

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

CSA NO. 897 OF 2017

Under Section 230 to 232 of  
Companies Act, 2013

In the matter of Scheme of Amalgamation of Flying Constructions Private Limited (First Applicant Company / First Transferor Company) and Shravasti Developers and Agro Private Limited (Second Applicant Company / Second Transferor Company) and Sumatinath Reality & Agro Private Limited (Third Applicant Company / Third Transferor Company) with Lodha Impression Real Estate Private Limited (Fourth Applicant Company / Transferor Company) and their respective shareholders and creditors.

Flying Construction Private Limited

..... First Applicant Company / First Transferor Company

Shravasti Developers and Agro Private Limited

..... Second Applicant Company / Second Transferor Company

Sumatinath Reality & Agro Private Limited

..... Third Applicant Company / Third Transferor Company

Lodha Impression Real Estate Private Limited

..... Fourth Applicant Company / Transferee Company

Judgment / Order delivered on 27<sup>th</sup> day of September, 2017

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant(s): Mr. Ajit Singh Tawar and Mr. Rushil Aiya i/b Ajit Singh Tawar & Co., Advocates for Applicants

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

**ORDER**

**UPON** the application of the Applicant Companies above named by a Company Notice of Admission **AND UPON HEARING** Mr. Ajit Singh Tawar and Mr. Rushil Aiya i/b Ajit Singh Tawar & Co, Advocates for the Applicant Companies. **AND UPON READING** the Application along with the Notice of Admission dated 14<sup>th</sup> day of September, 2017 of Mr. Abhijeet Shinde, Authorised Representative for the Applicant Companies, in support of Notice of Admission along with Application and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. A meeting of the Equity Shareholders of the First Applicant Company, be convened and held at Lodha Excelus, 10<sup>th</sup> Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Wednesday, 08<sup>th</sup> day of November, 2017 at 10:00 AM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Flying Constructions Private Limited and Shravasti Developers and Agro Private Limited and Sumatinath Reality & Agro Private Limited with Lodha Impression Real Estate Private Limited and their respective shareholders and creditors.
2. A meeting of the Equity Shareholders of the Second Applicant Company, be convened and held at Lodha Excelus, 10<sup>th</sup> Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Wednesday, 08<sup>th</sup> day of November, 2017 at 11:00 AM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Flying Constructions Private Limited and Shravasti Developers and Agro Private Limited and Sumatinath Reality & Agro Private Limited with Lodha Impression Real Estate Private Limited and their respective shareholders and creditors.



3. A meeting of the Equity Shareholders of the Third Applicant Company, be convened and held at Lodha Excelus, 10<sup>th</sup> Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Wednesday, 08<sup>th</sup> day of November, 2017 at 12:00 PM for the purpose of considering and, if thought fit, approving, with or without modification(s), the proposed Scheme of Amalgamation of Flying Constructions Private Limited and Shravasti Developers and Agro Private Limited and Sumatinath Reality & Agro Private Limited with Lodha Impression Real Estate Private Limited and their respective shareholders and creditors.
4. A meeting of the Equity Shareholders of the Fourth Applicant Company, be convened and held at Lodha Excelus, 10<sup>th</sup> Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Wednesday, 08<sup>th</sup> day of November, 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 Flying Constructions Private Limited and Shravasti Developers and Agro Private Limited and Sumatinath Reality & Agro Private Limited with Lodha Impression Real Estate Private Limited and their respective shareholders and creditors.
5. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Companies 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, a copy of the Explanatory 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 Companies 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 respective Applicant Companies.
6. At least 30 clear days before the Meeting of the Equity Shareholders of the Applicant Companies 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 respective Applicant Companies as aforesaid, shall be published once each in 'Free Press Journal' in English and 'Navshakti' in Marathi, both circulated at Mumbai.

7. The Applicant Companies undertakes to:

- i. Issue Notice convening meeting of the Equity shareholders in Form No. CAA.2 as per 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 in Form No. MGT-11 as per Rule 19 of the Companies (Management and Administration) Rules, 2014; and
- iv. Advertise the Notice convening meeting in Form No. CAA.2 as per Rule 7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

8. Mr. Varun Shah, Authorised Representative of the Applicant Companies failing him, Mr. Abhijeet Shinde, Authorised Representative of the Applicant Companies failing him Directors of the respective Applicant Companies, failing them Mr. Kushal Kumar, Practicing Company Secretary, is appointed as the chairperson for the meeting of the Equity Shareholders, who shall be paid an amount of Rs. 2000/- per Applicant Company for the services. The Scrutinizer for the meeting shall be Mr. Sharat Kumar Shetty Proprietor of Sharatkumar k Shetty & Associates., Practicing Company Secretary, who shall be paid an amount of Rs. 3000/- per Applicant Company for the services.
9. The Chairperson appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (or any re-enactment thereof upon effectiveness of Companies Act, 2013) in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise at the meeting 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).



10. The quorum for the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. The voting by proxy or authorized representative in case of body corporate shall be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, is filed with the respective Applicant Company at its Registered Office, not later than, 48 hours before the aforesaid meetings as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
12. The value and number of the shares of each member shall be in accordance with the books/ register of the respective Applicant Company or depository records and where the entries in the books / register /depository records are disputed, the Chairperson for the respective Meeting shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
13. The Chairperson for the respective meeting to file an affidavit not less than seven days before the date fixed for the holding of the respective meeting of equity shareholders and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016.
14. The Chairperson for the respective meeting to report to this Tribunal, the result of the aforesaid meetings of equity shareholder within 30 days after the conclusion of the meeting.
15. That since there are no Secured Creditors in the First Applicant Company, Second Applicant Company and Third Applicant Company as stated in the averments made in respective paragraph 33, 34 and 35 of the Application, therefore the question of sending notices to Secured Creditors does not arise.
16. The Counsel for the Fourth Applicant Company further submits that since the Scheme is an Arrangement between the Applicant Companies involved in the Scheme and their respective shareholders and only meetings of the Equity Shareholders of the Applicant Companies are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Fourth Applicant Company to



- issue individual notice of meeting of Equity Shareholders by Post / Courier / Email / Hand-delivery to all its Secured Creditors as required under section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Fourth Applicant Company.
17. That Counsel for Applicant Companies further submits that since the Scheme is an Arrangement between the Applicant Companies involved in the Scheme and their respective shareholders and only meetings of the Equity Shareholders of the Applicant Companies are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the respective Applicant Company involved in the scheme to issue notice to all its Unsecured Creditors as required under Section 230 (3) of the Companies Act, 2013 with a direction that they may submit their representation, if any, to the Tribunal and a copy of such representations shall simultaneously be served upon the respective Applicant Company.
  18. The Applicant Companies to serve the notice upon the concerned Regional Director, 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 Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
  19. The Applicant Companies 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 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.
  20. The Applicant Companies to serve the notice on the concerned Income Tax Authority within whose jurisdiction the Applicant 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 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 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

21. The Applicant Companies i.e. First to Third Applicant Company to serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Chartered Accountant, M/s. Kamlesh Mehta & Co., with remuneration of Rs. 15,000/- per Applicant Company for the services. If no response is received by the concerned Office of the Official Liquidator within 30 days of the date of receipt of the notice it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
22. The Applicant Companies to file an Affidavit of Service of the directions given by the Tribunal not less than seven days before the date fixed for holding of the meetings and do report to this tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

**V. Nallasenapathy, Member (T)**

Sd/-

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