

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

COMPANY SCHEME PETITION NO. 63 OF 2017

VASCON PRICOL INFRASTRUCTURES LIMITED ...Petitioner / Transferor Company 1

AND

COMPANY SCHEME PETITION NO. 64 OF 2017

VASCON DWELLINGS PRIVATE LIMITED ...Petitioner / Transferor Company 2

AND

COMPANY SCHEME PETITION NO. 65 OF 2017

WIND FLOWER PROPERTIES PRIVATE LIMITED ..Petitioner / Transferor Company 3

AND

COMPANY SCHEME PETITION NO. 66 OF 2017

FLORIANA PROPERTIES PRIVATE LIMITED ...Petitioner / Transferor Company 4

AND

COMPANY SCHEME PETITION NO. 67 OF 2017

IT-CITI INFOPARK PRIVATE LIMITED ...Petitioner / Transferor Company 5

AND

COMPANY SCHEME PETITION NO. 68 OF 2017

GREYSTONE PREMISES PRIVATE LIMITED ...Petitioner / Transferor Company 6

AND

COMPANY SCHEME PETITION NO. 69 OF 2017

JUST HOMES (INDIA) PRIVATE LIMITED ...Petitioner / Transferor Company 7

AND

COMPANY SCHEME PETITION NO. 70 OF 2017

SHREYAS STRATEGISTS PRIVATE LIMITED ...Petitioner / Transferor Company 8

AND

COMPANY SCHEME PETITION NO. 71 OF 2017

SANSARA DEVELOPERS INDIA PRIVATE LIMITED ...Petitioner / Transferor
Company 9

AND

COMPANY SCHEME PETITION NO. 72 OF 2017

SUNFLOWER REAL ESTATE DEVELOPERS PRIVATE LIMITED

...Petitioner / Transferor Company 10

AND

COMPANY SCHEME PETITION NO. 73 OF 2017

ANGELICA PROPERTIES PRIVATE LIMITED ...Petitioner / Transferor Company 11

In the matter of Section 230 to Sections 232 and any corresponding provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation of Vascon Pricol Infrastructures Limited and Vascon Dwellings Private Limited and Wind Flower Properties Private Limited and Floriana Properties Private Limited and IT-Citi Infopark Private Limited and Greystone Premises Private Limited and Just Homes (India) Private Limited and Shreyas Strategists Private Limited and Sansara Developers India Private Limited and Sunflower Real Estate Developers Private Limited and Angelica Properties Private Limited with Vascon Engineers Limited and their respective shareholders and creditors.

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

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

V. Nallasenapathy, Member (Technical)

Date: 21st June, 2017

MINUTES OF ORDER

- 1 Heard the learned counsel for the Petitioner Companies.
- 2 The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Vascon Pricol Infrastructures Limited, Vascon Dwellings Private Limited, Wind Flower Properties Private Limited, Floriana Properties Private Limited, IT-Citi Infopark Private Limited, Greystone Premises Private Limited, Just Homes (India) Private Limited, Shreyas Strategists Private Limited, Sansara

Developers India Private Limited, Sunflower Real Estate Developers Private Limited and Angelica Properties Private Limited with Vascon Engineers Limited and their respective shareholders and creditors.

- 3 The Counsel for the Petitioner Companies submit that all the Transferor Companies and the Transferee Company are engaged in the business of real estate activities.
- 4 The respective Boards of Directors are of the view that the proposed Scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objectives:
 - a. Consolidate its real estate business;
 - b. Unlock value for all stakeholders;
 - c. Simplify management structure, leading to better administration and a reduction in costs;
 - d. More focused operational efforts;
 - e. Rationalization, standardization and simplification of business processes; and
 - f. Elimination of duplication and rationalization of administrative expenses
- 5 The Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
- 6 The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court / Tribunal and the necessary affidavits of compliance has been filed in the Court / Tribunal. Moreover, the Petitioner Companies through their Counsel undertake 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 undertakings given by the Petitioner Companies are accepted.
- 7 The Official Liquidator has filed his report on 27th March, 2017 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved.
- 8 The Regional Director has filed his report dated 17th May, 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:

1. *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.*
2. *The Petitioner Companies has submitted the proof of serving notice, upon the Income Tax Authorities dated 10.02.2017 & 13.02.2017 respectively for comments. This Directorate has also issued a reminder letter to the Income Tax Department 16.05.2017 being issued.*
3. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

In this regard petitioner companies have to undertake to provide the same.

