

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 30 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 837 OF 2016  
(HIGH COURT TRANSFERRED PETITION).

GOLDEN MOUNT REALTORS PRIVATE LIMITED

....Petitioner/ the First Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 31 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 838 OF 2016  
(HIGH COURT TRANSFERRED PETITION).

ORIENTAL REALTORS PRIVATE LIMITED

....Petitioner/ the Second Transferor Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 32 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 839 OF 2016  
(HIGH COURT TRANSFERRED PETITION)

MARIE GOLD REALTORS PRIVATE LIMITED

....Petitioner/ the Transferee Company

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

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 and other relevant  
provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of  
GOLDEN MOUNT REALTORS PRIVATE  
LIMITED, the First Transferor Company  
AND  
ORIENTAL REALTORS PRIVATE LIMITED, the  
Second Transferor Company  
WITH  
MARIE GOLD REALTORS PRIVATE LIMITED,  
the Transferee Company.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,  
Advocate for the Petitioner.

Coram: Ms. Ina Malhotra, Hon'ble Member (J)

Date: 20th June, 2017

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of GOLDEN MOUNT REALTORS PRIVATE LIMITED, the First Transferor Company and ORIENTAL REALTORS PRIVATE LIMITED, the Second Transferor Company with MARIE GOLD REALTORS PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of GOLDEN MOUNT REALTORS PRIVATE LIMITED, the First Transferor Company and ORIENTAL REALTORS PRIVATE LIMITED, the Second Transferor Company with MARIE GOLD REALTORS PRIVATE LIMITED, the Transferee Company.

3. The Petitioner Companies have approved the said Scheme of Amalgamation 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 Summons for Direction Nos. 837 to 838 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the 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.
6. The Learned Counsel for the Petitioners states that the First Transferor Company presently carrying on business as builders, realtors, developers and contractors of buildings, houses, apartments and structures for residential, commercial, industrial and other purpose and to buy, purchase, acquire land, development rights, immovable properties to erect, construct, build, rebuild the building, houses, bungalows, structures including gardens, amusement parks, roads, bridges, shopping malls and the Second Transferor Company at present is carrying on business as builders, realtors, developers and contractors of buildings, houses, apartments and structures for residential, commercial, industrial and other purpose and to buy, purchase, acquire land, development rights, immovable properties to erect, construct, build, rebuild the

building, houses, bungalows, structures including gardens, amusement parks, roads, bridges, shopping malls and the Transferee Company at present is carrying on business as builders, realtors, developers and contractors of buildings, houses, apartments and structures for residential, commercial, industrial and other purpose and to buy, purchase, acquire land, development rights, immovable properties to erect, construct, build, rebuild the building, houses, bungalows, structures including gardens, amusement parks, roads, bridges, shopping malls. As per the opinion of the management all the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that the amalgamation will result in economy of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources and that the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each others core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

7. The Regional Director has filed a Report on 13<sup>th</sup> day of April, 2017 stating therein, save and except as stated in paragraph IV, 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:-

*“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:*

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 Court 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. *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 may be asked to submit the certificate.*

3. It may be submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities for comments. The Directorate has issued reminder letter to the Income Tax Authority dated 07.04.2017.

8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company 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

9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted to this Hon’ble Tribunal the Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013

10. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have served upon the Income Tax on 1<sup>st</sup> day of February, 2017. The Learned Counsel further submits that they have also filed an Affidavit of Service in the National Company Law Tribunal for the same.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
12. The Official Liquidator has filed his report on 14<sup>th</sup> March, 2017 in the Company Scheme Petition Nos. 30 and 31 of 2017 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.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 30 and 31 of 2017 is made absolute in terms of prayers clause (a) to (d) and 32 of 2017 is made absolute in terms of prayer clauses (a) to (c).
15. Petitioners are directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 1956 / 2013.



16. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition Nos. 30 and 31 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the receipt of the Order.
18. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-  
Ina Malhotra, Member (J)