

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
CA(AA)NO.02/BB/2017**

DATED: MONDAY THE 17TH DAY OF APRIL 2017

**PRESENT: SRI RATAKONDA MURALI, MEMBER JUDICIAL
SRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL
IN THE MATTER OF COMPANIES ACT, 2013
SECTIONS 230 and 232 OF THE COMPANIES ACT, 2013**

AND

**IN THE MATTER OF SCHEME OF AMALGAMATION
IN THE MATTER OF**

DARSHITA SOUTHERN INDIA HAPPY HOMES PRIVATE LIMITED

CA(AA) NO.02/BB/17

**Darshita Southern India Happy Homes Private Limited,
4th Floor, Salarpuria Windsor,
No.3, Ulsoor Road,
Bengaluru-560042**

- Applicant/Transferee Company

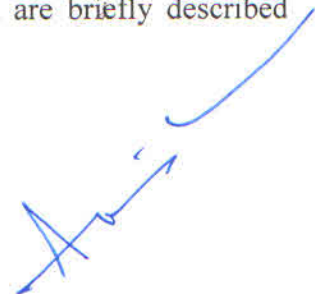
PARTIES PRESENT: M/s Uday Shankar Associates Advocates, Fortune
Chambers, 1st Floor, # 8, Lalbagh Road, Richmond Circle,
Bangalore -560027 Advocates and Authorised
representatives for the Applicant.

Heard on: 03/03/2017 and 17/03/2017.

O R D E R

This Application is filed on behalf of the Applicant Company under Section 230 and 232 of the Companies Act, 2013 read with Rule 3 of the Companies (Compromises, Arrangement and Amalgamation) Rules, 2016, praying to order for dispensing with convening of separate Meeting of Equity Shareholders and Unsecured Creditors of the Applicant Company for considering the Scheme of Amalgamation, where under the **Darshita Happy Homes Private Limited** (First Transferor Company) and **Darshita India Happy Homes Private Limited** (Second Transferor Company) are being merged with **Darshita Southern India Happy Homes Private Limited** (Applicant Company) which is Transferee Company for purposes of considering the Scheme of Amalgamation.

The averments made in the Company Application are briefly described hereunder:-



The Applicant Company seeks an order for dispensing with convening of separate meeting of Equity Shareholders and Unsecured Creditors for considering the Scheme of Amalgamation of **Darshita Happy Homes Private Limited** (First Transferor Company) and **Darshita India Happy Homes Private Limited** (Second Transferor Company) with Applicant Company **Darshita Southern India Happy Homes Private Limited** in terms of Scheme of Amalgamation shown as **Annexure-A**.

An Affidavit of Authorised Signatory is filed along with the application stating that, the Applicant Company was incorporated on 13th September 2004 under the name and style "Big Southern India Malls Private Limited" having its Registered Office at No. 1008, Chiranjiv Tower, 43, Nehru Place, New Delhi. Subsequently, on 16th December 2016 the Company has changed its name to **Darshita Southern India Happy Homes Private Limited** with Registrar of Companies, Karnataka vide CIN **U70100KA2004PTC098521** as a Private Limited Company and consequently the Registered office of the Applicant Company has been shifted to 4th Floor, Salarpuria Windsor, No.3, Ulsoor Road, Bengaluru-560042. The main object of the Applicant Company is engaged in the business of construction and development of residential and commercial projects in India and currently owns a land parcel in Bengaluru and to acquire, construct, build, alter, develop, improve, repair, renovate, decorate, work, plan, manage control, fabricate, pull down, layout landed properties, buildings, multi-storied buildings, apartments flats, houses, group housing schemes, residential layouts, bungalows, quarters, offices, formation of housing layouts and shelters for and on behalf of Central Government, State Government, public corporations; to provide project management consultancy services, which include conceptualizing, Planning, designing, patterning, facilitation, project delivery oversight, budgeting and scheduling, and to provide management services for the implementation of a project etc., Copy of the Memorandum and Articles of Association of the Applicant Company is marked as **Annexure-B Series**.

The latest authorized share capital of the Applicant Company is Rs.5,00,000/- divided into 50,000 Equity Shares of Rs.10/- each. The issued, subscribed and paid up share capital is Rs.1,00,000/- divided into 10,000 Equity Shares of Rs.10/- each fully paid up. The Audited balance sheet for the year ending 31/03/2016 is marked as **Annexure-D**.

It is further stated that, the Board of Directors of the Applicant Company has approved and adopted a Scheme of Amalgamation at its meeting held on 7th December 2016 by virtue of which **Darshita Happy Homes Private Limited** (First Transferor Company) and **Darshita India Happy Homes Private Limited** (Second Transferor Company) are proposed to be merged with the Applicant Company subject to confirmation. It is also stated that the Applicant Company and Transferor Companies are the group companies. A copy of the Board Resolution of Applicant Company dated 7th December 2016 in approving and adopting the Scheme of Amalgamation are marked as **Annexure-M**.

It is further averred that, the 1st Transferor Company was incorporated on 11th December 2015 under the name and style of "**Darshita Happy Homes Private Limited**" vide CIN **U70102KA2015PTC084676**. The 1st Transferor Company is engaged in the business of construction and development of residential and commercial properties (either by itself or through its subsidiaries) and undertaking project management activities etc., Copy of the Memorandum and Articles of Association of the 1st Transferor Company is shown as **Annexure-F Series**.

