

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 111 OF 2017

In the matter of 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 between Suryakrupa Constructions Private Limited and Lodha Developers Private Limited and Their respective shareholders.

**SURYAKRUPA CONSTRUCTIONS PRIVATE )**  
**LIMITED (formerly known as Suryakrupa Farms )**  
**and Constructions Private Limited), a company )**  
incorporated under the provisions of Companies Act, )  
1956 having CIN U70102MH2008PTC183617 and )  
registered office at 412, 4<sup>th</sup> Floor, 17G Vardhaman )  
Chamber, Cawasji Patel Road, Horniman Circle, Fort, )  
Mumbai - 400001, Maharashtra, India. )..... Petitioner Company

**Called for Hearing**

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

Ms. P. Sheela, Joint Director in the office of Regional Director

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

**V. Nallasenapathy, Member (T)**

**DATE: 20<sup>th</sup> April 2017**

**MINUTES OF THE ORDER**

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Suryakrupa Constructions Private Limited ('Transferor Company' / 'Petitioner Company') and



Lodha Developers Private Limited ('Transferee Company') and Their respective shareholders.

3. The Counsel for the Petitioner Company submits that the Petitioner Company and Transferee Company are engaged in the business of constructing, developing, dealing and leasing of real estate business.
4. The respective Board 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 Company / Transferee Company since both the companies are part of the same management of Lodha Group. The proposed Scheme of Amalgamation is aimed at achieving the following business and commercial objective:
  - a. Consolidate the business operations of the Petitioner Company and the Transferee Company;
  - b. Enhance the net worth of the Transferee Company which would enable the group to leverage on the basis of strong balance-sheet;
  - c. Integrate and effectively utilise resources, which is likely to result in optimization of overall shareholder value and improvement in competitive position of the Transferee Company as a combined entity;
  - d. Transferor Company has operational assets and therefore amalgamation would provide greater access to the assets as well as it enhances the cushion for the lenders of the Transferee Company;
  - e. Reduce multiple legal and regulatory compliances which at present is required to be made separately by the Transferee Company as well as by the Transferor Company;
  - f. Reduce administrative cost; and
  - g. Achieve operational and management efficiency.
5. Learned Advocate for the Petitioner Company further states that since the Petitioner Company is wholly owned subsidiary company of the Transferee Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Company by the Transferee Company and the entire share capital of the Petitioner Company will stand cancelled and in view



of the judgement passed by the Hon'ble High Court of Judicature at Bombay in Mahaamba Investment Limited v/s IDI Limited (2001) Company Cases 105, filing of separate Company Summons for Direction and Company Scheme Petition by Lodha Developers Private Limited, the Transferee Company was dispensed with vide order dated December 2<sup>nd</sup>, 2016 passed in CSD No. 913 of 2016 of the Bombay High Court.

6. The Board of Directors of the Petitioner Company and the Transferee Company have approved the said Scheme of Amalgamation by passing necessary Board Resolution which are annexed to the Company Scheme Petition.
7. The Learned Counsel appearing on behalf of the Petitioner Company states that the Petition have been filed in consonance with the Order passed in their respective Company Summons for Direction No. 913 of 2016 of the Bombay High Court.
8. The Learned Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company have complied with all requirements as per directions of the Court / Tribunal and the necessary affidavits of compliances has been filed in the Court / Tribunal. Moreover, the Petitioner Company 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 undertaking given by the Petitioner Companies are accepted.
9. The Income Tax Authority, Dy. Commissioner of Income Tax Central Circle – 7 (3), Mumbai, the person in charge of jurisdiction of the Petitioner Company and the Transferee Company has filed his observation vide letter dated 22<sup>nd</sup> February, 2017 stating that the right of the Income-tax department to ascertain / assessee correct income in correct hands as per the provisions of the Income-tax Act may be kept reserved.
10. The Official Liquidator has filed his report on 17<sup>th</sup> March, 2017 stating that the affairs of the Petitioner Company have been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved.



