

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

**CA (CAA)-64(ND)/2017**

**Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)**

**IN THE MATTER OF SECTIONS 230-232 OF THE COMPANIES ACT, 2013**

**In the matter of:**

Sections 230-232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

**AND**

**IN THE MATTER OF SCHEME OF AMALGAMATION**

**OF**

**DEVKOSH LEASING AND FINANCE PRIVATE LIMITED**

**(APPLICANT TRANSFEROR COMPANY-1)**

**AND**

**DHANESHWARI INVESTMENTS PRIVATE LIMITED**

**(APPLICANT TRANSFEROR COMPANY-2)**



**AND**

**TAXILA AGRICULTURE PRIVATE LIMITED**

(APPLICANT TRANSFEROR COMPANY-3)

**WITH**

**GOMTESHWAR REAL ESTATE PRIVATE LIMITED**

(APPLICANT TRANSFEREE COMPANY)

**WITH**

**Their respective Shareholders and Creditors**

**MEMO OF PARTIES**

**1. DEVKOSH LEASING AND FINANCE PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

8-A, Commissioner Lane, Civil Lines

Delhi-110054

CIN: U57870DL2004PTC258108

.....Applicant Transferor Company-1

**2. DHANESHWARI INVESTMENTS PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

8-A, Commissioner Lane, Civil Lines



Delhi-110054

CIN: U65990DL1990PTC258024

.....Applicant Transferor Company-2

**3. TAXILA AGRICULTURE PRIVATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

8-A, Commissioner Lane, Civil Lines

Delhi-110054

CIN: U01132DL2008PTC175479

...Applicant Transferor Company-3

**4. GOMTESHWAR REAL ESTATE LIMITED**

Company registered under the Companies Act, 1956

Having Registered Office at:

8-A, Commissioner Lane, Civil Lines

Delhi-110054

CIN: U70200DL2007PTC171624

.....Applicant Transferee Company

**For the Applicants: Mr. Sanjeev Jain, Advocate**

**Ms. Apporva Agarwal, Advocate**



## ORDER

**Order Delivered on: 30.06.2017**

1. This is an application which is filed by the applicant companies herein, namely Devkosh Leasing and Finance Private Limited (for brevity "Applicant Transferor Company-1"), Dhaneshwari Investments Private Limited (for brevity "Applicant Transferor Company-2"), Taxila Agriculture Private Limited (for brevity "Applicant Transferor Company-3") and Gomteshwar Real Estate Private Limited (for brevity "Applicant Transferee Company-4") under sections 230-232 of Companies Act, 2013, and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the Scheme of Arrangement by way of Amalgamation (hereinafter referred to as the "SCHEME" ) proposed between the applicants. The said Scheme is also annexed as Annexure "A-1" to the application. The applicants above named have preferred the instant application in effect for the following purpose as evident from the reliefs sought for in the Application, namely:-



- i. Pass orders/directions dispensing with convening , holding and conducting of Meetings or Shareholders in respect of Applicant Companies,
- ii. Pass orders/directions dispensing with convening , holding and conducting of Meetings of Secured Creditors of Applicant Companies,
- iii. Pass orders/directions dispensing with convening , holding and conducting of Meetings of Unsecured Creditors in respect of Applicant Companies,
- iv. Pass orders/directions dispensing with convening , holding and conducting of Meetings or Debenture Holders in respect of Applicant Transferee Company,
- v. Issue direction for permitting the filing of application, petition, other documents as may be required for the purpose of sanctioning the proposed scheme of Amalgamation between the Applicant Transferor Companies and the Applicant Transferee Company and their respective shareholders, and creditors, and
- vi. Pass such other and further order (s) as may be deemed fit and proper in the facts and circumstances of this case.

