

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

CSP NO. 644, OF 2017

CSP NO. 653 OF 2017

CSP NO. 655 OF 2017

CSP NO. 648 OF 2017

CSP NO. 646 OF 2017

CSP NO. 658 OF 2017

CSP NO. 647 OF 2017

CSP NO. 657 OF 2017

CSP NO. 659 OF 2017

**GOLDCITY PROPERTIES PRIVATE LIMITED ...Petitioner/Transferor Company 1**

**SUPERVIEW PROPERTIES PRIVATE LIMITED ...Petitioner/Transferor Company 2**

**AETIUS CONSTRUCTIONS PRIVATE LIMITED ...Petitioner/Transferor Company 3**

**KAUTUK CONSULTANCY SERVICES PRIVATE LIMITED ...Petitioner/Transferor  
Company 4**

**AAJIVAN COMPUTERS PRIVATE LIMITED ...Petitioner/Transferor Company 5**

**ADVAYA TEX TRADING PRIVATE LIMITED ...Petitioner/Transferor Company 6**

**TOPONE CONSTRUCTIONS PRIVATE LIMITED ...Petitioner/Transferor Company 7**

**AVNI PROPERTIES PRIVATE LIMITED ...Petitioner/Transferor Company 8**

**SUPERGOLD PROPERTIES PRIVATE LIMITED ...Petitioner/Transferee Company**

In the matter of the Companies Act, 2013 (18 of 2013);

AND

Sections 230 to 232 of the Companies Act, 2013 and  
Section 66 and other relevant provisions of the  
Companies Act, 2013 along with the Companies Act,  
1956;

AND

In the matter of Scheme of Amalgamation and  
Arrangement

BETWEEN

Goldcity Properties Private Limited ( 'the Transferor Company 1' or 'GPPL') Superview Properties Private Limited ('Transferor Company 2' or 'SPPL'), Aetius Constructions Private Limited ('Transferor Company 3' or 'AECPL'), Kautuk Consultancy Services Private Limited ('Transferor Company 4' or 'KCSPL'), Aajivan Computers Private Limited ('Transferor Company 5' or 'ACPL'), Advaya Tex Trading Private Limited ('Transferor Company 6' or 'ATTPL'), Topone Constructions Private Limited ('Transferor Company 7' or 'TCPL') and Avni Properties Private Limited ('Transferor Company 8' or 'APPL') with Supergold Properties Private Limited ('Transferee Company' or 'SUPPL') and their respective shareholders

**CALLED FOR HEARING:**

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioners

Order delivered on 5<sup>th</sup> October 2017.

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

V .Nallasenapathy Hon'ble Member (T)

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

**ORDER**

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 to a Scheme of Amalgamation and Arrangement between Goldcity Properties Private Limited ( 'the Transferor Company 1') Superview Properties Private Limited ('Transferor Company 2'), Aetius Constructions Private Limited ('Transferor Company 3'), Kautuk Consultancy Services Private Limited ('Transferor Company 4'), Aajivan Computers Private Limited ('Transferor Company 5'), Advaya Tex Trading Private Limited ('Transferor Company 6'), Topone Constructions Private Limited ('Transferor Company 7') and Avni Properties Private Limited ('Transferor Company 8' ) with Supergold Properties Private Limited ('Transferee Company' ) and their respective shareholders.
3. The Petitioner Companies have approved the said Scheme of Amalgamation and Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application Nos. 511 of 2017.
5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 511 of 2017 of the National Company Law Tribunal dated 3<sup>rd</sup> May, 2017 which is annexed as Exhibit E to the respective Company Scheme Petitions.
6. The Regional Director has filed its Affidavit on 25<sup>th</sup> September, 2017 stating therein that save and except as stated in paragraph IV of the said affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

In paragraph IV, of the said order it is stated that:

- a) *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-14, AS-5 etc.*
- b) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. The Petitioner Companies served copy of the Scheme along with relevant orders etc to Income Tax Department. Further, the Office of the Regional Director, WR has also issued reminders on 15-09-2017.*
- c) *The tax implication, if any arising out of the Scheme is subject to final decision of Income-tax authorities. The approval of the 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.*
- d) *As per **Clause 1.4 Definitions of the Scheme**. "**The Appointed Date**" means the **1st day of April, 2016** or such other dated as may be approved by the Hon'ble Tribunal having jurisdiction at Bombay, or any another Competent Authority. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **1<sup>st</sup> day of April, 2016**.*
- e) *As the Transferor Company No. 4 i.e. **M/S Kautuk Consultancy Services Private Limited** is wholly owned subsidiary of the **Transferee Company**, the Hon'ble Tribunal may kindly direct to both of the companies involved in the Scheme to file **Solvency Certificate** with the Registrar of Companies, Mumbai, as required*

*u/s 233(I)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate orders(s) as deem fit.*

- f) That in view of provisions of **proviso to Section 66(3)** of the Companies Act, 2013 in respect of reduction of share capital of the Transferee Company, the Hon'ble Tribunal may kindly direct the company to submit Certificate from auditor of the Company that "the Accounting treatment proposed by the company for such reduction is in conformity with the Accounting Standards Specified in Section 133 or any other provisions of the Companies Act, 2013.*
- g) As the Transferor Company No. 1 to 3 & 7 and Transferee Company are having main objectives of real estate business, the Hon'ble Tribunal may kindly direct to them to make compliance of the provisions of the Real Estate (Regulations and Development) Act, 2016.*
7. As far as observations made in paragraph IV (a) of his Report, the Transferee Company undertakes that in addition to compliance of AS-14 accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
8. As far as observations made in paragraph IV (b) & (c) of his Report, the Petitioner Company submits that the Petitioner Company is bound 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.
9. As far as observations made in paragraph IV (d) of his Report, the Petitioner Company confirms that the Appointed Date for the Scheme shall be April 1, 2016.
10. As far as observations made in paragraph IV (e) of his Report, the Petitioner Company submits that the requirement to submit Solvency Certificate is required under Section 233. The Petitioners have not invoked provisions of Section 233 of CA 2013 which are independent of Section 203-232 of the CA 2013. The present Scheme of Amalgamation and Arrangement is not made under Section 233 of the Companies Act, 2013 and hence the requirement to file Solvency Certificate is not applicable.
11. As far as observations made in paragraph IV (f) of his Report, the Petitioner Company submits that the capital reduction is made under Section 230-232 of Companies Act, 2013. As per explanation to Section 230 of Companies Act, 2013, provisions of Section 66 shall not apply and hence there is no separate requirement to obtain certificate from auditor of the Company in regards to accounting treatment in relation to capital reduction.

12. As far as observations made in paragraph IV (g) of his Report, the Petitioner Company submits that the Petitioner Company is not covered under the ambit of Real Estate (Regulations and Development) Act, 2016 as none of the Petitioner Companies are presently engaged in development of any Real Estate Project. Further, the Petitioner Companies states that under the concerned Scheme of Amalgamation and Arrangement, no real estate project is transferred and hence no approval is required to be sought from RERA Authority.
13. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, have been explained by the Petitioner Companies in paragraphs 7 to 12 above.
14. The Official Liquidator has filed his report on 6<sup>th</sup> September, 2017 in Company Scheme Petition inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 644 of 2017 made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 653 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 655 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 648 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 646 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 658 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 647 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 657 of 2017 are absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No 659 of 2017 are absolute in terms of prayer clauses (a) to (c).
17. Petitioners are directed to lodge a copy of this order and a copy of the Scheme of Amalgamation and Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 2013.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

19. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

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