

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

T.P. NO.294/2017

IN

C.A. NO 626/2016

DATED: FRIDAY THE 28th DAY OF APRIL 2017

***PRESENT: SHRI RATAKONDA MURALI, MEMBER JUDICIAL
SHRI ASHOK KUMAR MISHRA, MEMBER TECHNICAL***

IN THE MATTER OF COMPANIES ACT, 2013(18 OF 2013)

AND

**IN THE MATTER OF SECTIONS 391 to 394 OF THE COMPANIES ACT, 1956 AND
SECTION 230-232 OF THE COMPANIES ACT, 2013**

AND

OTHER RELEVANT PROVISIONS OF THE COMPANIES ACT, 2013

**ALONG WITH RULES OF THE COMPANIES (COMPROMISES,
ARRANGEMENTS AND AMALGAMATIONS) RULES 2016**

AND IN THE MATTER OF

MANTRI DEVELOPERS PRIVATE LIMITED

T.P. NO.294/2017 IN C.A.NO.-626/2016

**1. Mantri Developers Private Limited,
Mantri House, No.-41, Vittal Mallya Road
Bangalore- 560-001**

- APPLICANT/TRANSFeree COMPANY

PARTIES PRESENT :

Sri. Namrata Kolar Advocate
Cyril Amarchand Mangaldas 201, Midford Garden,
Off. M.G. Road Bengaluru 560001

Heard on: 6.02.2017, 24.03.2017 & 17.04.2017

O R D E R

Originally this Company Application has been filed before the Hon'ble High Court of Karnataka by the Applicant Company under Sec 391 of the Companies Act, 1956 read with Rule 67 of the Companies (Court) Rules, 1959 being numbered as CA 626/16. Subsequently as per notification No. GSR111(E) dated 7th December 2016 issued by the Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P. No.294/2017.

This Company Application is filed on behalf of the Applicant Company, praying to order to convene the separate meeting(s) of the Equity Shareholders, Secured and Unsecured Creditors of the Applicant Company for approving the Composite scheme of Amalgamation, where under

the Primary Transferor Companies ANTHARIKSH CONSTRUCTIONS PRIVATE LIMITED, MANTRI ABODES PRIVATE LIMITED, MANTRI PROPERTY DEVELOPERS PRIVATE LIMITED, BRAHMAGIRI REALTORS PRIVATE LIMITED, MANTRI MANSION PRIVATE LIMITED, AVANT GARDE SHELTERS PRIVATE LIMITED are proposed to be merged with the Applicant/Transferee Company MANTRI DEVELOPERS PRIVATE LIMITED for purposes of considering the composite scheme of amalgamation etc.

This Application is coming up for orders this day, the Tribunal made the following order:-

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

The Applicant seeks an order to convene the separate meeting(s) of Equity Shareholders and of the Secured & Unsecured Creditors of the Applicant Company for approving the scheme of amalgamation of **ANTHARIKSH CONSTRUCTIONS PRIVATE LIMITED (First Transferor)**, **MANTRI ABODES PRIVATE LIMITED (Second Transferor)**, **MANTRI PROPERTY DEVELOPERS PRIVATE LIMITED(Third Transferor)**, **BRAHMAGIRI REALTORS PRIVATE LIMITED(Fourth Transferor)**, **MANTRI MANSION PRIVATE LIMITED(Fifth Transferor)**, **AVANT GARDE SHELTERS PRIVATE LIMITED(Sixth Transferor)** with the **MANTRI DEVELOPERS PRIVATE LIMITED (Transferee Company)** in terms of Composite Scheme of Amalgamation shown as **Annexure A**.

It is averred in the Company Application that the Applicant/Transferee Company was incorporated on 6th December, 1990 under the name and style of GLORY ESTATE PRIVATE LIMITED in the State of Maharashtra. Subsequently on 22nd August, 2000 vide Company Law Board order the Applicant Company changed its Registered Office to the State of Karnataka. Consequently the Applicant Company on 1st January, 2001 changed its name to **MANTRI DEVELOPERS PRIVATE LIMITED** and obtained fresh Certificate of Incorporation bearing CIN No. U70102KA2000PTC027924.

The registered office of the Applicant Company is situated at Mantri Developers Private Limited, Mantri House, No.-41,Vittal Mallya Road Bangalore- 560-001

The Applicant Company's objects as set out in its Memorandum of Association inter alia are set out hereunder:

- a) To carry on the business in all branches of architecture and of contractors, erectors, construction of buildings, houses, apartments, structures or residential offices, industrial, institutional or commercial or developers of co-operative housing societies, developers of housing scheme, townships, holiday resorts, hotels, motels, and in particular preparing of building sites, etc.,
- b) To purchase for re-sale in land and house or other property of any tenure and any interest therein and to erect, sell and deal in free hold and acquire leasehold land and to make advances upon the security of land house or other property or any interest thereon and to deal by way of sale, lease, exchange or otherwise with land and house property and other immovable property.
- c) To carry on the business of and as an independent power projects Company and for the purpose to establish, develop, install, commission, acquire, operate and maintain, either independently and/ or in association with, non-conventional and renewable power projects including but not limiting to wind and to do all incidental and ancillary activities may be considered necessary, desirable and expedient in that behalf including but not limiting to acquiring and developing land , setting up and/ or arranging for necessary infrastructure like development of site and other civil construction work, laying transmission lines, setting up sub stations, etc., installation, erection, commissioning of independent power projects, marketing, buying, selling and / or otherwise dealing in power.

