

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSP NO. 810 OF 2017
AND

CSP NO. 808 OF 2017
AND

CSP NO. 841 OF 2017
AND

CSP NO. 809 OF 2017
AND

CSP NO. 843 OF 2017

KUNDAN REALTORS PRIVATE LIMITED

...Petitioner/ First Transferor Company

AND

JAWALA REAL ESTATE PRIVATE LIMITED

...Petitioner/ Second Transferor Company

AND

LODHA AVIATION PRIVATE LIMITED

...Petitioner/ Third Transferor Company

AND

SARVAVASA BUILDTECH & FARMS PRIVATE LIMITED

...Petitioner/ Fourth Transferor Company

AND

LODHA DEVELOPERS PRIVATE LIMITED

...Petitioner/ Transferee Company

In the matter of the Companies Act, 2013;

AND

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 Section 391 to 394 and other
applicable provisions of the Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation
(‘Scheme’) of Kundan Realtors Private Limited
and Jawala Real Estate Private Limited and Lodha
Aviation Private Limited and Sarvavasa Buildtech
& Farms Private Limited with Lodha Developers
Private Limited and their respective shareholders
and creditors.

Order delivered on 18th October 2017

coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)
Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner (s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for
Petitioner

Per: B.S.V Prakash Kumar, Member (J)

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Kundan Realtors Private Limited and Jawala Real Estate Private Limited and Lodha Aviation Private Limited and Sarvavasa Buildtech & Farms Private Limited with Lodha Developers Private Limited and their respective shareholders and creditors.
3. Learned Counsel for the Petitioner Companies states that the First Transferor Company was incorporated with the main object of real estate development and construction activities and is presently not engaged into any business activities. The Second Transferor Company was incorporated with the main object of real estate development and construction activities and presently it is engaged into real estate activities. The Third Transferor Company was incorporated with the main object of providing aviation related activities. The Fourth Transferor Company was incorporated with the main object to carry on the business of real estate development and construction activities and presently it is engaged in real estate activities and trading of building materials. The Transferee Company was incorporated with the main objective of real estate development and construction related activities and it is primarily engaged in the business of property development, sale of land and development rights and sale of construction material.
4. The proposed Scheme of Amalgamation will achieve the following primary benefits:

- The Scheme will consolidate and simplify the group structure;
 - The Scheme will result in elimination of multiple entities in the group which will eliminate duplication of administrative functions and reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company;
 - Achieving operational and management efficiency; and
 - Synergies arising out of consolidation of business, such as, enhancement of net worth of the combined business to capitalise on future growth potential, optimal utilisation of resources.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition.
 6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.
 7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
 8. The Regional Director has filed an Affidavit dated 9th October 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
 - a) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.*

- b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company vide letter dated 12.07.2017 has served copy a copy of company scheme application No. 473, 475, 476 & 680 of 2017 along with relevant orders etc. Further, this Directorate has also issued a reminder on 17.09.2017 to IT Department.*
- c) *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*
- d) *It is submitted that the Petitioner Transferor Company M/s. Jawala Real Estate Private Limited have not submitted the proof of serving notice to the Income Tax Authorities.*

In this regard, petitioner companies have to undertake to serve notice to Income Tax Authority.

- e) *It is submitted that Transferor Company 1, Transferor Company 2, Transferor Company 4 and Transferee Company are in the business of Real Estate. Hence, the provisions of the Real Estate (Regulation and Development Act) 2016 are to be complied with by these Companies.*
9. In so far as observations made in paragraph IV. (a) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
 10. In so far as observations made in paragraph IV. (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel confirms that the Petitioner Companies have served notice of Scheme on the income tax authorities.
 11. In so far as observations made in paragraph IV. (c) of the Report of Regional Director are concerned, the Petitioner Companies through its Counsel undertakes that the in addition to compliance of IND AS – 103, the Petitioner Companies shall pass such accounting entries which are necessary in

connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS – 8) etc., as may be applicable.

12. In so far as observations made in paragraph IV. (d) of the Report of Regional Director is concerned, the Petitioner Company / Second Transferor Company i.e. M/s Jawala Real Estate Private Limited through its Counsel submits that the Company has sent notice of Company Scheme Application to relevant income tax authorities in New Delhi via Registered Post. The copy of postal receipt was attached at Annexure E of the Affidavit of Service filed by the Company after sending of all notices post admission of Company Scheme Application No. 474 by the Hon'ble Mumbai Bench of the NCLT.
13. In so far as observations made in paragraph IV. (e). of the Report of Regional Director is concerned, The First Transferor Company, Second Transferor Company, Fourth Transferor Company and the Transferee Company through their Counsel submit that all the projects which are required to be registered are registered under the relevant provisions of the Real Estate (Regulation and Development) Act, 2016 and the Petitioner Companies are filing all returns/ reports as mandated in the said Act in a time bound manner. The Petitioner Companies undertake to comply with all applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations framed thereunder.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Official Liquidator has filed his report stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 810 of 2017 and Company Scheme Petition No. 808 of 2017 and Company Scheme Petition No. 841 of 2017 Company Scheme Petition No. 809 of 2017 and Company Scheme Petition No. 843 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

18. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the order.
19. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with e-form INC 28 in addition to the physical copy, within 30 days from the date of issuance of the order by the Registry.
20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition No 810, 808, 841 & 809 of 2017 to pay sum of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of Order.
21. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Dae: 18.10.2017

Sd/-

B.S.V Prakash Kumar, Member (J)