN U45202KA2008PTC045031. The Registered office of the Petitioner/Transferor Company is at No. 40/43, 8th Main, 4th Cross, RMV Extension, Sadashivnagar, Bengaluru-560080.
3. The object of the Petitioner/ Transferor Company as set out in its Memorandum of Association is as follows:
 - i. To carry on the business of developers, maintainers, upkeepers, designers, consultants, managers and to undertake all kinds of infrastructural development projects such as turnkey projects, buildings, apartments, residential projects, group housing projects, construction projects, hotels, shopping malls, IT parks, roads, industrial complexes, industrial estates, industrial layouts, residential layouts, commercial

development projects, holiday resorts, townships, power generation and power distribution projects, transport terminals of every description, airport, and the other infrastructural facilities of every description in India and abroad and/or to sell, lease, rent or transfer the title or any interest in the same or dispose it off in any other manner.

- ii. To carry on all or any of the business of proprietors of lands, flats, massionettes, dwelling houses, shops, offices, industrial estates, commercial complexes, etc and for these purpose to purchase, take on lease, or otherwise acquire and hold any lands or buildings of any tenure or descriptions wherever situate or rights or interest therein or therewith, to prepare building sites, and to construct, reconstruct, pull down, alter, improve, decorate and maintain flats, massonettes, dwelling houses shops, office buildings, industrial estates, works and convenience, to lay out roads and pleasure gardens and recreation grounds, to plant, drain or otherwise improvise the land or any part therefore for any period, whether belonging to the Company or not, and on such conditions as the company shall think fit.
- iii. To acquire by purchase, lease, exchange, rent or otherwise and deal in lands, buildings and any estate or interest therein and any rights over or connected with lands so situate and to turn the same to account as may seem expedient and in particular by laying out, developing, or assisting in developing and preparing land for building purposes and preparing building sites by planning, paving, drawing and by constructing, reconstructing, pulling down, altering, improving, decorating, furnishing and maintaining offices, cinema-houses, flats, houses, hotels, restaurants, bungalows, works and conveniences of all kinds and by consolidating or connecting or subdividing properties by leasing, letting or renting, selling by instalments, ownership, and otherwise disposing of the same on any other terms and conditions.



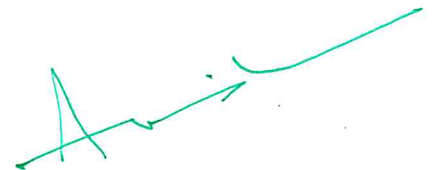
- iv. To carry on the business of builders, masonry, engineers, general construction and contractors and also to do business as consultants, agents or managers and deal in properties of all kinds and to undertake property management and property marketing.
- v. To acquire, hold, build/develop shopping complexes, infrastructure, IT Park, restaurants and buildings of any description in a Special Economic Zone or to build or develop a Special Economic Zone, either singly or jointly with Overseas Investment/Foreign Investors subject to such approvals as may be necessary.
- va. To carry on the business of the Company with technical and financial support from Holding Company, fellow subsidiaries, joint venture companies and associate companies and also to extend assistance to such entities, whether technical or financial, or by supply of manpower or any other means in accordance with law and as the Board of Directors deems fit such assistance being not limited to providing loans, advances, deposits, bank guarantees, corporate guarantees or security against borrowings by such entities.

The Copy of the Memorandum & Articles of Association of the Petitioner/ Transferor Company is shown in **Annexure-D**.

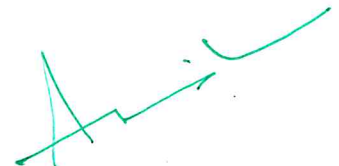
- 4. The latest authorised share capital of the Petitioner/ Transferor Company is Rs. 40,10,00,000/- divided into 1,00,50,000 Equity Shares of Rs.10/- each and 3,00,50,000 Preference Shares of Rs.10/- each. The issued, subscribed and paid-up capital of the Petitioner/ Transferor Company is Rs. 30,05,09,990/- divided into 20,004 Equity Shares of Rs.10/- each, fully paid up, 2,99,93,875 compulsorily convertible cumulative preference shares of Rs.10/- each fully paid up and 37,120 Redeemable cumulative Preference Shares of Rs.10/- each, fully paid up. The Copy of Audited Financials of the Petitioner/ Transferor Company as on 31st March, 2017 and is shown in **Annexure-B**. Copy of the provisional

Balance Sheet of the Petitioner/ Transferor Company as on 30th September, 2017 and is shown in **Annexure-C**.