A copy of Certificate of Incorporation and Memorandum and Articles of Association of the Transferor Company is shown as **Annexure B.** and the Audited Balance Sheet for the year ending 31.03.2015 of the Applicant Company is shown as **Annexure C.**

The Transferor Companies and Applicant Company both are the part of the same group and are engaged in the business of real estate as architects, contractors, erectors, construction of buildings, houses, apartments, structures or residential offices, industrial, institutional or commercial or developers. In view of the common business prospects, the management of the Companies has considered it appropriate to merge transferor Companies into the Transferee Company. The Consolidation will ensure greater integration and greater financial strength and flexibility for the combined entities and greater efficiency in the cash management of the combined entities.

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 24th June 2016 by virtue of which **Anthariksh Constructions Private Limited (first transferor), Mantri Abodes Private Limited (second transferor), Mantri Property Developers Private Limited(third transferor), Brahmagiri Realtors Private Limited(fourth transferor), Mantri Mansion Private Limited(fifth transferor), Avant Garde Shelters Private Limited (sixth transferor)** all the Six Transferor Companies are proposed to be merged with the Transferee Company **Mantri Developers Private Limited**. A copy of the Board Resolution of the Applicant Company is shown as **Annexure Y**.

The Certificate of Chartered Accountant certifying the names and number of Secured Creditors & Unsecured Creditors is shown as **Annexure-AC**.

The counsel for the Applicant Company has filed Additional Affidavit **dated 25th November, 2016** of the Company Secretary of the Applicant Company stating that the Applicant Company could not procure consent of all the Equity Shareholders at the time of filing of the Company Application. The Applicant Company prayed for directions to convene the meeting of the Equity Shareholders. However, subsequently all the Equity Shareholders as listed in the Chartered Accountant's Certificate have accorded their unanimous consent to the proposed scheme. Therefore, it is not necessary to convene a meeting of the Equity Shareholders of the Applicant Company and the Prayer for dispensing with the meetings of the equity Shareholders of the applicant Company does not in any manner result in any amendment or modification to the scheme and does not in any manner affect the rights of the equity Shareholders of the Applicant Company.

The counsel for the Applicant Company has filed Additional Affidavit **dated 15th April, 2017** of the Company Secretary of the Applicant Company stating that the authorities to whom notice(s) to be issued to consider the proposed scheme to (i) the Central Government of India Southern Regional Director; (ii) Registrar of Companies (Bengaluru); (iii) Income Tax Authority; (iv) Official Liquidator and dispensing with the issuing notice(s) to (i) Securities Exchange Board of India, (ii) Stock Exchange, (iii) Reserve Bank of India, (iv) Competition Commission of India.

We have heard the counsel appearing for the Transferee /Applicant Company, who has filed the application to dispense with for convening of meeting of the Equity Shareholders and convening of separate meeting(s) of Secured & Unsecured Creditors for considering the scheme of Amalgamation. The Applicant Company is Transferee Company in which Transferor Companies are proposed to be merged, as per the scheme of Amalgamation shown as **Annexure A**.

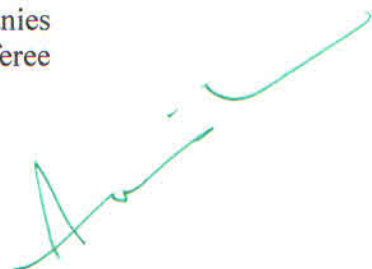

After hearing the counsel and after perusing the documents filed, we pass the following order:-

The Applicant Company is seeking an order to dispense with convening of meeting of Equity Shareholders on the ground that the Applicant Company has Fifteen Equity Shareholders and they have given their consent to the Scheme of Amalgamation. The Certificate of Chartered Accountant certifying the name and number of Equity shareholders is shown as **Annexure-AB**.

We have seen the Original Consent letters of the Fifteen Equity shareholders which is shown as **Annexure A** of Additional Affidavit dated **25th November, 2016**.

