

CSP NO 585 OF 2017

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO 585 OF 2017

IN

CSA NO 354 OF 2017

In the matter of the Companies Act, 2013

And

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

And

In the matter of Scheme of Amalgamation amongst Sears  
Constructions Private Limited and Hiranandani Realtors  
Private Limited and their respective shareholders

Sears Constructions Private Limited.....Petitioner/Transferor Company

Hiranandani Realtors Private Limited ... Petitioner /Transferee Company

Coram:

M.K. Shrawat, Hon'ble Member (J)

V. Nallasenapathy, Hon'ble Member (T)

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

Per: V. Nallasenapathy, Member (T)

Order delivered on 12<sup>th</sup> October, 2017**ORDER**

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation amongst Sears Constructions Private Limited and Hiranandani Realtors Private Limited and their respective shareholders .
3. The learned Counsel for the Petitioners submit that the Transferor Company is engaged in the business of Construction & Development of real estate projects and sale, lease, renting out and management of the developed properties. The Transferee Company is engaged in the business of Construction & Development

of real estate projects (including Integrated Townships) and sale, lease, renting out and management of the developed properties.

4. The rational for Scheme is that the Transferor Company is engaged in the business of Construction & Development of real estate projects and sale, lease, renting out and management of the developed properties. The Transferee Company is engaged in the business of Construction & Development of real estate projects (including Integrated Townships) and sale, lease, renting out and management of the developed properties. Thus both are engaged in the similar line of business, there will be exploitation of individual strengths, avoid duplication of efforts and will provide foundation for big ticket growth of the enterprise. This will enable the entities to attract capital and facilitate expansion. The Transferee Company will benefit from the management expertise especially in technical areas, which are essential for critical decisions. By the proposed Scheme of Amalgamation, the financial resources of both the Companies will be conveniently merged and pooled together leading to a more effective and centralized management and reduction of administrative and manpower expenses and overheads, which are presently being multiplied because of separate entities. Amalgamation will result in the larger pool of various resources as well as manpower and will create a synergy, which will enable the Transferee Company to grow and prosper at a faster pace. The combined technical, managerial and financial resources will enhance the capability of the Transferee Company to invest in larger and sophisticated projects to ensure rapid growth and will consolidate the strategic strength of the Transferee Company. The Amalgamation will maximize the returns to the shareholders of the Transferee Company.
5. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Application .



6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court/Tribunal and they have filed necessary Affidavits of compliance in the Court/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.
7. The Regional Director has filed his Report dated 11<sup>th</sup> 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) *That in addition to compliance of AS-14 (IND AS-103), the Transferee Company shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-14, AS-5 etc.*
  - (b) *In accordance to proviso to Section 233(3) of the Companies act, 2013 , the Company may be directed to file a Certificate from the Company's Auditors to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act 2013.*
  - (c) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. The Petitioner Companies served copy of the Scheme along with relevant orders etc to Income Tax Department. Further, the Office of the Regional Director, WR has also issued reminders on 19-09-2017.*

*(d) 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 transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.*

*(e) As both the Transferor Company and the Transferee Company are having main objectives of real estate business and engaged in the said activities, the Hon'ble Tribunal may kindly direct them to make compliance of the provisions of the Real Estate (Regulations and Development )Act 2016.*

8. As far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103), to the extent applicable, the Transferee Company shall pass such Accounting entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-14, AS-5 etc.
9. In so far as observations made in paragraph IV(b) of the report of Regional Director is concerned, the Counsel for the Petitioners clarifies that the certificate issued by the Auditor that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act 2013 is annexed as Annexure- H to the Petition.
10. As far as observations made in paragraph IV(c) & (d) of the report of Regional Director is concerned, the Petitioners submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
11. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioners through their Counsel undertakes that the



Petitioners will make all compliance of the provisions of the Real Estate (Regulations and Development )Act 2016 to the extent applicable.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 585 of 2017 filed by the Transferor and Transferee Company are made absolute in terms of prayer clause (a).
16. 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.
17. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of companies, electronically, along with E-form INC 28 within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay.
19. The costs to be paid within four weeks from the date of receipt of Order.

20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

SD/-

**V. Nallasenapathy, Member (T)**

Date:12.10.2017

SD/-

**M.K Shrawat , Member (J)**