

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, CHENNAI**

**TP (HC)/215 & 216/CAA/2017
[Old CP No. 23 & 24 of 2016]**

**Under Section 391 to 394 of the Companies Act, 1956 and the
corresponding sections 230 to 232 of the Companies Act, 2013**

In the matter of Scheme of Amalgamation of

**M/s. Vijas Infrastructures Private Limited
(CIN: U45200KL2010PTC025725)
(Transferor Company)**

With

**M/s. Ottapath Projects and Developers Private Limited
(CIN: U45202KL2014PTC037111)
(Transferee Company)**

Order delivered on: 29.01.2018

Coram:

K. Anantha Padmanabha Swamy, Member (Judicial)

S. Vijayaraghavan, Member (Technical)

For the Petitioner Companies: Shri. T.K Bhaskar, Advocate
Shri. Vikram P. Jain, Advocate
Smt. Shwetha Vasudevan, Advocate

ORDER

Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)

1. Under consideration are two Company Petitions filed before the Hon'ble High Court of Kerala under the provisions of the Companies Act, 1956 which stood transferred to this tribunal pursuant to the Companies (Transfer of Proceeding Proceedings) Rules, 2016 and renumbered as TP(HC)/215&2016/CAA/2017. The purpose of filing the petitions is to obtain the sanction to the Scheme of Amalgamation (hereinafter referred to as '**Scheme**') by virtue of which M/s. Vijas Infrastructures Private

Limited (hereinafter referred as ‘**Transferor Company**’) is proposed to be amalgamated, merged and vested with M/s. Ottapath Projects And Developers Private Limited (hereinafter referred as ‘**Transferee Company**’) as a going concern.

2. The Authorised and issued, subscribed & paid up share capital of the Transferor and the Transferee Company and secured/ unsecured creditors are as under:

Particulars	Share Capital Details	Authorized Capital	Issued & paid-up Capital	Equity Share-holders	Secured Creditors	Unsecured Creditors
Transferor Company	5,000 Equity Shares of Rs. 1000/- each	Rs. 50,00,000	Rs. 50,00,000	3	Nil	12
Transferee Company	500 Equity Shares of Rs. 1000/- each	Rs. 5,00,000	Rs. 2,00,000	3	Nil	6

3. The Transferor Company is a Private Limited Company, having its registered office at No.2A, Enarc Apartments, Marar Road, Thrissur, Kerala – 680001 and engaged in the business of infrastructure development and all types of housing projects etc. The Transferee Company is a Private Limited Company, having its registered office at No.12/759-1, Ottapath House, near Subramania Temple, Thaikattussery, Thrissur, Kerala – 680306 and engaged in the business of project and property developers, to act as builders, construction of all types of villas, apartments, residential and commercial spaces etc. The



Board of Directors of the Petitioner Companies vide their respective resolutions dated 02.02.2016 approved the said Scheme of Amalgamation.

4. The Hon'ble High Court of Kerala vide its order dated 05.04.2016 in MCA No.21/2016 and MCA No.22/2016 has directed to convene and hold the meetings of the Equity Shareholders and Unsecured Creditors of the Transferor Company and the Transferee Company respectively under the provisions of Section 391 of the Companies Act, 1956. The Transferor Company and the Transferee Company have no secured creditors and certificates were issued by M/s. JGS & Associates, Chartered Accountants to the same effect. All the Shareholders and unsecured Creditors of the Transferor and Transferee Company were present at the meeting in person or by proxy voted in favour of the scheme of Amalgamation and the resolution presented at the meeting was approved unanimously and the Chairman's Report has also been filed in this regard.
5. Shri T.K Bhaskar, the learned counsel appearing for the Companies submitted that the rationale of the scheme is that the Transferee Company would be benefited from the said scheme of Amalgamation by integration of operations of the shareholding structure of the Transferor Company and Transferee Company reflect common set of promoters/ shareholders. The scheme would thus facilitate the continuance of the



common business of the transferor and transferee company under one entity and management, especially considering that the Transferee Company owns the land in relation to project currently developed by the Transferor Company; the scheme would enable efficient implementation of business by way of cost reduction on the administrative/operational spheres and achieve business synergies and implementation of business policies from a group management perspective, and the benefit financial resources, managerial, technical and marketing expertise of the Transferor Company. Further it has been submitted that the scheme coming to effect, in consideration of the transferor and vesting of the undertaking of the transferor Company in the Transferee Company in terms of the scheme, the transferee company shall issue and allot to the equity shareholders of the Transferor Company *“64 equity shares of Rs. 1000/- each fully paid up in the Transferee Company for every 100 equity shares of Rs. 1000/- each fully paid up held by the Transferor Company”* Further, there is no investigation proceedings pending against the Companies under provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

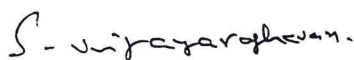
6. In this case as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no any objections to the scheme under reference.

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7. The Regional Director, Southern Region (In short, 'RD') vide the communication addressed to the Office of the Registrar of Companies (In short 'ROC') bearing reference No.F.MO.5/K-54/2016-17 dated 07.10.2016 has stated that the Scheme has been examined with reference to the material papers made available to him and accordingly it has been decided not to make any objection to the above scheme of Amalgamation. Further, the ROC vide Report dated 14.10.2016 set out that the Regional Director, Ministry of Corporate Affairs (Southern Region) Chennai being the competent authority by virtue of the powers delegated to him by the Central Government has examined the scheme of arrangement and amalgamation and other relevant papers made available to him in respect of the matters referred to in the above petition and accordingly decided not to make any objection to the above scheme of amalgamation. The report of the ROC also states that taking into account the above submission, the Company Petition may be disposed of on merits.
8. The Official Liquidator (In short 'OL') vide memo dated 08.05.2017 has submitted that the Chartered Accountant appointed by the OL has submitted his report dated 20.04.2017 with a conclusion that the affairs of the Transferor Company has not been conducted in a manner prejudicial to the interest of its shareholders and public and had filed the report of the Chartered Accountant. ✓

9. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of Amalgamation will not cast any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the Scheme is 01.04.2015.
10. The Scheme does not require any modification and the said Scheme of Amalgamation appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made under the Companies Act, 1956 and the Companies Act, 2013. Taking into consideration all the above, the Company Petition is allowed and the Scheme of Amalgamation annexed with the petition is hereby sanctioned which shall be binding on all the members, creditors and shareholders.
11. While approving the scheme as above, we further clarify that this order should not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained and compliances that may have to be made as per the mandate of law. ✓

12. The Transferor Company shall be dissolved without winding up from the date of the filing of the certified copy of this order with the Registrar of Companies.
13. Upon receiving the certified copy of this order, the RoC, Kerala is directed to place all documents relating to the Transferor Company with that of the Transferee Company and the files relating to the Transferor Company shall be consolidated with the files and records of the Transferee Company.
14. The Company to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme. The Petitioner Company to file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
15. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.
16. Accordingly, the Scheme stands sanctioned and the Company Petition Nos. 215 & 216/ CAA/2017 stands disposed of.



S. Vijayaraghavan
Member (Technical)



K. Anantha Padmanabha Swamy
Member (Judicial)