

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 467 OF 2017
AND
CSP NO 469 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013;
AND

In the matter of Scheme of Amalgamation of Arimas Developers Private Limited (Transferor Company) and Kalpataru Properties (Thane) Private Limited (Transferee Company) and their respective Shareholders

Kalpataru Properties (Thane) Private Limited Petitioner/Transferee Company

AND

Arimas Developers Private LimitedPetitioner/Transferor Company

Judgment/Order delivered on 20th July, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)
Hon'ble **V .Nallasenapathy** Hon'ble, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Ramesh Golap, Assistant Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Arimas Developers Private Limited (Transferor Company) and Kalpataru Properties (Thane) Private Limited (Transferee Company) and their respective Shareholders.

3. The learned Counsel for the Petitioners submit that the Transferor Company is engaged in the business of real estate development and the Transferee Company is also engaged in the business of real estate development.
4. The amalgamation of the Transferor Company with the Transferee Company would *inter alia* have the following benefits:
 - Achieving operational and managerial efficiency;
 - Management focus and enhanced flexibility;
 - Simplification of group structure; and
 - Bringing synergy in operations and optimum utilisation of common resources
5. 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 Scheme Applications and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes 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.
8. The Regional Director has filed his Report dated 18th July, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has 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 Hol'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. *It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 10.4.2017 for comments. The office of the Directorate also has issued reminder dated 17.07.2017*

3. *Petitioner Transferor Company is into real estate business where proof of serving notice is not submitted*

In this regard, Petitioner Transferor Company has to undertake to submit proof of serving notice to real estate regulator to the Hon'ble Tribunal and the Directorate.

4. *Petitioner Companies in their explanatory statement to the notice to the shareholders meeting at point no 10.8 has inter alia mentioned that a winding up petition has been filed by one of the creditor of Transferee Company with Hon'ble Bombay High Court and the same is yet to be admitted by the Hon'ble Bombay High Court. The claim which is subject matter of winding up petition is disputed and contested by the company*

9. In so far as observations made in paragraph IV (1) and (2) of the Report of Regional Director and the Income Tax Department, the Petitioners through their Counsel 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 submits that it was not required to serve any notice to the Real Estate Regulatory Authority ("RERA") as the Petitioner Companies are not yet registered with RERA and the last date to register is 31st July 2017 [Section 3(1) of the Real Estate (Regulation and Development) Act, 2016 read with notification F.No. O – 17034/275/2017-H dated 19th April, 2017] and therefore, proof of serving not submitted. The Petitioner Companies undertake to make an application to register with RERA on or before 31st July, 2017.
11. In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies submits that the winding up petition filed by the creditor (Shree Ganesh Enterprise) of the Transferee Company has been disposed by the Hon'ble Bombay High Court vide order dated 19th June, 2017 as the matter was amicably resolved between the parties.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

13. The Registrar of Companies, Maharashtra has filed his Report dated 16th June, 2017, wherein no comments have been stated.
14. The Official Liquidator has filed his report dated 6th June, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
15. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 469 of 2017 filed by the Transferee Company is made absolute in terms of prayer clause (a) to (e) of the Petition and Company Scheme Petition No. 467 of 2017 filed by the Transferor Company is made absolute in terms of prayer clause (a) to (e) of the Petition.
17. 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.
18. Petitioner Companies are directed to file a certified 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.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 467 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. 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 Kumār, Member (J)