

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CSP No. 630/230-232/NCLT/MB/MAH/2017

CSP No. 631/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. SD Suburban Development Private Limited

.....Petitioner in CSP 630/2017

(Transferor Company)

M/s. Galina Consultancy Services Private  
Limited

.....Petitioner in CSP 631/2017

(Transferee Company)

Order delivered on: 29.09.2017

**Coram :**

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Adv. Hemant Sethi, i/b. Hemant Sethi & Co., Advocates for the Petitioners

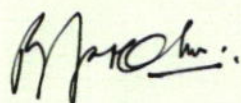
**For the Regional Director :**

Mr. Ramesh Gholap – Asst. Director (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

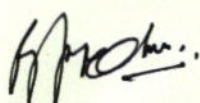
**COMMON ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, Scheme of Amalgamation of M/s. SD Suburban Development Private Limited (Transferor Company) with M/s. Galina Consultancy Services Private Limited (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.





3. The Transferor Company is engaged in the business of development & re-development of various immovable properties and in that respect to conceive, design, construct, build, manage, set up and maintain townships, housing, built-up infrastructure and construction-development projects.
4. The Transferee Company is engaged in the business of real estate business specializing in construction and development of sale and lease of commercial, industrial and residential properties and other similar works.
5. The amalgamation of the Transferor Company with the Transferee Company would help to simplify the Group structure, minimize cost of administration of two legal entities, for better and more economic and efficient management, control and running of the businesses of the companies concerned and to pool the resources of both the companies for growth.
6. The Authorised, Issued, Subscribed and Paid-Up Share Capital of the Transferor Company is ₹ 1,00,000/- comprising of 10 Equity Shares of ₹ 10/- each and 9,990 Preference Shares of ₹ 10/- each.
7. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 10,00,000/- Comprising of 1,00,000/- Equity Shares of ₹ 10/- each.
8. Presently the entire issued, subscribed and paid-up share capital of the Transferor Company is held by Transferee Company.
9. The averments made in the petitions and the submissions made by the Learned Counsel 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 Companies 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 his Report on 23<sup>rd</sup> August, 2017 stating therein that save and except as stated in paragraph IV (a) to (f) of the said





Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

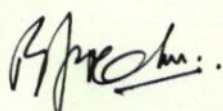
(a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other Applicable Standards such as AS-5 (IND AS-8) etc.,*

(b) *As per Definitions Clause 1.2 of the Scheme "Appointed Date" means the 15<sup>th</sup> day of March, 2017 or such other date as may be fixed or approved by the National Company Law Tribunal. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 15<sup>th</sup> day of March, 2017.*

(c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 05/05/2017 has served a copy Company Scheme Application No. 434 & 436 of 2017 along with relevant orders etc, further the Regional Director has also issued a reminder 10/08/2017 to IT Department.*

(d) *The tax issue if any arising out of the scheme is subject to final decision of I.T. Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter the IT Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the amalgamation. The decision of the IT Act is binding on the petitioner Company.*

(e) *M/s. SD Suburban Development Private Limited (Transferor Company) is a wholly owned subsidiary of M/s. Galina Consultancy Services Private Limited (Transferee Company). Hence, this Hon'ble Tribunal may kindly direct the companies involved in the scheme to file solvency certificate with the Registrar of Companies, Mumbai, as required u/s 233(1)(c) read with section 233(12) of the*





*Companies Act, 2013 and pass appropriate order(s) as deem fit.*

*(f) Both the Transferor and the Transferee Companies are in the Real Estate Development Business. Hence, they may be directed to clarify the applicability of Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulations 2017.*

- c) Apropos observation of the Regional Director, as stated in paragraph IV (a) of the Report is concerned, the Learned Counsel for the Petitioners undertakes that it will comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.
- d) Apropos observation of the Regional Director, as stated in paragraph IV (b) of the Report is concerned, the Learned Counsel for the Petitioners submits that the Appointed Date will be fixed as 15<sup>th</sup> March, 2017.
- e) Apropos observation of the Regional Director, as stated in paragraph IV (c) is concerned, the Learned Counsel for the Petitioners states that, the Petitioner Companies have already served the notice to the Income Tax Authorities and it has also served the acknowledgement copy of service of notice before Regional Director and to Hon'ble NCLT.
- f) Apropos observation of the Regional Director, as stated in paragraph IV (d) of the Report is concerned, the Learned Counsel for the Petitioners undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues, if any arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
- g) Apropos observation of the Regional Director, as stated in paragraph IV (e) of the Report is concerned, the Petitioner Companies through their Counsel submits that Section 233 (12) of the Companies Act, 2013 states that "The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise

*Mr. John.*

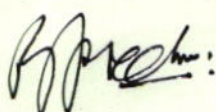


or arrangement referred to in section 230 or division or transfer of a company referred to in clause (b) of subsection (1) of section 232.” In the present case, the Petitioner Companies have presented the Scheme to this Tribunal under Sections 230 to 232 of the Companies Act, 2013 and the Petitioner Companies did not invoke the Section 233 of the Companies Act, 2013. Therefore, there is no requirement of filing solvency certificate. The provisions of section 233 are independent of Section 230-232 of Companies Act, 2013.

- h) Apropos observation of the Regional Director, as stated in paragraph IV (f) of the Report is concerned, the Learned Counsel for the Petitioners submits that, the Petitioner Companies has no real estate project at present which requires registration under Real Estate Regulation and Development Act, 2016 (RERA) read with Maharashtra Rules and Regulations 2017 and hence it is not applicable. However, there is land with the Petitioner Companies which they may develop in the future and that time the Companies will comply with the RERA Provisions.
- i) The Official Liquidator has filed his report inter alia, stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and the said Scheme is not prejudicial to the interest of Public. It is further stated that the Transferor Company may be ordered to be dissolved without winding up by this Tribunal.
- j) Further the Learned Counsel for the Petitioners submitted that, neither the Petitioners nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Company and Transferee Company.

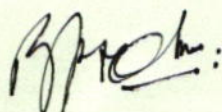
10. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, 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) Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.
- d) Since the entire issued, subscribed and paid up capital of the Transferor Company is held by the Transferee Company, no consideration shall be issued after the Amalgamation of the Transferor Company with the Transferee Company.
- e) 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.
- f) 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.
- g) Each Petitioner Companies to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) 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.
- h) Transferor Company i.e. Petitioner in CSP No. 630 of 2017 to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.





- i) 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.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- k) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 15<sup>th</sup> March, 2017.

11. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 29<sup>th</sup> September, 2017**

Avinash