

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

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

CP NO.288/2015

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 47/2015

IN THE MATTER OF SECTIONS 391-394 OF THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

(TRANSFERRED FROM HON'BLE HIGH COURT OF DELHI)

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

BAWEJA REALTECH PRIVATE LIMITED

Having Registered Office at:

53-B, New Rohtak Road

Near kamal Hotel, New Delhi-110 005

....Petitioner Company No.1 / Transferor Company



SINGHMAN FINEX PRIVATE LIMITED

Having Registered Office at:

BF-7, Tagore Garden

New Delhi-110 027

...Petitioner Company No.2/Transferee Company

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Rishi Sood, Advocate

FOR REGIONAL DIRECTOR, (NR), MCA: Mr. Manish Raj, Company

Prosecutor

ORDER

Order Delivered on: 22nd September, 2017

1. This petition filed by the companies above named is coming up finally before us on 08.08.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor/ Petitioner Company No.1 with the Transferee/ Petitioner Company No.2. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 47/2015. The Hon'ble High Court of Delhi vide its order dated 29th April, 2015, was pleased to dispense with the requirement of convening the meetings of the equity shareholders, secured creditors and unsecured creditors of the Petitioner Companies in view of their consents having been obtained and produced before it or there was none therefore, the necessity of convening the meeting did not arise as the case may be. Transferee Company being an NBFC was required to seek the approval of RBI for the scheme of arrangement.
2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Arrangement before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meetings ordered by the Hon'ble High Court of Delhi on 29th April, 2015.

3. On 19.05.2015, the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in CP No.288/2015 moved by the petitioners under Sections 391-394 of the Companies Act, 1956 read with relevant Rules of the Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "Statesman" in English and "Jansatta" in Hindi.
4. While the joint petition in C.P.No. 288 of 2015 was pending disposal since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 09.02.2017, for our consideration.
5. The petitioners, it is seen from the records have filed an affidavit dated 18th December, 2015 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 19.05.2015 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'Statesman' in English edition and 'Jansatta' in Hindi edition on 22nd June, 2015. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director, Northern Region on

28th May, 2015, Registrar of Companies on 1st June, 2015 and Official Liquidator on 28th May, 2015 in compliance with the order dated 19.05.2015 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

6. The representative of the Official Liquidator has filed an affidavit dated 10.12.2015 stating that the office of Official Liquidator does not have any objection to the scheme being approved.
7. Further, Regional Director, Northern Region has also filed an Affidavit dated 17th December, 2015 and have stated that there is no objection to the sanction of the Scheme. However Regional Director stated that Registrar of Companies at para 31 of their report has made certain observations which are as follows:

"that the scheme of Amalgamation in which the exchange ratio were approved and recommended by the Board of Directors of the Transferor Company at the Board Meeting held on 15.07.2014 whereas as per para 18 of Board's Report to the Balance Sheet as at 31.03.201, there was no Board meeting held on 15.07.201. Moreover the valuation report is dated 18.09.2014."

8. In reply to the above observation, the petitioner companies vide rejoinder dated 21st October, 2016 have stated that inadvertently the date which finds mention in the valuation report is 18.09.2014 which was on account of the fact that the petitioner companies have re-approached the valuer on 18.09.2014 to seek the valuation report as the same was required to be furnished to other authorities and inadvertently, the valuation report obtained from the valuer dated 18.09.2014 was made part of the present petition. They further submitted that the Chartered accountant i.e. Mars and Partners who had earlier issued the valuation report has issued a certificate to the effect that he



has signed the valuation report pertaining to the Transferor and Transferee Company non 15.07.2014 and again on 18.09.2014. Since the Chartered Accountant, being an independent professional and on oath in relation to professional ethics, this Tribunal takes the same into consideration and closes the said objection.

9. Further observation of RoC is that after approving the scheme of Amalgamation in their Board meeting neither of the companies have filed e-form MGT-14 which is the prime facie violation of the provisions of section 117 (3) of the Companies Act, 2013.
10. The petitioner companies vide their rejoinder as stated above have filed the same with the Registrar of Companies, NCT of Delhi.
11. It has also been observed that as per MGT-14 filed on 05.08.2014, the company has passed Board Resolution for borrowing money of more than Rs.1 crore in terms of the provisions of section 180 (1) (c) of the Companies Act, 2013 on 25.12.2014 whereas as per Board Report to its Balance sheet as at 31.03.2015, no such Board meeting was held on 25.12.2014. Similarly, the Transferor Company has granted advance of Rs. 95 lacs to the Transferee Company as per Board resolution passed on 30.06.2014 which is also found to be not held on as per Board Report to the balance sheet as at 31.03.2015 of the Transferor Company.
12. In response the aforesaid observation, the petitioner companies has stated that since the resolution was passed in the General Meeting held on 25.12.2014 therefore the same is not reflected in the Board Report to the Balance Sheet as at 31.03.2015 and in relation to the loan of Rs. 95 lacs advanced by the Transferor Company to the Transferee Company



as per the Board Resolution passed on 30.06.2014, it was stated that date was inadvertently left out in the Board Report of the Transferor Company.

13. The last observation was regarding the NBFC status of the Transferee Company as it was observed by the RoC that Transferee Company has not taken the No Objection Certificate from the RBI. The petitioners vide their rejoinder urged that RBI vide its letter dated 19.05.2016 has conveyed their no Objection to the proposed scheme of amalgamation.
14. Further Regional Director's representation shows that notice was served to the Income Tax Department and no specific comments have been received.
15. That the Petitioner Companies have complied with proviso to Section 230 (7) proviso/ Section 232 (3) by filing the certificate of the Company's Auditor's relating to compliance with Accounting Standards prescribed under section 133 of the Act.
16. The counsel for Petitioners states that they have not received any objections from the third party and public at large for the purpose of sanction to the present Scheme of Amalgamation. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled and the objections of RD and OL having satisfactorily been explained and as well as conceded as such by the Learned representatives of RD and OL, this Tribunal sanctions the scheme of amalgamation annexed as Annexure -E with the Company Petition as well as the prayer made therein.



17. 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 will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.
18. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes including arising out of Transfer Pricing, or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law. Further, any Pre-conditions placed by RBI at the time of giving approval shall also be complied with. This scheme being approved after the enactment of the provisions of Real Estate (Regulation and Development) Act, 2016, the provisions if any, applicable to either of the companies shall also be abided by and the scheme is conditional upon the same.

THIS TRIBUNAL DO FURTHER ORDER

- (1) That all the property, rights and powers of 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 interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and



- (2) That all the liabilities and duties of 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 become the liabilities and duties of the Transferee company; and
- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company; and
- (4) That as per clause 8 of the scheme, all the employees of the Transferor Company in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.
- (5) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 13 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION;
- (6) Both the Transferor Company and Transferee Company 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 Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved



and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly;

(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

Sd-
(R. VARADHARAJAN)
MEMBER (JUDICIAL)

22/9/17

U.D Mehta