

**BEFORE THE NATIONAL COMPANY LAW TRI BUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 227 OF 2017**

**IN**

**COMPANY SCHEME APPLICATION NO.66 OF 2017**

**BANDRA PROPERTIES PRIVATE LIMITED**

.....Petitioner/Transferor Company 1

**AND**

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

**COMPANY SCHEME PETITION NO. 219 OF 2017**

**IN**

**COMPANY SCHEME APPLICATION NO.67 OF 2017**

**BANDRA CONSTRUCTION PRIVATE LIMITED**

.....Petitioner/Transferor Company 2

**AND**

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

**COMPANY SCHEME PETITION NO. 229 OF 2017**

**IN**

**COMPANY SCHEME APPLICATION NO.68 OF 2017**

**SUNDER BHAWAR HOLIDAY HOMES PRIVATE LIMITED**

(FORMERLY KNOWN AS 'SHETH LANDMARKS PRIVATE LIMITED'),

.....Petitioner/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:

Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956;

**AND**

**IN THE MATTER OF:** Scheme of Amalgamation between:

Bandra Properties Private Limited ('BPPL' or 'the Transferor Company 1') and Bandra Construction Private Limited ('BCPL' or 'the Transferor Company 2')

*MKS*

with Sunder Bhawar Holiday Homes Private Limited (Formerly known as 'Sheth Landmarks Private Limited') ('SBHPL' or 'the Transferee Company') and their respective shareholders.

**Called for Final Hearing:**

Rajesh Shah, Advocate along with Ahmed M. Chunawala, Advocate i/b Rajesh Shah & Co., Advocates for the Petitioners.

Coram: SH. M. K. Shrawat Hon'ble Member (J)

Date: 6<sup>th</sup> June, 2017.

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and sections 391 to 394 of the Companies Act, 1956 to a Scheme of Amalgamation between Bandra Properties Private Limited ('Transferor Company 1') and Bandra Construction Private Limited ('Transferor Company 2') with Sunder Bhawar Holiday Homes Private Limited (Formerly known as 'Sheth Landmarks Private Limited') ('SBHPL' or 'the Transferee Company') and their respective shareholders.
3. Learned counsel or the Petitioner Companies states that all the Petitioners are presently engaged in the business of owning real estate properties and the learned counsel for the Petitioners states that the merger of BPPL and BCPL into SBHPL 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.
4. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 66 of 2017, 67 of 2017 and 68 of 2017 of the National Company Law Tribunal dated 9<sup>th</sup> February, 2017 which is annexed as Exhibit E to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as

required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

7. The Official Liquidator has filed his report on 24th March, 2017 in Company Scheme Application Nos. 66 & 67 of 2017 inter alia, stating therein that the affairs of both the Transferor Companies have been conducted in a proper manner and that both the Transferor Companies may be ordered to be dissolved without winding up by this Hon'ble Tribunal.
8. The Regional Director, Western Region, Mumbai has filed his Report on 26<sup>th</sup> April, 2017 stating therein that save and except as stated in paragraph IV 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:

1. *The tax implication if arising out of the scheme is subject to the final decision of Income Tax Authorities. The approval of the scheme by this Hon'bel Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect of the scheme. The decision of the Income tax authority is binding on the petitioner Company.*
  2. *The Petitioner Companies have submitted the proof of service notice, upon the Income Tax Authorities dated 14.02.2017 for comments. This Directorate has also issued reminder letter to Income Tax Department 25.4.2017 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*
  4. *Chairman Report as directed by Hon'ble NCLT regarding meeting of equity shareholders and unsecured creditors of Transferor Company 1 and Transferee Company are not provided. And hence the Petitioner Companies has to undertake to make compliance regarding provisions of Section 232(3)(e) of the Companies Act, 2013*
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (1) and (2) of his report are concerned, the Petitioner Companies submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Amalgamation will be met and answered in accordance with applicable law.
  10. So far as observation of the Regional Director, as stated in paragraph IV (3) of his report is concerned, counsel for the Petitioner Companies submits that the Petitioner/Transferee Company has already filed Certificate by the Company Auditor through further affidavit at NCLT, Mumbai Branch in CSP No.229 of 2017. *ms*

11. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have already annexed the Chairman's Report as Exhibit 'G' to the respective Petitions.
12. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai have been explained by the Petitioner Companies in Para 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the NCLT, Mumbai Bench.
13. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 227 and 219 are made absolute in terms of prayer clauses (a) to (d) and Company Scheme Petition No.229 is made absolute in terms of prayer clauses (a) and (b).
15. The 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 physical copy, within 30 days from the date of receipt of the order by the Registry.
16. 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, within a period of 60 days from the date of receipt of the order.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Companies in Company Scheme Petition No. 227 and 219 to pay cost of Rs.25,000/- each to Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
18. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
19. Liberty is granted to the person who is aggrieved by this order to come before this bench.

sd/-  
M. K. Shrawat (Judicial)<sup>1</sup>