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

**TRANSFER COMPANY SCHEME PETITION NO.153 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.663 OF 2016**

Shree Shantinath Real Estate Private LimitedPetitioner Company/
Transferor Company No.1

And

**TRANSFER COMPANY SCHEME PETITION NO.154 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.664 OF 2016**

Krutvarma Stalwart Developers and Farms Private Limited
....Petitioner Company/
Transferor Company No.2

And

**TRANSFER COMPANY SCHEME PETITION NO.155 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.665 OF 2016**

Sun Villa Estates Private LimitedPetitioner Company/
Transferor Company No.3

And

**TRANSFER COMPANY SCHEME PETITION NO. 156 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.666 OF 2016**

Kritika Infrabuild and Farms Private LimitedPetitioner Company/
Transferor Company No.4

And

**TRANSFER COMPANY SCHEME PETITION NO. 157 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.667 OF 2016**

Niharika Realtors Private LimitedPetitioner Company/
Transferee Company

In the matter of the Companies Act (1 of
1956) (or re-enactment thereof upon
effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies Act, 2013 as may be notified);

AND

In the matter of the Scheme of Amalgamation of Shree Shantinath Real Estate Private Limited (SSREPL) and Krutvarma Stalwart Developers and Farms Private Limited (KSDFPL) and Sun Villa Estates Private Limited (SVEPL) and Kritika Infrabuild and Farms Private Limited (KIFPL) with Niharika Realtors Private Limited (NRPL) and their respective Shareholders & Creditors

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Ameya Lambhate, Advocates for the Petitioner

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director in all Transfer Company Scheme Petitions

Mr. Raghunath Pola, Deputy ROC in the office of Registrar of Companies in all Transfer Company Scheme Petitions

Mr. Santosh Dalvi, representative from the office of the Official Liquidator present in Transfer Company Scheme Petition Nos.153 to 156 of 2017

CORAM: B. S. V. Prakash Kumar, Member (Judicial)
V. Nallasenapathy, Member (Technical)

DATE : 22nd June, 2017

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.

2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Shree Shantinath Real Estate Private Limited (SSREPL) and Krutvarma Stalwart Developers and Farms Private Limited (KSDFPL) and Sun Villa Estates Private Limited (SVEPL) and Kritika Infrabuild and Farms Private Limited (KIFPL) with Niharika Realtors Private Limited (NRPL) and their respective Shareholders and Creditors.
3. The Learned Advocate for the Petitioners state that the Transferor Companies and Transferee Company are engaged in real estate development and construction related activities.
4. The Learned Advocate for the Petitioners state that the Transferor Companies being subsidiaries of Transferee Company (direct) are engaged in the same line of business and are being managed and owned by the same management and in order to reduce the cost of managing separate companies and to make the management of the business operations of the companies more effective, it is proposed to amalgamate the Transferor Companies with the Transferee Company and the amalgamation would enable the management to bring the entire business of all the five companies under one umbrella and consolidation of the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to stronger base for future growth of the amalgamated entity and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and benefit of operational synergies to the combined entity and greater leverage in operations planning and process optimization and cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses.
5. The Learned Advocate for the Petitioner states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.

6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Summons for Directions.
7. The Learned Advocate appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and they have filed necessary affidavit of compliance in the Hon'ble Bombay High Court. Moreover, the Petitioner Companies 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.
8. The Official Liquidator has filed his report dated 21st April, 2017 in the Transfer Company Scheme Petition No.153 of 2017 to Transfer Company Scheme Petition No.156 of 2017 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.
9. The Regional Director has filed his Report dated 13th April, 2017 stating therein save and except as stated in para IV (a) to IV (f) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV of the said Report, the Regional Director has stated that :
 - 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 Accounting Standards such as AS-5 (IND AS-8) etc.*
 - b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangement to the Income Tax Department for their comments. It appears that the Company vide its letter dated 9th November, 2016 and 10th November, 2016 has served a copy of Company Petition No.661 to*

665/2016 alongwith relevant orders etc. Further the Regional Director has issued a reminder on 11th April, 2017 to IT Department.

- 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.*
- d) *As per Part-A, Clause 1.8 of the Scheme (Definitions and Share Capital). "The Appointed Date" means the commencement of 1st June, 2016 or such other date as may be fixed by the High Court of Judicature at Bombay. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013, it should be 1st June, 2016.*
- e) *Accounting Treatment Clause 11.4 of the Scheme, the excess of net assets value (assets minus liabilities) of the Transferor Companies transferred to the Transferee Company, after making adjustment as mentioned in sub-clauses 11.1 to 11.3 above, shall be adjusted in Goodwill/Capital Reserve, as the case may be, in the books of the Transferee Company. The Goodwill, if any, arising on Amalgamation will be amortised in the manner as may be decided by the Board o Directors of the Transferee Company.*

In this regard, it is submitted that amortization of the Goodwill, if any, arising on Amalgamation will be amortized in accordance with law and AS-14 (Treatment of Goodwill arising on amalgamation) and not in the manner as may be decided by the Board of Directors of the Transferee Company.

- f) *As on date ROC Mumbai has not submitted his report. Hon'ble Tribunal may pass appropriate order(s) as deem fit.*

10. As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Petitioner Companies

undertakes that in addition to compliance of Accounting Standards 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 Accounting Standards such as AS-5 (IND AS-8) etc.

11. As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that they have served Notice for Scheme of Amalgamation to the concerned Income Tax Department for their comments vide their letter dated 9th November, 2016 and 10th November, 2016 alongwith High Court Company Scheme Petition Nos.661 to 665 of 2016 and its original acknowledgements for each Petitioner Company have been filed by way of an Affidavit of Service dated 8th December, 2016 before the Hon'ble Bombay High Court.
12. As far as the observations made in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authority. The Petitioner Companies further submits that the approval of the Scheme by this Hon'ble Tribunal will 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 shall be binding on the Petitioner Companies.
13. As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Appointed Date mentioned in Clause 1.8 of the Scheme will be 1st June, 2016 as per the provisions of Section 232(6) of the Companies Act, 2013.
14. As far as the observations made in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Petitioner Companies undertakes that the amortization of the Goodwill, if any, arising on Amalgamation will be amortized in accordance with law and AS-14

(Treatment of Goodwill arising on amalgamation) and not in the manner as may be decided by the Board of Directors of the Transferee Company.

15. As far as the observations made in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioner Companies submits that they have served the Registrar of Companies, Mumbai vide their letter dated 15th November, 2016 wherein the original acknowledgements have been filed by way of an Affidavit of Service dated 8th December, 2016 before the Hon'ble Bombay High Court.
16. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 15. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
17. 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.
18. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petition No.153 of 2017 to Transfer Company Scheme Petition No.156 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c) and Transfer Company Scheme Petition No.157 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b).
19. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of the order.
20. The Petitioner Companies are further 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 physical copy, as per the relevant provisions of the Companies Act, 2013.

21. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region Mumbai in Transfer Company Scheme Petition No.153 of 2017 to Transfer Company Scheme Petition No.157 of 2017 and costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No. 153 of 2017 to Transfer Company Scheme Petition No.156 of 2017. Costs to be paid within four weeks from the date of the Order.
22. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
23. 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 Kumar, Member (J)