2. An Affidavit in support of the above application sworn for and on behalf of all the Applicant Companies has been filed by the one Mr. Akhila Nand Singh, being the authorized signatory of the Companies along with the application. Counsel for the joint applicants took us through the averments made in the application as well as the typed set of documents annexed there with. Learned Counsel represents that the Scheme does not contemplate any corporate debt restructuring exercise as contemplated under Section 230(2) of the Act. It is further represented that a joint application filed by the applicants are maintainable in view of Rule 3(2) of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016 and it is also represented that the registered office of all the applicant companies are situated within the territorial jurisdiction of this Tribunal and falling within Registrar of Companies, NCT, New Delhi.



3. In relation to Devkosh Leasing and Finance Private Limited being the Applicant Transferor Company-1, in the Scheme marked as Annexure – “A-1”, it represented that it is having 2 (Two) Equity Shareholders .It is further represented by the counsel for Applicants that the Applicant Transferor Company-1 as on 31.03.2017 has no Secured and Unsecured Creditor. In relation to the shareholders, secured and unsecured creditors of the Applicant Transferor Company-1, the Applicant Transferor Company-1 seeks dispensation from convening and holding of the meetings in view of consent being obtained and are placed on record.

4. In relation to Dhaneshwari Investments Private Limited being the Applicant Transferor Company-2 in the Scheme marked as Annexure-“A-1”, Learned Counsel represents that company is having 2 (Two) Equity Shareholders. It is further represented by the counsel for Applicants that the Applicant Transferor Company-2 as on 31.03.2017 has no secured and Unsecured Creditor. In relation to the Equity Shareholders, Secured and Unsecured creditors of the Applicant Transferor Company-2, Applicant Transferor Company-2 seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained and are placed on record or there being none which obviates the necessity of convening a meeting.

5. In relation to Taxila Agriculture Private Limited being the Applicant Transferor Company-3 in the Scheme marked as Annexure-“A-1”, Learned Counsel represents that company is having 2 (Two) Equity Shareholders. It is further represented by the counsel



for Applicants that the Applicant Transferor Company-3 as on 31.03.2017 has no secured and 4 (Four) Unsecured Creditors. In relation to the Equity Shareholders, Secured Creditor and has Unsecured creditors of the Applicant Transferor Company-3, Applicant Transferor Company-3 seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained and are placed on record or there being none which obviates the necessity of convening a meeting.

6. In relation to Gomteshwar Real Estate Private Limited being Applicant Transferee Company in the Scheme marked as Annexure-“A-1”, Learned Counsel represents that company is having 3 (Three) Equity Shareholders. It is further represented by the counsel for Applicants that the Applicant Transferee Company as on 31.03.2017 has no secured creditor, 5 (Five) Unsecured Creditors and 1 (One) Debenture holder. In relation to the Equity Shareholders, Secured Creditors, Unsecured Creditors and Debenture holders of the Applicant Transferee Company, Applicant Transferee Company seeks dispensation of the meeting for the purpose of obtaining their approval to the proposed Scheme of Amalgamation in view of consent being obtained which are placed on record or there being none which obviates the necessity of convening a meeting.

7. The Scheme has been proposed to achieve the following objectives, namely:

(a) Consolidation of the businesses presently being carried on by the Transferor Companies and the Transferee Company, including without limitation, the



consolidation of the group shareholding, which shall be beneficial to the interests of the shareholders, creditors and employees of such companies, as such amalgamation would create greater synergies between the businesses of all such companies and would enable them to have access to better financial resources, as well as increase the managerial efficiencies, while effectively pooling the technical, distribution and marketing skills of each other :

(b) Streamlining the group structure.

(c) Creating better synergies across the group as well as tie-ups/alliances with companies, governmental agencies, etc, increasing operational efficiencies and better utilization of expertise within the individual businesses to capture greater share of the market, and provide more comprehensive and holistic services to the clients/customers ;

(d) Combined entity would be able to optimize the manpower resources required for overall administration and statutory compliances resulting in elimination of overlapping activities, optimization of manpower resources in functional areas like finance, administration, legal, secretarial, human resources etc.