11. The Regional Director has filed his report dated 27<sup>th</sup> March, 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:

- a. *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.*
- b. *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 it is requested that Petitioner has to submit the certificate.*
- c. *The Petitioner Companies have submitted the proof of serving notice of Transferor Company, dated, 02.02.2017, upon the Income Tax Authorities for comments. The reminder letter has been issued by this Directorate to the Income Tax Authorities vide letter dated 24.03.2017, But Transferee Company has not submitted the proof of serving notice upon the Income Tax Authorities for comments, The reminder letter has been issued by this Directorate to the Income Tax Authorities vide letter dated 27.03.2017.*
- d. *ROC, Mumbai, has made an observation that, the Transferee Company:- as per MCA master data the Authorised & paid up capital of the company is Rs.1,60,88,02,200/- and Rs.1,13,10,80,000/- Company has to clarify whether the required form has been filled before ROC for the increase, issue and allotment of shares.*
- e. *Petitioner in clause 12 has inter alia has mentioned that the Transferee Company further agrees that for the purpose of payment of any retrenchment compensation, if any, such past services with the Transferor Company shall also be taken into account. It is submitted that interest of employees has to be protected.*
- f. *Petitioner Companies in Part I clause 3 under the heading share capital inter alia has mentioned the details of Authorised, Issued, Subscribed & Paid up capital of the transferor company as on 31.03.2016 & mentioned that 0% Redeemable Preference Shares of Rs.10/- Each, fully paid up to be issued to the equity shareholders of M/s. Lodha Ideal Buildcon Pvt Ltd pursuant to erstwhile scheme of Amalgamation between M/s. Lodha Ideal Buildcon Pvt Ltd & M/s. Suryakrupa Constructions Pvt Ltd. Subsequent to above date Transferor Company increased its Authorised Share Capital & issued 10,000 0% Redeemable Preference Shares of Rs.10/- Each. In this regards, it is*



*submitted that as per the scheme, date of Appointment is 1.4.2015, whereas Transferor Company has increased the Authorised Share Capital & also issued Redeemable Preference Shares subsequent to Appointment Date. If the company has filed its Balance Sheet as on 31.03.2016, the Petitioner Company has to postpone its Appointment date to 1.4.2016 to come inline with facts mentioned in the scheme. Further, it is mentioned that as on the date of Approval of scheme the entire paid up share capital of the Transferor Company is held by Transferor Company. This has to be clarified and corrected.*

12. In so far as observations made in paragraph IV (a) and (c) of the Report of Regional Director and the Income Tax Department, the Petitioner Company 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.
13. In so far as observation made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Company through their Counsel submits the certificate of the Transferee Company's Auditor 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 has been filed with the office of Regional Director and in this Tribunal.
14. In so far as observation made in paragraph IV (d) of the Report of Regional Director is concerned, the Transferee Company through their Counsel submits that such observation are general in nature and further submits that the Transferee Company has redeemed its Zero Coupon Optionally Convertible Redeemable Preference Shares and made fresh issue of fully paid up Equity Shares on 31<sup>st</sup> December, 2016 and duly filed Form SH – 7 and PAS – 3, respectively with ROC on 18<sup>th</sup> January, 2017.
15. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Transferee Company through their Counsel undertakes that as per clause 12 of the Scheme all employees of the Transferor Company shall become employees of the Transferee Company without break or interruption in service as result of transfer and all terms and conditions of employment shall not be less favourable than those on which they are presently engaged by the Transferor Company immediately preceding the Effective Date.



16. In so far as observation made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Company through their Counsel submits that increase in authorised share capital & also issue of Redeemable Preference Shares pursuant to erstwhile Scheme of Amalgamation between M/s Lodha Ideal Buildcon Pvt Ltd and the Petitioner Company and subsequent filing of audited balance sheet as on 31.03.2016 does not have any bearing on the Appointed Date of present Scheme of Amalgamation of Petitioner Company with Transferee Company and are independent of each other. The Scheme with the Appointed Date as 1<sup>st</sup> April 2015 has been unanimously approved by all the shareholders of the Petitioner Company. Therefore, 1<sup>st</sup> April 2015 has been taken into consideration as Appointed Date.
17. The observation made by the Regional Director have been explained by this Petitioner Company in paragraph 12 to 16 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No 111 of 2017 filed by the Petitioner Company are made absolute in terms of prayer clause (a) of TCSP No 111 of 2017 of the Petition.
20. Petitioner Company 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.
21. The Petitioner Company 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.



22. The Petitioner Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay.
23. Costs to be paid within four weeks from the date of receipt of the order.
24. 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.
25. 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)**