4. *Chairman report as directed by Hon'ble NCLT regarding meeting of the equity shareholders and unsecured creditors of Transferor Company 1 and Transferee Company are not provided.*

Petitioner companies has to undertake to submit copy of the minutes of order.

5. *Petitioner Transferee Company is a listed company. Whereas company has not provided copy of notice served to SEBI, BSE and NSE.*

In this regard, it is submitted that the transferee company to undertake to issue notice u/s 230(5) of the Act, 2013 to SEBI, BSE and NSE and also furnish comments received from them.

6. *Petitioner companies not submitted affidavit duly notarized for compliance of provisions of the Companies Act and other Acts as applicable to them.*

In this regard, it is submitted that petitioner has to undertake to submit affidavits duly notarized.

- 9 In so far as observations made in paragraph IV (1) and (2) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Companies undertakes 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.
- 10 In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Transferee Company through their Counsel submit that the Petitioner Companies have submitted the certificate by the Company's Auditor on 30 May, 2017 with this Tribunal and with the Regional Director, stating that the accounting treatment proposed in the scheme of amalgamation is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
- 11 In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit the Company Scheme Application was filed before the Hon'ble Bombay High Court ('the High Court') for sanctioning the proposed scheme of amalgamation and the High Court vide Company Scheme for Directions No. 788 to 798 of 2016 dispensed with convening and holding of the meeting of the equity shareholders and unsecured creditors of the Petitioner Companies and also dispensed the entire process of filing of separate Company Summons for Directions and Company Scheme Petition for the Transferee Company. Further, the Company Scheme Petitions were subsequently transferred to and admitted by this Tribunal. The petitioner companies have submitted minutes of orders (CSD No. 788 to 798 of 2016) of the High Court with the Regional Director. However, as instructed by the Regional Director the Petitioner Companies have filed the copy of same with this tribunal and Regional Director on 30 May, 2017.
- Thus, in view of the dispensation of meetings of equity shareholders and unsecured creditors of all petitioner companies and dispensation of the entire process of filing separate Company Summons for Directions and Company Scheme Petition for the Transferee Company, the question of convening and holding of the meeting of the equity shareholders and unsecured creditors and submission of chairman's report of the Petitioner Companies and Transferee Company does not arise.
- 12 In so far as observations made in paragraph IV (5) of the Report of Regional Director is concerned, the Transferee Company through their Counsel submit that the Petitioner Companies has filed the 'No objection certificate' issued by NSE and BSE dated 19th July, 2016 granting their approval to the proposed Scheme of Amalgamation with this Tribunal and with the Regional Director along with the respective Company Scheme

Petition. However, as instructed by the Regional Director, the Petitioner Companies have filed the copy of same with this tribunal and Regional Director on 30 May, 2017.

- 13 In so far as observations made in paragraph IV (6) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that they have submitted affidavits affirmed by the Directors of all the Petitioner Companies to the Regional Director on 27th February, 2017. However, as instructed by the Regional Director the Petitioner Companies have filed the copy of same with Regional Director on 30 May, 2017.
- 14 The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
- 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 63 to 73 of 2017 filed by the respective Petitioner Companies are made absolute in terms of prayer clause (a) of CSP No 63 to 73 of 2017 of the respective Petitions.
- 17 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.
- 18 The Petitioner Companies to lodge a copy of this order and the Scheme duly certified 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.
- 19 The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Companies to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay.
- 20 Costs to be paid within four weeks from the date of receipt of the order.

- 21 All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director National Company Law Tribunal, Mumbai Bench.
- 22 Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kúmar, Member (J)