8. Learned Counsel for the Applicants also represents that the provisions of Section 233 of 2013 Act will not apply as the Scheme is a composite Scheme. The above joint application has been filed on 31.05.2017 and this Tribunal hence proceeds to entertain the above joint application filed under the 2013 Act. Further, the registered office of all the applicant Companies are situated within New Delhi and subject to Registrar of Companies, NCT, New Delhi and hence are amenable to the territorial jurisdiction of this Tribunal.





9. We have perused the joint application and the connected documents / papers filed therewith including the Scheme of Amalgamation contemplated between the Applicant companies.

10. From the certificate of incorporation filed, it is evident that Applicant Transferor Company-1 was initially incorporated in the name of Devkosh Leasing and Finance Private Limited on 27<sup>th</sup> August, 1990 under the Companies Act, 1956 in the State of Maharashtra. The registered office of Applicant Transferor Company-1 was shifted to National Capital Territory of Delhi and Haryana from the State of Maharashtra on September 20, 2013.

11. The Authorized Share Capital of the Applicant Transferor Company-1 is Rs.70,00,000/- (Rupees Seventy Lakh only) divided into 7,00,000 (Seven Lakh) Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Transferor Company-1 as on date is Rs.69,00,000/- (Rupees Sixty Nine Lakh only) divided into 6,90,000/- (Six Lakh Ninety Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.

12. The Applicant Transferor Company-1 is presently engaged inter alia, in the business of financing, leasing letting on hire of easy payment system, household and office furniture, domestic or business appliances, farming equipment and is also engaged in the business of cultivating, growing, producing, or dealing in tea, coffee, food products, other agricultural products etc.



13. From the certificate of incorporation filed, it is evident that the Applicant Transferor Company-2 was originally incorporated on 27<sup>th</sup> July, 1990 under the Companies Act, 1956 as Dhaneshwari Investments Private Limited in the State of Maharashtra. The registered office of Applicant Transferor Company-2 was shifted to National Capital Territory of Delhi and Haryana from the State of Maharashtra on September 19, 2013.

14. The Authorized Share Capital of the Applicant Transferor Company-2 is Rs.70,00,000/- (Rupees Seventy Lakh only) divided into 7,00,000 (Seven Lakhs) Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-Up Share Capital of the Applicant Transferor Company-2 as on date is Rs.6,90,000/- (Rupees Sixty Nine Lakh only) divided into 6,90,000 (Six Lakh Ninety Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.

15. The Applicant Transferor Company-2 is presently engaged inter alia in the business of an investment company and to finance the industrial enterprises, and other by way of deposit and advance and is also engaged in the business of cultivating, growing, producing or dealing in tea, coffee, food products, other agricultural products etc.

16. From the certificate of incorporation filed, it is evident that the Applicant Transferor Company-3 was originally incorporated on 17<sup>th</sup> March, 2008 under the Companies Act, 1956 as Taxila Agriculture Private Limited in the National Capital Territory of Delhi and Haryana.



17. The Authorized Share Capital of the Applicant Transferor Company-3 is Rs.10,00,000/- (Rupees Ten Lakh only) divided into 1,00,000 (One Lakh) Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Transferor Company-3 as on date is Rs.1,00,000/- (Rupees One Lakh only) divided into 10,000 (Ten Thousand) Equity Shares of Rs.10/- (Rupees Ten only) each.

18. The Applicant Transferor Company-3 is presently engaged inter alia, in the business of establishing, commissioning, setting up, operating , generating and maintaining electric power and networks based on Renewable resources for evacuation, transmission, distribution, trading or supply and to carry on the business of agricultural production.

19. From the certificate of incorporation filed, it is evident that the Applicant Transferee Company was originally incorporated on 19<sup>th</sup> December, 2007 under the Companies Act, 1956 under the name of Gomteshwar Rear Estate Private Limited in the National Capital Territory of Delhi and Haryana.

20. The Authorized Share Capital of the Applicant Transferee Company was Rs.5,00,00,000/- (Rupees Five Crores only) divided into 50,00,000 (Fifty Lakh) Equity Shares of Rs.10/- (Rupees Ten only) each and the Issued, Subscribed and Paid-up Share Capital of the Applicant Transferee Company as on such date was Rs.3,10,00,000/-



(Rupees Three Crore Ten Lakh only) divided into 31,00,000 (Thirty One Lakh) Equity Shares of Rs.10/- (Rupees Ten only) each.