5. The Petitioner/Transferor Company is wholly owned subsidiary of the Transferee Company. Both the companies are part of the same group. The Board of Directors of the Petitioner/ Transferor Company have approved and adopted the Scheme of Arrangement at its respective meeting held on 19th December, 2017. The copy of Board Resolution is shown in **Annexure – E**.
 6. The Petitioner/ Transferor Company had filed Company Application No.(CAA) 02/BB/2018 before this Tribunal for dispensation of the meetings of Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Company. This Tribunal vide its orders dated 30th January, 2018 allowed the Application and dispensed with convening of meeting of Equity Shareholders and Secured Creditors and directed for convening the meeting of Unsecured Creditors of the Petitioner Company. The Copy of the Order of this Tribunal in CA(CAA) No.02/BB/2018 is shown as **Annexure- F**.
- C. This Tribunal vide order dated 03rd May, 2018 directed the Petitioner/ Transferor Company to issue Notice to all relevant statutory authorities including Income Tax Authorities, and also to have an advertisement of Notice of Petition be carried out in the '**The Hindu**', an English daily Newspaper and '**Udayavani**' a Kannada daily Newspaper and stating the next date of hearing was on 29th May, 2018.
- D. In pursuant to the same the Counsel for the Petitioner/ Transferor Company has filed a Memo dated 29th May, 2018 of the authorized signatory of the Petitioner Company for having taken paper publication as directed and also has furnished the copy of the paper publication for having taken Advertisement in '**The Hindu**', an English daily Newspaper and '**Udayavani**' a Kannada daily Newspaper.
- E. The Registrar of Companies, Karnataka has filed the observations dated 04th April, 2018 making the following observations:



- a. Transferor Company has not yet filed financial statements for the year 2016-17.
 - b. Transferee Company is registered with ROC, Chennai. At Clause 3.9.1 of the Scheme, Transferee Company is asking for complete waiver of fee and stamp duty on the increased authorised capital after consolidating the authorised capital of the Transferor Company with the authorised capital of the Transferee Company. In this regard Transferee Company shall comply with the provisions of section 232(3) (i) of the Companies Act, 2013, and the Transferee Company has to pay the differential fee and stamp duty on the increase of authorised capital after setting off the fee if any paid by the Transferor Company.
 - c. Since, the Transferor Company is a wholly owned subsidiary of the Transferee Company and all the shares of the Transferor Company are held by the Transferee Company, all such shares shall stand cancelled upon the scheme becoming effective. The clause of consideration/cancellation of shares at Clause No. 3.5.1 of the Scheme has not mentioned the same.
 - d. There are no prosecutions, complaints, technical scrutiny/inspection pending on the Petitioner Company.
- F. The Official Liquidator attached to the Hon'ble High Court of Karnataka has submitted a report bearing OLR No. 28 of 2018 on 26.02.2018 making the following observations and requests:
- (i) That the Official Liquidator may appoint a Chartered Accountant from the panel approved by the Hon'ble High Court of Karnataka for scrutiny of the books of accounts and records of the Transferor Company and to submit report on the affairs of the Transferor Company with a concluding opinion that the affairs of the Transferor Company have not been conducted in a manner prejudicial to the interest of its members or general public.
 - (ii) That the Petitioner Company pay the professional fees of the Chartered Accountant as may be mutually agreed and in case the Chartered Accountant charges exorbitant



fee which is not acceptable to the Transferor Company, the Official Liquidator shall appoint other Chartered Accountant by cancelling the appointment of that Chartered Accountant.

G. The Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad represented by Registrar of Companies has filed Affidavit dated 20th April, 2018 making some observations:

a) In Clause 3.9 of the Scheme, the Petitioner transferee company has sought the complete waiver of the fee and stamp duty payable on account of clubbing of authorised share capital of the Transferor with that of the Transferee Company which is not acceptable in view of the provisions of Section 232(3)(i) of the Companies Act, 2013. The Transferee Company has to pay the differential fee and stamp duty on the increased authorised capital after setting off the fee if any paid by the Transferor Company.

b) ROC in his report dated 04.04.2018 at para No. 30(3) has pointed out that there is no mention in the Scheme about cancellation of shares held by the Transferee Company in the Transferor Company. In Clause 3.6.1.4 of the Scheme, it is mentioned that the shares held by Transferee Company in the Transferor Company would get cancelled upon the Scheme being effective. Hence, no further consideration of this observation may be required.

H. In pursuance of the report filed by the Official Liquidator bearing OLR No. 28 of 2018, the Tribunal permitted the Official Liquidator to appoint a Chartered Accountant from the panel maintained in the office of the Official Liquidator. In pursuance of the aforesaid order dated 11.05.2018, P. Chandrasekar LLP, Chartered Accountants was appointed to scrutinise the books and accounts of the Transferor Company and submit their report to the Official Liquidator. The observations made by P. Chandrasekar LLP, Chartered Accountants were reiterated by the Official Liquidator in OLR No. 91/2018 dated 20.07.2018 in the following form, expressing its consent for the Scheme:

