

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

COMPANY SCHEME APPLICATION NO. 47 OF 2017

Under Section 391 to 394 of Companies Act, 1956
read with Section 230 to 232 of the Companies Act,
2013.

In the matter of

Pentagram Properties Private Limited,)
a Company incorporated)
under the Companies Act, 1956)
and having its Registered Office)
at HDFC House, CTS 154 & 155,)
Oshiwara District Centre,)
Garden Road, Goregoan (West))
Mumbai – 400 104)
CIN: U70100MH2005PTC154357) ...Applicant/ Transferor Company

Judgment delivered on September 4, 2017

Coram:

Hon'ble Shri. B.S.V. Prakash Kumar, Member (J)

Hon'ble Shri. V. Nallasenapathy, Member (T)

For the Applicant:

1. Mr. Darius Khambata, Senior Advocate,
2. Mr. Krishnava Dutt
3. Mr. Pheroze Mehta
4. Mr. Swapnil Gupte i/b Argus Partners.

Per: Hon'ble Shri. V. Nallasenapathy, Member (T)

MINUTES OF THE ORDER

UPON application filed by the Applicant Company above named by a Company Application **AND UPON HEARING** Mr. Darius Khambata, Senior Advocate, a/w Mr. Krishnava Dutt, Mr. Pheroze Mehta and Mr. Swapnil Gupte i/b Argus Partners Advocates for the Applicant Company, **AND UPON READING** the Affidavit dated 21st October, 2016 of Mr. Manoj Nair, Director of the Applicant Company in support of the Company Scheme Application and exhibit referred therein, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the Applicant Company, be convened and held at HDFC House, 165-166, Backbay Reclamation, H.T. Parekh Marg, Churchgate, Maharashtra, Mumbai – 400 020 on October 25, 2017 at 01:00 pm for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Pentagram Properties Private Limited ("the Applicant Company" or "the Transferor Company") with Housing Development Finance Corporation Limited ("the Transferee Company").
2. At least thirty (30) clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said Meeting at the place, day, date and time aforesaid, together with a copy of the Scheme of Amalgamation, a copy of the Statement required to be sent under Section 230 of the Companies Act, 2013 and the prescribed Form of Proxy, shall be sent by Registered Post or by Air Mail, or by courier or by speed post, or by hand delivery to each of the Equity Shareholders of the Applicant Company at their respective registered or last known addresses or by e-mail to the registered e-mail address of the Equity Shareholders as per the records of the Applicant Company.
3. The Applicant Company undertakes to:
 - i. Issue Notice convening meeting of the equity shareholders as per Form No.CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
 - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013.
 - iii. Issue Form of Proxy as per Form No.MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
 - iv. Advertise the Notice convening meeting as per Form No.CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

4. Mr. Manoj Nair Director of the Applicant Company is appointed as the Chairman for the meeting of Equity Shareholders called under this order and the relevant law of the Applicant Company.
5. The Chairman appointed for the aforesaid Meeting to issue the advertisement and notices of the Meeting referred to above. The said Chairman 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 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).
6. The quorum for the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
7. The voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office at HDFC House, CTS 154 & 155, Oshiwara District Centre, Garden Road, Goregaon (West) Mumbai – 400 104, not later than, forty-eight (48) hours before the aforesaid meeting as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
8. The value and number of the Equity shares of each member shall be in accordance with the books/ register of the Applicant Company and where the entries in the books/ register are disputed, the Chairman of the Meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
9. That Bhandari & Associates, Company Secretaries is hereby appointed as the Scrutinizer of the meeting of the Shareholders proposed to be held on October 25, 2017 at HDFC House, 165-166, Backbay Reclamation, H.T. Parekh Marg, Churchgate, Maharashtra, Mumbai – 400 020.

10. The Chairman to report to this Tribunal, the result of the aforesaid meetings of the Equity Shareholders within three (3) days of the conclusion of the meeting.
11. The Counsel for the Applicant Company submits that there are no Secured Creditors of the Applicant Company, therefore the question of sending notices to Secured Creditors does not arise. The Counsel for the Applicant Company further submits that since the Scheme is an arrangement between the Applicant Company and their respective Shareholders, only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230 (1) (b) of the Companies Act, 2013. This Bench directs the Applicant Company to issue individual notices to all its unsecured creditors and debenture holder to whom amounts are due and payable as required under section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, within a period of thirty (30) days from the date of receipt of such notice to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company, failing which, it shall be presumed that the Unsecured Creditors and debenture holder have no representations to make on the proposals.
12. The Applicant to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from Regional Director within thirty (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 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
13. The Applicant to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Registrar of Companies within thirty (30) days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

14. The Applicant to serve the notice upon the Official Liquidator, High Court, Bombay pursuant to Section 230(5) of the Companies Act, 2013. The Tribunal is appointing Chartered Accountant, M/s. T. R. Chadha & Co. LLP, with remuneration of Rs. 1,00,000/- (Rupees One Lakh Only) for the services. If no response is received by the concerned Tribunal from Official Liquidator within thirty (30) days of date of receipt of the notice it will be presumed that Official Liquidator, High Court, Bombay has no objection to the proposed Scheme as laid out in section 230 (5) of the Companies Act, 2013.
15. The Applicant to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Petitioner Company's assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the concerned Tribunal from the Registrar of Companies within thirty (30) days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. The Applicant Company to file an affidavit of service in the registry proving dispatch of notices to the Shareholders, unsecured creditors, debenture holder, publication in newspapers and to the regulatory authorities above not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices have been duly complied as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)