

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

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 Aura Real Estate Private Limited (Transferor Company) and Kalpataru Retail Ventures Private Limited (Transferee Company) and their respective Shareholders

CSP NO 470 OF 2017

AND

CSP NO 478 OF 2017

Kalpataru Retail Ventures Private Limited Petitioner/Transferee Company

AND

Aura Real Estate 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 Aura Real Estate Private Limited (Transferor Company) and Kalpataru Retail Ventures 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:
 - a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
 - b) *As per Clause 1.3, Definitions of the scheme. "The "Appointed Date" means the 1st day of April 2016 or such other date as may be fixed or approved by the Tribunal. ROC Mumbai vide his report dated 20th June 2017, has observed that the appointed date should be 01/04/2017 and not 01/04/2016 as sought by the company. In this regard it is submitted that Hon'ble Tribunal may pass appropriate orders/ orders as deem fit.*

- c) *ROC Mumbai vide his report dated 20th June 2017 has observed that Transferor and Transferee Companies have not filed e-form MGT-14 of the members meeting held on 11th May 2017. In this regard, it is submitted that Hon'ble Tribunal may pass appropriate orders/ orders as deem fit.*
 - d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 10th April 2017 has served a copy company scheme application no 220 & 222 of 2017 along with relevant orders etc. further this Directorate has also issued reminder 13th July, 2017 to IT Department*
 - e) *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.*
 - f) *Regarding Clause 10 of the Scheme it is submitted that the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Profit & Loss Account of the Transferee Company*
 - g) *M/s Aura Real Estate Private Limited (AREPL) and Transferor Company is a wholly owned subsidiary of M/s Kalpataru Properties (Thane) Private Limited (KRVPL) the Transferee Company. Hence, this Hon'ble Tribunal may kindly direct the companies involved in the scheme to file solvency certificate with the Registrar of Companies, Mumbai, as required u/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*
9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Counsel for the Transferee Company undertakes to comply with IND AS – 103 and other applicable Indian Accounting Standards such as AS-5 (IND AS-8), AS-13 (IND AS-27 read with IND AS-109), etc.
10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies submits that Appointed Date of 1st April, 2016 has been duly approved by the Board of Directors and the Shareholders of the Petitioner Companies and therefore the Appointed Date should be retained as 1st April, 2016.

11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies submits that the requirement of filing e-form MGT-14 with the Registrar of Companies for the NCLT convened meeting of the members held on May 11, 2017 is not applicable to the Schemes as the only requirement under the provisions of Section 230 to 232 of the Companies Act, 2013 and Rules framed therein is filing of Chairman's Report as to outcome of the meeting held pursuant to directions of this Tribunal.
12. In so far as observations made in paragraph IV (d) and (e) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies 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 the law.
13. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Counsel for the Transferee Company undertakes that in compliance with the provisions of AS-14 (IND AS-103), the surplus / deficit arising pursuant to the Scheme shall be credited / debited, as the case maybe, to Capital Reserve Account. The Counsel for the Transferee Company submits that the Transferee Company further undertakes to comply other applicable Indian Accounting Standards such as AS-5 (IND AS-8), AS-13 (IND AS-27 read with IND AS-109), etc.
14. In so far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies submits that the present petition is filed under Sections 230 to 232 of the Companies Act, 2013 and therefore solvency certificate as required under Section 233 of the Companies Act, 2013 is not applicable in the present case. Counsel for the Petitioner Company further submits that the Scheme does not involve any arrangement with any of the creditors of the Petitioner Companies and their rights shall not be prejudiced pursuant to the Scheme.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
16. The Registrar of Companies, Maharashtra has filed his Report dated 20th June, 2017 with certain comments which have been considered by the Regional Director in the observation portion.
17. The Official Liquidator has filed his report dated 13th July, 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.

18. 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.
19. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 470 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. 478 of 2017 filed by the Transferor Company is made absolute in terms of prayer clause (a) to (e) of the Petition.
20. 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.
21. 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.
22. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 478 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.
23. 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.
24. 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)