

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**TRANSFERRED COMPANY SCHEME PETITION NO. 88 OF 2017**

SAMBHAVNATH BUILDERS PRIVATE LIMITED

...Petitioner/ First Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 89 OF 2017**

VAMADEVI DEVELOPERS AND FARMS PRIVATE LIMITED

...Petitioner/ Second Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 90 OF 2017**

MALLINATH REALITY & AGRO PRIVATE LIMITED

...Petitioner/ Third Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 91 OF 2017**

SUNANDA AGROBUILD PRIVATE LIMITED

...Petitioner/ Fourth Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 92 OF 2017**

GROOVY DEVELOPERS AND FARMS PRIVATE LIMITED

...Petitioner/ Fifth Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 93 OF 2017**

SUSIMA BUILDTECH AND FARMS PRIVATE LIMITED

...Petitioner/ Sixth Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 94 OF 2017**

SHANTIPRIYA DEVELOPERS AND FARMS PRIVATE LIMITED

...Petitioner/ Seventh Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 95 OF 2017**

POONAM FAST FOODS PRIVATE LIMITED

...Petitioner/ Eighth Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 96 OF 2017**

VISHWAVINAYAK TECHNO BUILDERS PRIVATE LIMITED

...Petitioner/ Ninth Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 97 OF 2017**

DURGESHWARI HI-RISE & FARMS PRIVATE LIMITED

...Petitioner/ Tenth Transferor Company

AND

**TRANSFERRED COMPANY SCHEME PETITION NO. 98 OF 2017**

CHANDRAKRUPA DEVELOPERS PRIVATE LIMITED

...Petitioner/ Transferee Company

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

AND

In the matter of Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016

AND

In the matter of Scheme of Amalgamation ('Scheme') between Sambhavnath Builders Private Limited and Vamadevi Developers and Farms Private Limited and Mallinath Reality & Agro Private Limited and Sunanda Agrobuilt Private Limited and Groovy Developers and Farms Private Limited and Susima Buildtech and Farms Private Limited and Shantipriya Developers & Farms Private Limited and Poonam Fast Foods Private Limited and Vishwavinayak Techno Builders Private Limited and Durgeshwari Hi-Rise & Farms Private Limited (collectively referred to as 'Transferor Companies') and Chandrakrupa Developers and Farms Private Limited ('Transferee Company') and their respective shareholders and creditors

Called for hearing

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners in all the Petitions.

Mr. Ramakantha , Joint Director in the office of Regional Director

**Coram: B.S.V. Prakash Kumar, Member (Judicial)**

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

**DATED: 29<sup>th</sup> March, 2017**

**MINUTES OF THE ORDER**

1. Heard the learned counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme and to contravene averments made in the Petition.

2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Sambhavnath Builders Private Limited and Vamadevi Developers and Farms Private Limited and Mallinath Reality & Agro Private Limited and Sunanda Agrobuid Private Limited and Groovy Developers and Farms Private Limited and Susima Buildtech and Farms Private Limited and Shantipriya Developers & Farms Private Limited and Poonam Fast Foods Private Limited and Vishwavinayak Techno Builders Private Limited and Durgeshwari Hi-Rise & Farms Private Limited and Chandrakrupa Developers and Farms Private Limited and their respective shareholders.
3. Learned Counsel for the Petitioner Companies states that the Transferor Companies and the Transferee Company were incorporated with the objective of carrying on business of builders, real estate construction and related activities. However, currently the Transferor Companies and the Transferee Company are not engaged into any business activities.
4. The rationale for the proposed Scheme is that there will be elimination of multiple subsidiaries of the Transferee Company, reducing operational and compliance cost and achieving operational and management efficiency.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of the Hon'ble Bombay High Court and they have filed necessary Affidavits of compliance with this Court. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed a Report dated 8<sup>th</sup> March, 2017 stating therein that save and except as stated in Sr. No. IV, Paragraph (a) to (c) of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Sr. No. IV, Paragraph (a) to (c) of the said Report, the Regional Director has stated that:
  - (a) *The submission made by the Company at Para No. 6.3 of the Scheme is found contrary to the AS-14. It is stated amongst other in the said Para that the difference between share capital of Transferor Companies and investment in the Transferor Companies recorded in the books of the Transferee Company shall be **adjusted in reserves**. Whereas amongst others as per Para No. 17 of AS-14 "on deduction of Consideration from the Net Assets of the Transferor Company by the Transferee Company, if the result of the computation is negative, the difference is debited to **Goodwill** arising on amalgamation and dealt with in the manner stated*

*in paragraphs 19-20 of the said AS and if the result of the computation is Positive, the difference is credited to Capital Reserve.” The Transferee Company may be directed to make above compliance of AS-14 in the matter.*

- (b) *In addition to compliance of AS-14, 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 etc and ensure that the Financial Statements of the Transferee Company does not impair the true and fair view of the Financial Statements of the Transferee Company after post-amalgamation.*
- (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 Companies.*
9. As far as observations made in Sr. No. IV, Paragraph (a) of the Report of Regional Director are concerned, the Transferee Company through their Counsel clarifies that the Accounting Treatment as envisaged in the Scheme of Amalgamation is in consonance with the 'Pooling of interest method' specified in AS-14. In view of the above, the Transferee Company through their Counsel undertakes that they will pass all accounting entries to be in compliance with 'Pooling of interest method' as specified in AS-14.
10. As far as observations made in Sr. No. IV, Paragraph (b) of the Report of Regional Director are concerned, the Transferee Company through their Counsel undertakes that in addition to compliance of AS-14, the Transferee company will pass such accounting entries which may be necessary in connection with the scheme to comply with other applicable accounting standards such as AS-5 etc.
11. In so far as observations made in Sr. No. IV, Paragraph (c) of the Report of Regional Director are concerned, the Petitioner Companies undertake to comply with all applicable provision of Income Tax Act, and all tax issues arising out of Scheme will be met and answered in accordance with law.
12. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
13. The Official Liquidator has filed his report on 16<sup>th</sup> November, 2016 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Court.
14. 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. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, transferred Company Scheme Petition No. 88, 89, 90, 91, 92, 93, 94, 95, 96, 97 and 98 of 2017, filed by the

Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
17. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme 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.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Transferred Company Scheme Petition No 88 to 97 of 2017 to pay sum of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
19. All authorities concerned to act on a certified copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

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