

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

**COMPANY SCHEME PETITION NO. 50 OF 2017
(High Court Transferred Company Scheme Petition)**

Aryaman Properties and Investments Private Limited ...1st Transferor Company
AND

**COMPANY SCHEME PETITION NO. 51 OF 2017
(High Court Transferred Company Scheme Petition)**

Arjuna Agencies Private Limited ...2nd Transferor Company

WITH

**COMPANY SCHEME PETITION NO. 52 OF 2017
(High Court Transferred Company Scheme Petition)**

Radha Krishna Properties Private Limited
...Transferee Company

In the matter of the Companies Act, 1956;

And

In the matter of Section 391 to 394 of the
Companies Act, 1956 read with Sections
230 to 232 of Companies Act, 2013;

And

In the matter of the Scheme of
Amalgamation of
Aryaman Properties and Investments
Private Limited

(1st Transferor Company)

And

Arjuna Agencies Private Limited
(2nd Transferor Company)

with

Radha Krishna Properties Private Limited
(Transferee Company)

CALLED FOR HEARING

Mr. Ramesh Saraogi, Advocate for the Petitioners

Mr. S. Ramakantha, Joint Director for the Regional Director in the Petitions.

Coram : M.K.Shrawat , Member (Judicial)

V. Nallasenapathy , Member (Techincal)

Date : 12th April 2017

1. Heard the Learned Counsel for the Party. No objector has come before the Tribunal to oppose the Scheme of Amalgamation nor any party has controvened any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Aryaman Properties and Investments Private Limited (the 1st Transferor Company) and Arjuna Agencies Private Limited (the 2nd Transferor Company) with Radha Krishna Properties Private Limited (the Transferee Company) .
3. The First Transferor Company as well as the Second Transferor Company and the Transferee Company are engaged in the business of construction and real estate.
4. The Rationale for the amalgamation is to consolidate and create large entity and reduce multiple small entities, consolidate shareholding structure and reduce shareholding tiers and to simplify management structure leading to better administration and reduction in costs, more focused operational efforts and to achieve advantages of economies of scale, rationalization, standardization and simplification of business processes, elimination of duplication, and rationalization of administrative expenses.

5. The Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition filed by the Petitioner Companies.
6. The Learned Advocate for the Petitioner Companies further states that the Petitioner Companies have complied with all directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Summons for Directions.
7. The Learned Counsel appearing on behalf of the Petitioner Companies have stated that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and filed necessary Affidavits of Compliance in this behalf. The Petitioner Companies further undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 as may be applicable, and the Rules made there under. The said undertaking is accepted.
8. The Official Liquidator has filed his report on 20-03-2017 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
9. The Regional Director has filed his Report on 31-03-2017 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. In Paragraph IV of the said report, the Regional Director has stated that:
10. Para IV (a) states that the tax implication if any arising out of 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.

11. Para IV (b) states that 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 may be asked to submit the certificate.

12. Petitioner in clause 8 of the Scheme has inter alia mentioned that upon the coming into effect of this Scheme, the Employees "(if any)" shall become the employees of the Transferee Company. It is submitted that in this regard the petitioner may be asked to amend the Scheme and delete the words "if any".

Further the petitioner has inter alia mentioned in clause 8 that, it is clarified that save as expressly provided for in the Scheme, the Employees who become the employees of the Transferee Company by virtue of this Scheme, shall not be entitled to the employment policies and shall not be entitled to avail of any schemes and benefits that may be applicable and available to any of the other employees of the Transferee Company (including the benefits of or under any employee stock option schemes applicable to or covering all or any of the other employees of the Transferee Company), unless otherwise determined by the Transferee Company.

It is submitted that in this regard, the Transferee Company may be asked to protect the interests of the employees of the Transferor Companies.

13. As far as observation made in paragraph no. IV (a) of the report of Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies are bound to comply with all the 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.

14. As far as observations made in paragraph no IV (b) of the report of the Regional Director is concerned, the Petitioner Companies submit that the certificate of the statutory auditors Messers K.N. Gandhi & Co., Chartered Accountants, stating that the accounting treatment as provided in the Scheme is in conformity with the Accounting Standards as prescribed under section 133 of the Companies Act 2013 is already filed with the office of the Regional Director as well as with the National

Company Law Tribunal, Mumbai Bench along with affidavit of service dated 01/03/2017.

15. As far as observations made in para IV (c) of the report of the Regional Director is concerned, the Transferee Company undertakes that all the employees of both the Transferor Companies as on the effective date shall be the employees of Transferee Company on the terms and conditions which is in no manner less favorable to them than those existing in the Transferor Companies and there will not be any break or interruption in their services.
16. The observations made by the Regional Director have been explained by the Petitioner Companies. The Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai states that they are satisfied with the undertaking given by the Petitioner Companies. The undertaking given on behalf of the Petitioner Companies is accepted.
17. 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.
18. Since all the requisite statutory compliances have been fulfilled the Company Scheme Petition of the Transferee Company and the Transferor Companies is made absolute in terms of prayer clause (a) to (c).
19. The Transferee Companies to file a copy of this order and the Scheme duly authenticated by the Deputy Director/ Officer of 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 Order.
20. 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 or other applicable e-form in addition to the physical copy, if required, as per the relevant provisions of Companies Act, 1956 or Companies Act 2013, whichever is applicable.

21. All the Petitioner Companies in the Company Scheme Petition to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor Companies to pay Rs. 25,000/- each to the Official Liquidator. Costs to be paid within four weeks from the date of the Order

22. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Director/ Officer of National Company Law Tribunal, Mumbai Bench.

Sd/-
V.Nallasenapathy, Member(Technical)

Sd/- 12/04/17
M.K.Shrawat , Member (Judicial)