

MA NO. 571 OF 2017
IN
CSA NO. 892 OF 2017
IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

MA NO. 571 OF 2017
IN
CSA NO. 892 OF 2017

Under Section 230 to 232 of Companies
Act, 2013

In the matter of Scheme of Amalgamation of Ajitnath Hi-Tech Builders Private Limited ('Transferor Company 1') and Shri Kaiilas Properties & Agrofarms Private Limited ('Transferor Company 2') and Aanant Developers Private Limited ('Transferor Company 3') and Lodha Elevation Buildcon Private Limited ('Transferor Company 4') with Lodha Developers Private Limited ('Transferee Company') and their respective shareholders

Lodha Elevation Buildcon Private LimitedApplicant Company

Judgment / Order delivered on 30th November, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Ajit Singh Tawar and Mr. Rushil Aiya i/b Ajit Singh Tawar & Co.,
Advocates for Appicant

Per: V. Nallasenapathy, Member (J)

ORDER

1. On 21st September, 2017 this Tribunal passed an order directing convening meeting of Equity Shareholders.
2. The Counsel for the Applicant further submits that inadvertently directions regarding convening of meeting of the Preference Shareholders were not obtained.

3. The Counsel for the Applicant further submits that the Applicant Company is Wholly Owned Subsidiary of the Transferee Company and the Transferee Company is holding the entire Equity and Preference Share Capital of the Applicant Company and the notice for the meeting of Equity Shareholder is served upon the Transferee Company.
4. The Counsel for the Applicant Company further submits that the compliances as per the order dated 21st September, 2017 are made and an affidavit thereto is filed with the Tribunal on 12th October, 2017. In view thereof the following order is passed:-
 - a. The meeting of the Preference Shareholders of the Applicant Company be convened and held at 10th Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai – 400 011 on 2nd of January, 2018 at 10:00 AM, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed amalgamation embodied in the Scheme of Amalgamation of Ajitnath Hi-Tech Builders Private Limited and Shri Kaiilas Properties & Agrofarms Private Limited and Aanant Developers Private Limited and Lodha Elevation Buildcon Private Limited with Lodha Developers Private Limited and their respective shareholders('Scheme').
 - b. At least thirty (30) days before the said meeting of the Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Preference Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.

- c. At least thirty (30) days before the meeting of the Preference Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published once each in 'The Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, Ajit Singh Tawar & Co., 13, Apollo House, Mumbai Samachar Marg, Near BSE, Fort, Mumbai 400001.
- d. That Mr. Abhijeet Shinde, Authorised Person of the Applicant Company, and failing him, Mr. Varun Shah, Authorised Person of the Applicant Company, and failing him, Mr. Mitesh Kamariya, Authorised Person of the Applicant Company, shall be the Chairman of the aforesaid meeting of the Preference Shareholders to be held at 10th Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai- 400 011 on 2nd January, 2018 at 10:00 AM or any adjournment or adjournments thereof.
- e. That Mr. Sharatkumar Shetty, Practicing Company Secretary, is hereby appointed as Scrutinizer of the meeting of Preference Shareholders of the Applicant Company to be held at 10th Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai- 400 011 on 2nd of January, 2018 at 10:00 AM or any adjournment or adjournments thereof.
- f. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, 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) eligible to vote at the aforesaid meeting.

- g. That the quorum of the aforesaid meeting of the Preference Shareholders shall be one person duly authorized by the sole Preference Shareholder.
- h. That the voting shall be allowed on the proposed Scheme by voting in person or by proxy. That voting by proxy or authorized 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 the Applicant Company at its Registered Office not later than 48 hours before the aforesaid as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
- i. That the value and number of the shares of Sole Preference Shareholder shall be in accordance with the books/ register of the Applicant Company and where the entries in the books / register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
- j. That the Chairman of the meeting of the Applicant Company to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
- k. That the Chairman of the meeting of the Applicant Company to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
- l. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the Preference shareholders and publication of notices in newspapers as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

m. The Applicant Company to file the Petition as per Rule 15 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within seven days of the filing of Chairman Report of the meeting of Preference Shareholder.

Sd/-

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

Sd/-

**B.S.V. Prakashkumar,
Member (J)**