

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO 137 of OF 2017

IN

HIGH COURT COMPANY SCHEME PETITION NO 638 OF 2016

Celebration Developers Private Limited...Petitioner

AND

TRANSFERRED COMPANY SCHEME PETITION NO 138 OF 2017

IN

HIGH COURT COMPANY SCHEME PETITION NO 639 OF 2016

Flexon Constructions Private Limited...Petitioner

AND

TRANSFERRED COMPANY SCHEME PETITION NO 139 of 2017

IN

HIGH COURT COMPANY SCHEME PETITION NO. 640 of 2016

Kanakia Spaces Realty Private Limited...Petitioner

In the matter of the Companies Act,  
2013;

AND

In the matter of Sections 391 to 394 of  
the Companies Act, 1956(corresponding  
sections 230 to 231 of the Companies act  
2013);

AND

In the matter of Scheme of  
Amalgamation of Celebration Developers  
Private Limited (the "First Transferor  
Company")and Flexon Constructions  
Private Limited (the "Second Transferor  
Company")with Kanakia Spaces Realty  
Private Limited (the "Transferee  
Company") and their respective  
Shareholders

**Called for Hearing**

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in all the 3  
Petitions.

Mr. Kamal Harjani, Deputy Director in the office of Regional Director in all the 3  
Petitions.

Coram: SH. B.S.V. Prakash Kumar, Member (Judicial)

Date : 1st March 2017

### MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted 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 Celebration Developers Private Limited and Flexon Constructions Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.
3. Learned Counsel for the Petitioners states that the First Transferor Company, The Second Transferor Company and the Transferee Company are engaged in business of construction and development of real estate properties.
4. The proposed Scheme of Amalgamation will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operative and management efficiencies.
5. The First Transferor Company, the Second Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 644 of 2016, 645 of 2016 and 646 of 2016.
7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes 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 undertakings given by the Petitioner Companies is accepted.
8. The Official Liquidator filed his report on 20<sup>th</sup> day of February, 2017 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Transferor Companies may be ordered to be dissolved.

9. The Regional Director has filed his report dated 21<sup>st</sup> day of February, 2017 stating therein, save and except as stated in paragraph IV, it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraph IV, of the said affidavit, it is stated that:-

- (a) *In addition to compliance of AS-14, the Transferee Company shall pass such Accounting Entries which are necessary in connection with the Scheme to comply with other applicable Accounting Standards such as AS-5 etc. and ensure that the Financial Statement of the Transferee Company does not impair the true and fair view of the Financial Statements of the Transferee Company after post-amalgamation*
- (b) *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.*

10. As far as the observations made in paragraph IV(a) of the affidavit of Regional Director is concerned, the Transferee Company through its Counsel undertakes that in addition to accounting treatment given in the Scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
11. In so far as observations made in paragraph IV(b) of the Affidavit of Regional Director is concerned, the Petitioner submits that the Petitioner is bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. Mr. Kamal Harjani, Deputy Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai for Regional Director is satisfied with the undertakings given by the Petitioner Companies. The said undertaking given by Petitioner Companies are accepted.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Transfereed Company Scheme Petition No 137 of 2017 , 138 of 2017 and 106 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

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, along with e-Form INC-28 on MCA portal, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
16. 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.
17. The Petitioner Companies to pay costs of Rs. 25,000/- (Rupees Twenty Five Thousand only) each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of Order.
18. Costs to be paid within four weeks from today.
19. Filing and issuance of the drawn up order is dispensed with.
20. All authorities concerned to act on a copy of this order along with Scheme duly authenticated 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/-

**B.S.V. Prakash Kumar, Member (Judicial)**