

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

CSP 638/230-232/NCLT/MB/MAH/2017

CSP 639/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Ashish Builders Private Limited

.....Petitioner in CSP 638/2017
(Transferor Company)

M/s. Geopreneur Corp Private Limited

.....Petitioner in CSP 639/2017
(Transferee Company)

Order delivered on: 14.09.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Kedar Wagle, Counsel for the Petitioners

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s Ashish Builders Private Limited (Transferor Company), with M/s Geopreneur Corp Private Limited, (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company and the Transferee Company both are engaged in the Business of construction and realty and having its operational location in Mumbai.
4. The rationale of the Scheme of Amalgamation is, it would result in improving the operational efficiencies, optimising costs, revenues, capital, and would have better access to different financing avenues for both the Transferor Company and the Transferee Company and would result in improved shareholder's value.

A. K. Wagle

5. The Authorised, Issued, Paid-up and Subscribed Share Capital of the Transferor Company is ₹ 20,00,000/- comprising of 15,000 Equity Shares of ₹ 100 each and 5,000 13.5% Cumulative Redeemable Preference Shares of ₹ 100 each.
6. The issued, subscribed and paid-up share capital of the Transferor Company is 12,004 Equity Shares of ₹ 100 each.
7. The Authorised Share Capital of the Transferee Company is ₹ 10,00,00,000/- comprising of 1,00,00,000 Equity Shares of ₹ 10 each.
8. The issued, paid-up and subscribed share capital of the Transferee Company is ₹ 6,91,67,990/- comprising of 69,16,799 Equity Shares of ₹ 10 each.
9. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:

- a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
- b) The Regional Director has filed a report on 4th September 2017 stating therein, save and except as stated in paragraph IV (1) to IV (5), it appears that the Scheme of Amalgamation is not prejudicial to the Interests of Shareholders and Public. In paragraph IV (1) to IV (5), the Regional Director has stated that:

"1. The Tax implication if any arising out of the scheme is subject to the final decision Income Tax Authorities. The approval of this scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

2. It is submitted that the Petitioner Companies have submitted proof of serving notice upon Income Tax Authorities dated 15.05.2017 for comments. The office of the Directorate also has issued reminder dated 17.08.2017.

Approved:

3. *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*

4. *Petitioner in clause 11.6 of the scheme has inter alia mentioned that the Board of the transferee Company in consultation with the statutory auditors is authorized account for any balances in any other manner if such accounting treatment is considered more appropriate.*

In this regard it is submitted that accounting treatment should be only in accordance with AS 14. Board may not have power to alter without prior approval of the Hon'ble Tribunal.

5. *It is submitted that Petitioner both Transferor and Transferee Company are into real estate activity. Hence they have to comply with the provisions of the Real Estate (Regulation and Development) Act, 2016.*

- c) *Apropos the observation in paragraph IV (1) and (2) of the Report of the Regional Director is concerned, the Learned Counsel submitted that, the Transferee Company undertakes to comply with all applicable provisions of the Income-Tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.*
- d) *Apropos the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel submitted that, the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103), the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.,*
- e) *Apropos the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel submitted that, the Transferee Company undertakes to pass accounting entries in compliance with AS-14 and other applicable Accounting Standards. The Learned Counsel for the Petitioner Companies confirms that the Board of the Petitioner Companies does not have the power to alter the accounting treatment without prior approval of the Hon'ble Tribunal.*

Approved:

- f) Apropos the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel submitted that, the Transferor Company as on the date of this Order, does not have any project that is registrable under the provisions of the Real Estate (Regulation and Development) Act, 2016 do not apply to the Transferor Companies.
- g) Whereas the Transferee Company is concerned, the Learned Counsel submitted that, the Transferee Company is registered under the provisions of the Real Estate (Regulation and Development) Act, 2016 and undertakes to comply with all the applicable provisions of the said Act and the Rules and Regulations made thereunder. It is further stated that, the Transferee Company has also filed an affidavit dated 11th September 2017 to the effect with the registry on 11th September 2017 containing an undertaking to that effect.
- h) The Official Liquidator, Mumbai has filed its report, dated 22nd August, 2017, and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company can be dissolved without winding up.
- i) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

10. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred to the Transferee Company and accordingly the same shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.



- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of Consideration for the said Scheme of Amalgamation, 12 shares of the Transferee Company shall be issued and allotted for 1 share held by such Member in the Transferor Company.
- d) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- e) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
- f) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- g) Transferor Company i.e. Petitioner in CSP No. 638 of 2017 to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- h) All authorities concerned to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- i) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.



j) The Scheme is sanctioned and the appointed date is fixed as 01.04.2016.

11. Ordered accordingly.

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Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 14.09.2017