

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH
T.P.No.298/17**

IN

C.A.630/16

DATED: FRIDAY THE 28TH DAY OF APRIL 2017

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

**IN THE MATTER OF COMPANIES ACT, 1956
SECTIONS 391-394 OF THE COMPANIES ACT, 1956**

AND

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

AND

IN THE MATTER OF MANTRI PROPERTY DEVELOPERS PRIVATE LIMITED

T.P.No.298/17 IN C.A.No.630/16

1. Mantri Property Developers Private Limited

Mantri House, No.41, Vittal Mallya Road

Bangalore-560001

-APPLICANT/TRANSFEROR COMPANY No.3

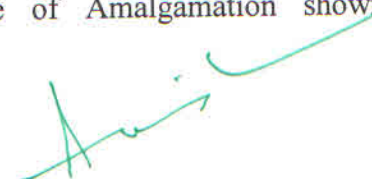
PARTIES PRESENT: Shruti Jere, Advocate, Cyril Amarchand Mangaldas
No.201, Midford House, Midford Garden, Off M.G.Road,
Bangalore 560001

Heard on: 06.02.2017, 28.2.2017, 24.03.2017, 17.04.2017

ORDER

Originally this Company Application was filed before the Hon'ble High Court of Karnataka by the Applicant Company under Section 391 of the Companies Act, 1956, being numbered as C.A. No.630/16. Subsequently as per Notification No. GSR.1119 (E) dated 7th December, 2016 issued by Ministry of Corporate Affairs, New Delhi, the said case is transferred to this Tribunal and renumbered as T.P.No.298/17.

This Company Application is filed on behalf of the Applicant Company under Section 391 of the Companies Act, 1956, praying to order for dispensing with for convening of the Meeting of Equity Shareholders and Unsecured Creditors of the Applicant/Transferor Company and convening of separate meeting(s) of Secured Creditor for considering the Scheme of Amalgamation, where under the Applicant Company Mantri Property Developers Private Limited which is Transferor Company No.3 to be merged with Mantri Developers Private Limited (Transferee Company). The Scheme of Amalgamation shown as Annexure-A.

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

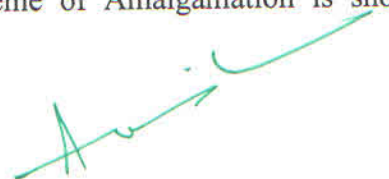

The Applicant Company seeks an order for dispensing with convening of the Meeting of Equity Shareholders and Unsecured Creditors and for convening of meeting of Secured Creditors for considering the Scheme of Amalgamation of Applicant Company Mantri Property Developers Private Limited with Mantri Developers Private Limited in terms of Scheme of Amalgamation shown as **Annexure-A**.

It is further averred in the Application that the Applicant/Transferor Company 3 was incorporated on 7th December, 2010 under the name and style of Mantri Property Developers Private Limited with the Registrar of Companies, Karnataka vide CIN bearing No. U70100KA2010PTC056156. The Registered office of the Applicant Company is situated at Mantri House, No.41, Vittal Mallya Road, Bangalore-560001.

The main objects of the Applicant Company is 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, construction, reconstruction, erecting, altering, improving, enlarging etc., to purchase for resale 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. The copy of Memorandum and Articles of Association of the Applicant Company is shown as **Annexure-B**.

The latest authorized share capital of Applicant Company is Rs.1,00,000/- divided into 10,000 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 as on 31st March, 2016 is marked as **Annexure -C**.

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 29th June, 2016 by virtue of which Applicant Company Mantri Property Developers Private Limited (Transferor Company No.3) is proposed to be merged with Mantri Developers Private Limited (Transferee Company) subject to confirmation. A copy of the Board Resolution of Applicant Company dated 27th June, 2016 in approving and adopting the Scheme of Amalgamation is shown as **Annexure-Y**.



