

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSA No 1019 of 2017

In the matter of the Companies Act,  
2013

AND

In the matter of Scheme of  
Amalgamation of Godrej Real Estate  
Private Limited (‘the Transferor  
Company’) WITH Godrej Properties  
Limited (‘the Transferee Company’) and  
their respective shareholders

**GODREJ REAL ESTATE PRIVATE LIMITED**, a  
company incorporated under the provisions of  
Companies Act, 1956 having its registered address at  
5<sup>th</sup> Floor, Godrej One, Pirojshanagar, Eastern Express  
Highway, Vikhroli (East), Mumbai - 400  
079, Maharashtra

.....The Transferor Company / First Applicant

**GODREJ PROPERTIES LIMITED**, a company  
incorporated under the provisions of Companies Act,  
1956 having its registered address at 5<sup>th</sup> Floor, Godrej  
One, Pirojshanagar, Eastern Express Highway,  
Vikhroli (East), Mumbai - 400 079, Maharashtra

.....The Transferee Company/ Second Applicant

Order delivered on 13<sup>th</sup> December, 2017

Coram:

Hon’ble Shri. **B.S.V Prakash Kumar**, Member (J)

Hon’ble Shri. **V. Nallasenapathy**, Member (T)

For the Applicant: Mr. Hemant Sethi i/b Hemant Sethi & Co.

Per: V. Nallasenapathy, Member (T)

**ORDER**

1. The Counsel for the Applicant states that the present Scheme is a Scheme of Amalgamation of wholly owned subsidiary company namely, Godrej Real Estate Private Limited (‘First Applicant Company’ or ‘Transferor Company’), with its holding company namely Godrej Properties Limited

- (‘Second Applicant Company’ or ‘Transferee Company’) and their respective Shareholders under the provisions of Sections 230 to 232 of the Companies Act, 2013.
2. The Counsel for the Applicants further submits that the Transferor Company is engaged in the business of real estate development. The Transferee Company is engaged in the business of real estate development.
  3. The Counsel for the Applicants further submit that the Transferor Company is a wholly owned subsidiary of the Transferee Company and entire share capital of these Transferor Company is owned and controlled by the Transferee Company.
  4. The Counsel for the Applicants further submits that the rationale for the Scheme is as under:
    - Consolidation of fully owned real estate projects
    - Elimination of multiple entities
    - Reducing the multiplicities of legal and regulatory compliances
    - Reducing time and efforts for coordination of financials at group level
    - Elimination of duplicative communication and coordination efforts
    - Rationalization of administrative and compliance
  5. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at The Auditorium, Godrej One, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai – 400 079 on Wednesday, 24<sup>th</sup> January, 2018 at 11.00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of Godrej Real Estate Private Limited with Godrej Properties Limited and their respective shareholders.
  6. That at least one month before the said Meeting of the Equity Shareholders of the First 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 notified on 14<sup>th</sup> December, 2016 and the prescribed Form of Proxy, shall be sent by Air Mail / Courier / Registered Post / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Transferor Company, at their last known address or email addresses as per the records of the Transferor Company.

7. That at least one month before the meeting of the Equity Shareholders of the First 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 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 Transferor Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai - 400 071.
8. That the Notice of the Meetings shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai by the Transferor Company not less 30 days before the date fixed for the meeting.
9. That Mr. Uday Bhaskar Kaligotla, Director of the First Applicant Company and failing him, Mr. Pravin Ajmera, Additional Director of the First Applicant Company and failing him, Mr. Surender Varma, Authorized Signatory of the First Applicant Company and failing him, Mr. Amit Kumar, authorized Signatory of the First Applicant Company and failing him, Mr. Ashish Karyekar, authorized Signatory of the First Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholder of the First Applicant Company to be held at The Auditorium, Godrej One, Pirojshanagar, Eastern Express Highway, Vikhroli (East), Mumbai - 400 079 on Wednesday, 24<sup>th</sup> January, 2018 at 11.00 a.m. or any adjournment or adjournments thereof. The Scrutinizer for the meeting shall be Mr. Kalidas Vanjpe, Practicing Company Secretary (CP No.:- 3413 / Membership No. FCS - 7132).
10. That the Chairman appointed for the aforesaid Meeting to issue the notices of the Meeting referred to above. The said Chairman shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), 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).

11. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
12. 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 meetings, are filed with the Transferor Company at its Registered Office at 5<sup>th</sup> Floor, Godrej One, Pirojshanagar, Eastern Express Highway, Vikhroli East, Mumbai - 400 079, Maharashtra, India, not later than, 48 hours before the aforesaid Shareholders meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
13. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the Transferor Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
14. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
16. The First Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. M/s T.R Chadha & Co. Chartered Accountants are appointed with a remuneration of Rs. 2,00,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The First Applicant Company is also directed to serve notice along with copy of Scheme upon:- (i) concerned Income Tax Authority with in whose

jurisdiction the Transferor Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies and (iv) The Official Liquidator, Mumbai with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferor Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

18. The Counsel for the Applicants further submits that the present Scheme is an arrangement between Transferor Company, Transferee Company and their respective shareholders as contemplated under section 230(1)(b) of the Companies Act, 2013 as there is no compromise or arrangement with any of the creditors and the rights of creditors are not affected, all the Secured and Unsecured creditors would be paid off in the ordinary course of business. Hence only meeting of equity shareholders of Transferor Company is proposed to be held in accordance with provisions of 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Transferor Company to issue individual notices by Post / Courier / Email / Hand-delivery to all its Creditors to whom amounts are due and payable, as on 30<sup>th</sup> September 2017 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon Transferor Company.
19. The Applicant respectfully submits that:
- a. Being a merger of wholly owned subsidiary company into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly the rights of members of the Transferee Company is not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also the present Scheme will not result in any dilution in shareholding of the public shareholders of the Transferee Company.
  - b. The rights of the creditors of the Transferee Company is not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also the net worth of the Transferee Company is and will continue to remain highly positive post-merger.
  - c. The existence of the Transferee Company will remain as before without any change either to its shareholding pattern or debt position pursuant to the Scheme;

- d. No undertaking of the Transferor Company is being parted away or being disposed off and hence provisions of Section 180 of the Companies Act, 2013 are also not applicable.
20. The Counsel for the Second Applicant/Transferee Company submits that in view of above, no reconstruction or arrangement happens with its shareholders or creditors, and thus, it does not require to hold either shareholders' meeting or creditors' meeting for approval of the proposed Scheme, in view of ratio laid down by this Tribunal in *CSA NO 243 of 2017* in the matter of Housing Development Finance Corporation Limited, *CSA NO 899 of 2017* in the matter of Mahindra CIE Automotive Limited and *CSA NO 915 of 2017* in the matter of Godrej Consumer Products Limited. The Counsel for the Transferee Company submits that the facts in the present case are similar to the facts of above case therefore no meeting of shareholders and creditors of the Transferee Company is required to be convened. The Counsel for the Applicant Companies further clarifies that the Transferee Company will file petition and comply with the provisions of service of notices upon all Regulatory Authorities.
21. The Second Applicant/Transferee Company is accordingly directed to serve notices along with the documents as mentioned (a) the draft of the proposed terms of the Scheme drawn up and adopted by the Board of Directors; (b) confirmation that a copy of the draft Scheme has been filed with the Registrar; (c) a report adopted by the Directors of the Applicant Companies explaining the effect of the amalgamation on each class of shareholders, key managerial personnel, promoters and non-promoter shareholders laying out in particular the share exchange ratio, specifying any special valuation difficulties; (d) the report of the expert with regard to valuation, if any; (e) a supplementary accounting statement, if any, if the last annual accounts of any of the merging companies relate to a financial year ending more than 6 months before the date of service of notice, upon:-  
(i) concerned Income Tax Authority with in whose jurisdiction the Transferee Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) Registrar of Companies (iv) BSE Limited (v) National Stock Exchange of India Limited (NSE) (vi) Real Estate Regulatory Authority with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

22. The Applicant Companies to file affidavit of service in the Registry proving dispatch of notices to the shareholders and Creditors, publication of notices in newspapers and service of notice to the regulatory authorities as stated in Clauses 16 to 18 & 21 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

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

**Date: 13.12.2017**

Sd/-

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