

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

**Present: SMT. INA MALHOTRA, MEMBER (JUDICIAL)
&SMT. DEEPA KRISHAN, MEMBER (TECHNICAL)**

CAA- 173/ND/2017

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

Cotys Buildcon Private Limited

..... Transferor Company No.1

AND

Harley Builders & Developers Private Limited

.... Transferor Company No.2

AND

Jetashri Builders and Developers Private Limited

.....Transferor Company No.3

AND

Kagni Builders and Developers Private Limited

..... Transferor Company No.4

AND

Malayeka Builders and Developers Private Limited

..... Transferor Company No.5

AND

Mysha Builders and Constructions Private Limited

..... Transferor Company No. 6

AND

Rentia Developers and Constructions Private Limited

..... Transferor Company No. 7

AND

Vinesh Home Developers Private Limited

..... Transferor Company No.8

WITH

Parisksha Builders And Constructions Private Limited

.....Transferee Company

ORDER DELIVERED ON – 31st January, 2018



ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. This Joint application has been filed by the Applicant Companies being Transferor Companies 1- 4 and 8 and the Transferee Company under the provisions of sections 230 and 232 of the Companies Act, 2013 read with the Company (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving the Scheme of Amalgamation, as contemplated between the Transferor Companies with Transferee Company.

2. As per averments, the registered offices of the Transferor Companies 1- 4 and 8 as well as that of the Transferee Company are situated in the National Capital Territory of Delhi, falling within the territorial jurisdiction of this Court. The Registered offices of the applicant Nos. 5- 7 falls within the territorial jurisdiction of the Chandigarh bench and hence would seek approval for sanction of the Scheme from the concerned Bench.

3. A perusal of the petition discloses that Transferor Companies 1-4 and 8 and the Transferee Company had jointly filed the first motion application bearing C.A. No. (CAA) 35/PB /2017. The Tribunal vide its



order dated 25.07.2017 had dispensed with the meetings of the equity shareholders, secured and unsecured creditors of the Applicant Companies in view of the consent affidavits of all concerned having been filed on record.

4. The applicant companies have now initiated the Second Motion. An affidavit dated 26.09.2017 discloses that the petitioners have effected publication in the daily newspapers "The Business Standard" in English and "Veer Arjun" in Hindi , both dated 19.09.2017 and having circulation in Delhi. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator in compliance with the order of the Tribunal, inviting objections if any to the proposed Scheme of Amalgamation.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

Additionally, the petitioners have also filed an affidavit dated 26.09.2017 before this tribunal that neither the petitioner companies, nor their Legal Counsels have received any objection/representation against the proposed scheme of Amalgamation till the date of such affidavit. The replies of the Regional Director, (NR), MCA dated 12.01.2018 and the Report of Official Liquidator dated 08.01.2018 have been placed before us.



5. We have heard the counsels for the petitioners and also considered the representation dated 12.01.2018 made by the Regional Director, Northern Region. In the reply filed by the Regional Director (NR), it has been confirmed that the Transferor and Transferee companies are regular in filing their statutory returns. No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of the applicant companies. Further in their report, they have stated that they have no objection to the sanction of the proposed scheme. Objections raised by the Income Tax Department in respect of the outstanding tax liability of Applicant/ transferor No.3 Company is confirmed as having been addressed.
6. The Applicant Companies, being direct or indirect holding of a parent company viz Felicite Builders and Constructions Pvt. Ltd, (which is not a part of the Scheme) are all engaged in the business of Real Estate Development. As per the report of the statutory auditors, the Accounting Standards are compliance of Section 133 of the Act and certificates to that extent are on record. Valuation of each of the applicant companies has been carried out by M/s Daver Karnatak & Associates on the basis of the Net Asset value purpose of Allotment of shares by the Transferee Company.

The Scheme has proposed the Appointed date as 1st April, 2016.



7. The scheme of Amalgamation of the applicant companies being direct or indirect wholly owned subsidiaries of the parent company viz. M/s Felicite Builders and Constructions Pvt. Ltd, (which is not a part of the Scheme) is sought to be justified on grounds that:

- a.) The amalgamation will enable the Companies to pool their financial, commercial and other resources and considerable synergy of operations would be achieved.
- b.) With the enhanced capabilities and resources at its disposal, the Amalgamated Company will have greater flexibility and strength and will be able to compete more effectively as a combined entity.
- c.) All the Transferor Companies will have better financial and business prospects. The Scheme would be beneficial to and in the best interest of the Shareholders & Creditors, if any, of all the Transferor Companies and the Transferee Company. The Scheme shall not in any manner be prejudicial to the interests of the concerned members/ creditors or general public at large.
- d.) It would be advantageous to combine the activities of all the Transferor Companies and the Transferee Company into a single Company. The amalgamation would provide beneficial synergy of operations from business and administrative point of view.

8. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no

objections being raised by the office of the Regional Director or the Income Tax Dept, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of arrangement shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.

9. 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 to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of both the petitioner companies.

10. While approving the Scheme as above in respect of the Transferor Companies 1-4,8 and the Transferee Company , we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

11. This tribunal doth further order that upon scheme of Amalgamation by way of Merger coming into effect;

- (i) That Transferor Companies 1-4 and 8 shall stand dissolved without being wound up.
- (ii) All assets of the Transferor Companies No 1-4 and 8 be transferred to and vest with the Transferee Company in the manner specified in the Scheme with effect of the Appointed date, without any further act or deed to be done by any of the Transferor Company Nos. 1-4 and 8, so as to become undertaking, business, properties, assets and liabilities of the Transferee Company, but subject nevertheless to all changes now affecting the Scheme.
- (iii) That all the liabilities and duties of the Transferor companies, 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;
- (iv) That all proceedings now pending by or against the transferor company, be continued by or against the transferee company;
- (v) That petitioners 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 companies and registered with them and shall consolidate the files of the two companies. The proposed Scheme is accordingly duly approved and sanctioned in terms of the above.

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

(vii) Transferee company is directed to pay **Rs. 50,000/-** to the Prime Minister's Relief Fund, the payment of which shall be ascertained by the RoC prior to further steps.



Deepa Krishan
Member (T)



Ina Malhotra
Member (J)