It is stated in the scheme that, the scheme would inter-alia, have the following benefits:

1. Greater integration and greater financial strength and flexibility for the combined entities;
2. Greater efficiency in the cash management of the combined entities and unfettered access to cash flow generated by the combined business;
3. Benefit of operational synergies of the combined entities etc.,

We have heard the Counsel appearing for the Applicant/Transferor Company 3, who has filed the application for dispensing with the convening of meeting of Equity Shareholders and Unsecured Creditors and convening of meeting of Secured Creditor for considering the Scheme of Amalgamation of Applicant Company Mantri Property Developers Private Limited with Mantri Developers Private Limited in terms of Scheme of Amalgamation shown as **Annexure-A**.

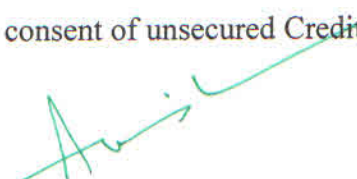
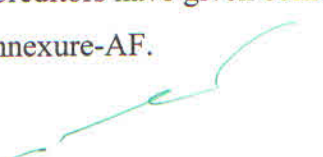
The Applicant Company is seeking an order to dispense with convening of meeting of Equity Shareholders on the ground that the Applicant Company has only Two Equity Shareholders and they have given their consent to the Scheme of Amalgamation. The Certificate of Chartered Accountant certifying the name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

We have seen the consent letters of the Two Equity shareholders shown as Annexure-AD i.e., (i) Mantri developers Private Limited holding 9,999 equity shares, constituting 99.99 % of the paid-up capital, (ii) Sushil Mantri and Snehal Mantri (Jointly) holding 1 equity shares, constituting 0.01% of the paid-up capital.

It is further averred that, there is only 1 Secured Creditor as certified by the Chartered Accountant shown as Annexure- AE.

It is further averred that, the Applicant Company has 2 Unsecured Creditors as certified by the Chartered Accountant shown as Annexure-AE. It is stated that, the value of amounts in respect of the unsecured creditors of the Applicant Company is Rs.45,77,00,512/-. The Applicant Company is indebted to (i) Mantri Primus Lifespaces Private Limited is Rs.1,41,20,836/- (ii)Guru & Jana is Rs.17,175/-

We have seen the consent letters of the two unsecured creditors and 100% of the Unsecured Creditors have given consent to the scheme. The consent of unsecured Creditors is shown as Annexure-AF.



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

The meeting of Secured Creditor of the Applicant Company be convened and held at St. Marks Hotel, St. Marks Road, Bangalore-560001, on 10th June, 2017 at 2:00 P.M. for the purpose of considering and, if thought fit, in approving with or without modifications the proposed scheme of Amalgamation of Mantri Property Developers Private Limited (Transferor Company No.3) with Mantri Developers Private Limited (Transferee Company).

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 is appointed for the Secured Creditors meeting. The remuneration of chairperson and Scrutinizer is fixed at Rs.20,000/- and Rs.10,000/- respectively for convening the Secured Creditors meeting.

The quorum for the Meeting of the Secured Creditor is one.

The Notice of the Meeting of Secured Creditor shall be published in an English Daily Financial Express and Vijayavani (Kannada daily).

The Applicant Company or its authorized signatory is directed to issue notice(s) to Secured Creditor by 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 Creditor as per Form No.CAA2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 ensuing convening the said Secured 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 Meeting of the Secured Creditor 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.



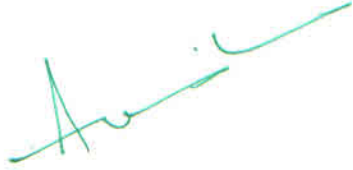

The Applicant Company to serve the notice upon the Regional Director, South-East Region, Ministry of Corporate Affairs, Hyderabad pursuant to Section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 if no response is received 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 Reserve Bank of India, if applicable 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 Reserve Bank of India within 30 days of the date of receipt of the notice it will be presumed that Reserve Bank of India 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 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.

In the result, the application is allowed and holding of meeting of the Equity Shareholders and Unsecured Creditors is dispensed with. In any eventuality when the Applicant Company approaches this Tribunal for seeking approval of the scheme it would be open for any person who are interested in the Scheme of Amalgamation to put forth their contentions before the Tribunal.


(RATAKONDA MURALI)
MEMBER, JUDICIAL


(ASHOK KUMAR MISHRA)
MEMBER, TECHNICAL

DATED THIS THE ²⁸/₁₄ DAY OF APRIL, 2017