

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI

CSP NO. 537 OF 2017

AND

CSP NO 539 OF 2017

PIRAMAL REALTY PRIVATE LIMITEDPetitioner Company

AND

GERAH DEVELOPERS PRIVATE LIMITEDPetitioner Company

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 between Gerah Developers Private Limited ("GDPL" or "the Transferor Company") with Piramal Realty Private Limited ("PRPL" or "the Transferee Company") and their respective Shareholders and Creditors

AND

In the matter of Sections 230 read with Section 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

Judgment/Order delivered on 10th August, 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

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

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 present Scheme of Amalgamation pertains to amalgamation of Gerah Developers Private Limited ("GDPL" or "the Transferor Company") with Piramal

Realty Private Limited (“PRPL” or “the Transferee Company”) and their respective Shareholders and Creditors with effect from the Appointed Date in terms of the Scheme. The Transferor Company is engaged in the business of real estate/real estate development and incidental services and the Transferee Company is engaged in the business of real estate construction, development, project marketing, technical consultancy and incidental services. Amalgamation of the Transferor Company will result in (a) Elimination of inter-company transactions and holdings, (b) Rationalisation of administrative overheads and (c) Greater administration efficiency.

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. By order dated 12th April, 2017 passed by the Hon’ble National Company Law Tribunal, bench at Mumbai (‘Hon’ble Tribunal’) in Company Scheme Application 376 of 2017, meetings of Equity Shareholders of the Transferor Company were ordered to be convened and held at 4th Floor, Piramal Tower Annexe, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400013 on 24th day of May, 2017 at 11:00 a.m. Further, meetings of the Equity Shareholders and Preference Shareholders of the Transferee Company were also ordered to be convened and held at 4th Floor, Piramal Tower Annexe, Ganpatrao Kadam Marg, Lower Parel, Mumbai – 400013 on 24th day of May, 2017 at 12:00 noon and 12:30 p.m. respectively. Further, since there were no Secured Creditors in the Transferor Company and the Transferee Company, their meetings were not required to be convened.
5. The learned Counsel for the Petitioner Company further states that, the Petitioner Company has complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition has been filed in consonance with the orders passed in the Company Scheme Application.
6. The Learned Advocate appearing on behalf of the Petitioner Companies 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 in the 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 Regional Director has filed his Report dated 10th day of August, 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:

(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 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.

(b) It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 04.04.2017 for comments. The office of the Directorate also has issued reminder dated 08.08.2017.

(c) Petitioners are in to real estate business whereas proof of serving notice to real estate regulator is to be submitted.

8. In so far as observations made in paragraph IV (a) & (b) of the Report of Regional Director is concerned, the Petitioner Company undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
9. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies submits that a company needs to register itself with the Real Estate Regulatory Authority established under the Real Estate (Regulation and Development) Act, 2016 if there are any real estate projects undertaken by the company. However, the Petitioner Companies states that the Petitioner Companies has not undertaken any real estate project and therefore, serving notice on Real Estate Regulatory Authority shall not apply.
10. The observations made by the Regional Director have been explained by the Petitioner Company in paragraphs 8 to 10 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
11. The Official Liquidator has filed his report on 19th day of July, 2017 in Company Scheme Petition Nos. 539 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by the Hon'ble Tribunal.
12. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.

13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 537 of 2017 are made absolute in terms of prayer clause (c) to (e) of the Petition.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 539 of 2017 are made absolute in terms of prayer clause (c) to (f) of the Petition.
15. 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 certified copy of the Order by the Registry.
16. 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.
17. Both the Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company mentioned in Company Scheme Petition No. 539 of 2017 to pay costs of Rs. 25,000/- to the 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.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

B.S.V. Prakash Kumar Member (J)