- (i) “We have obtained all the information and explanation, which to the best of our knowledge and belief were necessary for the purpose of scrutiny of books and papers of Transferor Company.
 - (ii) In our opinion proper books of account, papers, Statutory Registers, minutes and other related records as required by law have been kept by the Transferor Company so far as appears from our examinations of those books and accounts.
 - (iii) On scrutiny of books of accounts, papers, statutory registers and other related records of the company we are of the opinion that the affairs of the company have not been conducted in a manner prejudicial to the interest of the members of the company or public interest.”
- I. The Authorized Signatory of the Petitioner Companies have filed a Reply Affidavit dated **23rd August, 2018** in furnishing response to the Affidavit filed by the Regional Director, Ministry of Corporate Affairs, South-East Region, Hyderabad represented by Registrar of Companies, which are as follows:
- i. That the Scheme permits combination of the authorised capital. The Scheme stipulates that Company shall not be required to pay fee/stamp duty for the increased share capital. Section 232 (3)(i) of the Companies Act, 2013 states that the fee paid by the Transferor Company on its Authorised Capital shall be set off on amount of fee payable by Transferee Company on its authorised capital subject to the amalgamation.

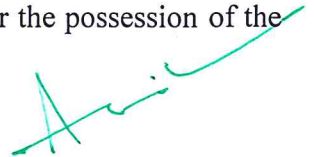
The Petitioner undertakes that the Transferee Company will make the payment if any as per section 232(3)(i) of the Companies Act, 2013 subsequent to the amalgamation after setting off the fee already paid by the Transferor Company.
 - ii. That the Regional Director has stated in his affidavit that no consideration of the second observation is required. Hence, no clarification is required from the Petitioner.

- J. The Counsel for the Petitioner/Transferor Company has filed copy of Accounting Treatment Certificate dated **21st December, 2017** of the Auditor stating that “based on our examination and according to the information and explanations given to us, we are of the opinion that the accounting treatment contained in the Clause 3.6 of the aforesaid Scheme is in compliance with applicable Accounting Standards notified under Section 133 of the Companies Act, 2013, read with the rules made thereunder”. The Auditors Certificates on Accounting Treatment is shown as **Annexure-H**.
- K. After hearing the Counsel for the Petitioner/Transferor Company and considering the materials on record the Scheme appears to be fair, reasonable and is not detrimental against the Members or Creditors or contrary to public policy and the same can be approved,

THIS TRIBUNAL DO FURTHER ORDER as follows:

- a) While Approving the Scheme, we make clear 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 specially required under any law.
- b) The Whole of the property, rights and powers of Petitioner/Transferor Company be transferred without further act or deed to Shriram Properties Private Limited (Transferee Company) and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the Transferee Company for all the state and interest of the Petitioner/Transferor Company therein but subject nevertheless to all charges now affecting the same; and
- c) All liabilities including taxes and charges, if any and duties of the Petitioner/Transferor Company be transferred without further act or deed to Shriram Properties Private Limited (Transferee Company) and accordingly the same shall pursuant to section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and

- d) All proceedings now pending by or against the Petitioner/Transferor Company, if any, be continued by or against the Shriram Properties Private Limited (Transferee Company); and
- e) All employees of the Petitioner/Transferor Company will become employees of the Transferee Company without any break or interruption of service.
- f) The tax implications, if any arising out of the scheme is subject to final decision of concerned Tax Authorities and the decision of the respective Tax Authority shall be binding.
- g) The Petitioner Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order along with a copy of scheme of Arrangement to be delivered to the Registrar of Companies for registration in accordance with Rule 25 (7) of Companies (Compromises, Arrangements And Amalgamations) Rules, 2016.
- h) The Scheme shall be effective from **1st April, 2018**.
- i) The Petitioner Company should ensure compliance of the affidavit dated 23rd August, 2018.
- j) The approval of the scheme is subject to the compliance of the following:
 - (a) Section 232 (3)(i) of the Companies Act, 2013 states that when the Transferor Company is dissolved, the fee paid by the Transferor Company on its Authorised Capital shall be set off on amount of fee payable by Transferee Company on its authorised capital subject to the amalgamation. The Transferee Company shall pay the differential fee and stamp duty on the increased authorised capital after setting off the fee, if any, paid by the Transferor Company.
 - (b) The Companies are to comply with applicable accounting standards and other Generally Accepted Accounting Principles.
- k) The Registrar of Companies should oversee the compliances before finally accepting the Scheme.
- l) The Petitioner/Transferor Company or its authorised signatory is directed that after the completion of the process of demerge to handover the possession of the



books of accounts and other relevant documents to Shriram Properties Private Limited (Transferee Company) for the purpose of Section 239 of the Companies Act, 2013.

- m) Any person shall be at the liberty to apply to the Tribunal in the above matter for any directions that may be necessary.


ASHOK KUMAR MISHRA
(MEMBER, TECHNICAL)


RAJESWARA RAO VITTANALA
(MEMBER, JUDICIAL)

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