Copy of Balance sheet of the 1st Transferor Company as on 30th September 2016 is shown as **Annexure-G**.

It is further averred that, the 2nd Transferor Company was incorporated on 2nd September 2004 under the name and style "Big India Malls Private Limited" having its Registered Office at No. 1008, Chiranjiv Tower, 43, Nehru Place, New Delhi. Subsequently, on 16th December 2016 the Company has changed its name to **Darshita India Happy Homes Private Limited** with Registrar of Companies, Karnataka vide CIN **U70100KA2004PTC098520** as a Private Limited Company and consequently the Registered office of the Applicant Company has been shifted to 4th Floor, Salarpuria Windsor, No.3, Ulsoor Road, Bengaluru-560042. Copy of the Memorandum and Articles of Association of the 2nd Transferor Company is shown as **Annexure-I Series**.

Copy of Balance sheet of the 2nd Transferor Company as on 30th September 2016 is shown as **Annexure-L**.

It is stated in the scheme that, the Board of Directors of Transferee as well as Transferor Companies were of the view that, the scheme would, inter-alia provide the following benefits:

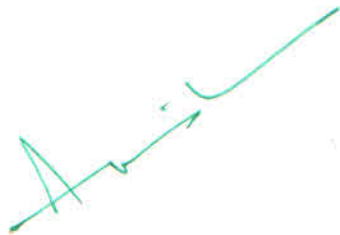

- (i) Achieve business growth in a more advantageous manner by combining all the businesses/projects under taken by the parties into one and thereby provide an integrated solution/offering to stakeholders as well as external customers/agencies and
- (ii) To achieve greater integration/greater financial strength, efficiency in cash management, administrative efficiency and to improve organizational capability and thereby the scheme shall not in any manner be prejudicial to the interests of concerned shareholders, creditors and/or general public at large.

It is further stated that, the Chartered Accountant after verification of the books of accounts and other records and documents of the Applicant Company had certified the number of shareholders of the Applicant Company as on 30th September, 2016. Certificate issued by the Chartered Accountant is marked as **Annexure-N**.

We have seen the Affidavits filed by the Two Equity Shareholders along with **Memo dated 03rd March, 2017** i.e., (i) Darshita India Happy Homes Private Limited holding 9,999 equity shares, constituting 99.99% of the paid-up capital, (ii) Mahesh Kumar Khaitan (Nominee of Darshita India Happy Homes Private Limited) holding 1 equity share, constituting 0.01% of the paid-up capital.

It is further stated that, there are no Secured Creditors as certified by the Chartered Accountant produced at **Annexure-P**.

It is further stated that, the Applicant Company has only 1 (one) Unsecured Creditor as certified by the Chartered Accountant shown at **Annexure-Q**. It is stated that, the value of amounts due to unsecured creditor of the Applicant Company is Rs.74,83,96,200/- and 100 % of the unsecured creditor representing value of Rs.74,83,96,200/- has given consent to the Scheme by way of affidavit. We have seen the affidavit filed by the Unsecured Creditor shown as **Annexure-R**.



It is further stated that, the scheme does not adversely affect the rights of the shareholders and arrangement embodied in the Scheme of Amalgamation does not contemplate any extinction or reduction of liability to any shareholder of the Applicant Company.

The Applicant Company is seeking an order to dispense with convening of meetings of Equity shareholders and Unsecured Creditor of the Applicant Company on the ground that, there are only two equity Shareholders, no secured creditors & one unsecured creditor and all the equity shareholders and one unsecured Creditor have given their consent by way of affidavits for the proposed Scheme of Amalgamation.

However, the accumulated profit/loss as seems to be represented through Reserve and Surplus of the companies as per their Audited Accounts as of 31st March 2016 are as follows:-

Sl. No.	Name of the Company	Rs. (approx..)
1	Darshita Southern India Happy Homes Private Limited – Transferee Company – (Loss)	(6,46,18,457)
2	Darshita Happy Homes Private Limited – Transferor Company – 1 – (Loss)	(33,167)
3	Darshita India Happy Homes Private Limited – Transferor Company – 2 – (Profit)	74,49,33,179

This necessitate views of Income Tax Authorities.

The Applicant Company (Transferee Company) will have to review its Authorised Capital requirement and also valuation of shares as both having positive net worth company and negative net worth company are treated at par while offering shares.

We have heard the Counsel appearing for the Applicant Company. The Application is filed by the Applicant Company which is a Transferee Company for dispensing with convening of meetings of the shareholders and creditor for considering the Scheme of Amalgamation shown as **Annexure-A. Darshita Happy Homes Private Limited** (First Transferor Company) and **Darshita India Happy Homes Private Limited** (Second Transferor Company) which are proposed to be merged with the Applicant Company as per Scheme of Amalgamation shown in **Annexure-A.**

In this view of the matter, the Application is allowed and holding of Meeting of the equity shareholders and unsecured creditor is dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the Scheme, it would be open for shareholders and creditors who are interested/disinterested in the scheme of amalgamation to put forth their contention before the Tribunal.

17.4.17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 17th DAY OF APRIL, 2017