21. The Applicant Transferee Company is presently engaged inter alia, in the business of construction, to act as builders, colonizers and civil and constructional contractors and to purchase, take on lease or otherwise acquire , sell and mortgage any estates and lands and deal in the business of real estate and is also engaged in the business of cultivating, growing, producing, or dealing in tea, coffee and any agricultural, vegetable or food products.

22. All the applicants have filed their respective Memorandum and Articles of Association as well as their last available audited financial statements for the year ended 31.03.2016.

23. The appointed date as specified in the Scheme is 01.04.2017 subject to the directions of this Tribunal.

24. The Board of Directors of the Applicant companies vide separate meetings held on 17<sup>th</sup> May, 2017, have unanimously approved the proposed Scheme of Amalgamation as contemplated above and copies of resolutions passed thereat have been placed on record by the companies.

25. All the companies have submitted that no investigation proceedings are pending against them under Sections 210 or any other applicable provisions of the Companies Act, 2013.



26. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors, Debenture Holders or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

**A) In relation to the Applicant Transferor Company-1:**

**(i) With respect to Equity shareholders:**

Since it is represented by the Applicant Transferor Company-1 that there only 2 (Two) Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

**(ii) With respect to Secured Creditors:**

Since it is represented by the Applicant Transferor Company-1 that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

**(iii) With respect to Unsecured Creditors:**



24. Taking into consideration the application filed jointly by the Applicant Companies and the documents filed therewith, this tribunal propose to issue the following directions with respect to calling, convening and holding of the meetings of the shareholders, secured and Unsecured Creditors, Debenture Holders or dispensing with the same as well as issue of notices including by way of paper publication as follows:-

**A) In relation to the Applicant Transferor Company-1:**

(i) With respect to Equity shareholders:

Since it is represented by the Applicant Transferor Company-1 that there only 2 (Two) Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Applicant Transferor Company-1 that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:



Since it is represented by the Applicant Transferor Company-1 that there is no Unsecured Creditor in the Company, the necessity of convening a meeting does not arise.

**B) In relation to Applicant Transferor Company-2:**

(i) With respect to Equity shareholders:

Since it is represented by the Applicant Transferor Company-2 that there only 2 (Two) Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Applicant Transferor Company-2 that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant Transferor Company-2 that there is no Unsecured Creditor in the Company, the necessity of convening a meeting does not arise.

**C) In relation to Applicant Transferor Company-3:**



(i) With respect to Equity shareholders:

Since it is represented by the Applicant Transferor Company-3 that there only 2 (Two) Equity shareholders in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Applicant Transferor Company-3 that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant Transferor Company-3 that there are 4 Unsecured Creditors in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

**D) In relation to Applicant Transferee Company:**

(i) With respect to Equity shareholders:

Since it is represented by the Applicant Transferee Company there are only 3 Equity shareholders in the Company whose consents have been obtained and are





placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

(ii) With respect to Secured Creditors:

Since it is represented by the Applicant Transferee Company that there is no Secured Creditor in the Company, the necessity of convening a meeting does not arise.

(iii) With respect to Unsecured Creditors:

Since it is represented by the Applicant Transferee Company there are only 5 Unsecured Creditors in the Company whose consents have been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.

(iv) With respect to Debenture Holders:

Since it is represented by the Applicant Transferee Company there is only 1 (One) Debenture Holder in the Company whose consent has been obtained and are placed on record, therefore the necessity of convening and holding a meeting to consider and it thought fit, the approval of the scheme is dispensed with.



The application stands allowed on the aforesaid terms. Let the petition for approval of the scheme of Amalgamation be filed within a period of two weeks from the date this order.

2d1-

(R.VARADHARAJAN)

MEMBER (JUDICIAL)

30.06.2017.

U.D Mehta