The Separate Meeting(s) of the Secured Creditors & Unsecured Creditors of the Applicant Company is ordered to be convened and held in accordance with Section 230-232 & other relevant provisions of Companies Act 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The separate meeting(s) of Secured Creditors & Unsecured Creditors of the Applicant Company be convened and held at **ST. MARKS HOTEL, ST. MARKS ROAD, BANGALORE-560001**, on **SATURDAY THE 10TH DAY OF JUNE, 2016 AT 02:00 P.M & 03:00 P.M** respectively for the purpose of considering and, if thought fit, in approving with or without modifications the proposed scheme of Amalgamation of Anthariksh Constructions Private Limited (first transferor), Mantri Abodes Private Limited (second transferor), Mantri Property Developers Private Limited (third transferor), Brahmagiri Realtors Private Limited (fourth transferor), Mantri Mansion Private Limited (fifth transferor), Avant Garde Shelters Private Limited (sixth transferor) all the Six Transferor Companies are proposed to be merged with the Applicant/Transferee Company Mantri Developers Private Limited.



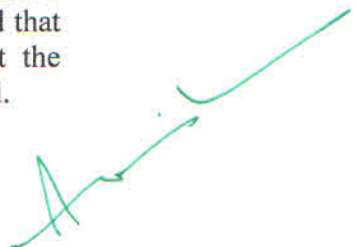

MR.GIRISH GUPTA, General Manager-Accounts failing whom **MR.GANAPATHY VENKATESH**, Assistant Vice President-Finance and Accounts as proposed by the Applicant Company is appointed as Chairperson and **MR.ANUJ AGARWAL**, Company Secretary as Scrutinizer for the Secured and Unsecured Creditors meeting. The remuneration of chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening each separate meeting(s) of the Secured Creditors & Unsecured Creditors of the Applicant Company.

The quorum for the separate meeting(s) of the Secured Creditors & Unsecured Creditors of the Applicant Company shall be in accordance with Section 103 of the Companies Act, 2013 respectively.

The Notice of the Meeting of the Secured Creditors & Unsecured Creditors of the Applicant Company shall be published in an English Daily of "The Hindu" and in Kannada Daily "Kannada Prabha" respectively.

The Applicant Company or its authorized signatory is directed to issue notice(s) to Secured Creditors & Unsecured Creditors as certified by the Chartered Accountant in **Annexure AC** through Registered or Speed Post; or Courier; or Air Mail; or email; or hand delivery to their last known address at least 30 clear days before the said meeting of the Secured Creditors & Unsecured Creditors as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Secured Creditors & Unsecured Creditors Meeting at the place, day, date and time, along with a copy of scheme of arrangement, a copy of Explanatory Statement, pursuant to be sent under the Section 230 of the Companies Act, 2013 and form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014.

The Applicant Company is directed at least 30 clear days before the separate meeting(s) of the Secured Creditors & Unsecured Creditors of the Applicant Company to be held as aforesaid, a notice convening the said meeting, at the place, date and time aforesaid and stating that copies of the Scheme of Amalgamation and the statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and that the form of proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid.



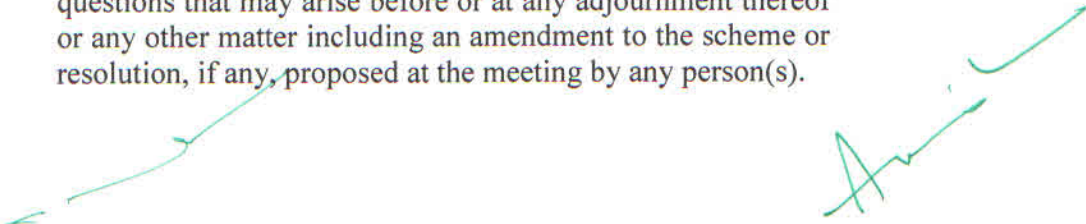
The Applicant Company to serve the notice upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/or Central Government has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the Registrar of Companies, Karnataka pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Registrar of Companies, Karnataka within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies, Karnataka has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the Income Tax Authority, within whose jurisdiction that Applicant Company's Assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme.

The Applicant Company to serve the notice upon the other sectoral regulators or authorities, if any, pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received by the Tribunal from other sectoral regulators or authorities within 30 days of the date of receipt of the notice it will be presumed that the other sectoral regulators or authorities has no objection to the proposed Scheme.

The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the separate meeting(s), including for deciding procedural questions that may arise before 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).



The voting shall be in person or by proxy or authorised representative in case be permitted, provided that the proxy in the Form No. MGT-11 authorization duly signed by the person entitled to attend and vote at the meeting, is to be filed with the Applicant Company at its Registered office, not later than, forty eight hours before the aforesaid meeting in accordance with Rule 10 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.

The said Chairperson to file affidavit not less than seven days before the day fixed for holding of the meeting and do report to this tribunal that the direction regarding convening and issuance of notice(s) to all the necessary parties have been duly complied with in conformity with the relevant Provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements, Amalgamations) Rules, 2016.

The Chairman shall report the conclusion of the aforesaid meeting as per the Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

28/4/17
(RATAKONDA MURALI)
MEMBER, JUDICIAL

28/4/17
(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE 28th DAY OF APRIL, 2017