

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
TRANSFER COMPANY SCHEME PETITION NO. 69 OF 2017**

**CONNECTED WITH**

**HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 508 OF 2016**

Mahasen Developers & Farms Private Limited

...Petitioner Company / Transferor Company No.1

**AND**

**TRANSFER COMPANY SCHEME PETITION NO. 70 OF 2017**

**CONNECTED WITH**

**HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 509 OF 2016**

Shri Bhairav Properties & Agrofarms Private Limited

...Petitioner Company / Transferor Company No.2

**AND**

**TRANSFER COMPANY SCHEME PETITION NO. 71 OF 2017**

**CONNECTED WITH**

**HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 510 OF 2016**

Siddheshwer Real Estate Private Limited

...Petitioner Company / Transferor Company No.3

**AND**

**TRANSFER COMPANY SCHEME PETITION NO. 72 OF 2017**

**CONNECTED WITH**

**HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 511 OF 2016**

Balaji Hi-Tech Reality And Engineers Private Limited

...Petitioner Company / Transferor Company No.4

**AND**

**TRANSFER COMPANY SCHEME PETITION NO. 73 OF 2017**

**CONNECTED WITH**

**HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 512 OF 2016**

Aashi Realties Private Limited

...Petitioner Company / Transferor Company No.5

**AND**

**TRANSFER COMPANY SCHEME PETITION NO. 74 OF 2017**

**CONNECTED WITH**

**HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 513 OF 2016**

Arhanathji Builders And Farms Private Limited

...Petitioner Company / Transferee Company

In the matter of the Companies Act, 1956  
(1 of 1956) (or re-enactment thereof upon  
effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the  
Companies Act, 1956 (or any  
corresponding provision of Companies act,  
2013 as may be notified);

AND

In the matter of Scheme of Amalgamation of  
1) Mahasen Developers & Farms Private  
Limited,  
2) Shri Bhairav Properties & Agrofarms Private  
Limited,  
3) Siddheshwer Real Estate Private Limited,  
4) Balaji Hi-Tech Reality And Engineers  
Private Limited,  
5) Aashi Realties Private Limited

With

Arhanathji Builders And Farms Private Limited  
and  
their respective Shareholders and Creditors

**Called for Hearing**

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Ameya Lambhate, Advocates  
for the Petitioner

Mr. S. Ramakantha, Joint Director in the office of the Regional Director in  
all Company Scheme Petitions

Mr. Vinod Sharma, Official Liquidator present in Transfer Company  
Scheme Petition Nos. 69 to 73 of 2017.

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

Shri. V. Nallasenapathy, Member (Technical)

DATE: 15<sup>th</sup> February, 2017

1. Heard Counsel for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Mahasen Developers & Farms Private Limited and Shri Bhairav Properties & Agrofarms Private Limited and Siddheshwer Real Estate Private Limited and Balaji Hi-Tech Realty And Engineers Private Limited and Aashi Realties Private Limited with Arhanathji Builders And Farms Private Limited and their respective Shareholders and Creditors.
3. The Learned Advocate for the Petitioners state that the Transferor Companies and Transferee Company are engaged in the business of real estate development and construction related activities.
4. The Learned Advocate for the Petitioners state that the Transferor Companies being subsidiaries of the Transferee Company and engaged in the same line of business and are being managed and owned by the same management and therefore this scheme have the benefits to reduce the cost of managing separate companies and manage the business operations more effectively and it would consolidate the business operations which would result into stronger base for future growth of the amalgamated entity and greater efficiency in cash management and unfettered access to cash flow generated by combined business which be deployed more efficiently to fund growth opportunities and operation synergies, greater leverage in operations planning and process optimization and cost savings are expected to flow from more focused operational efforts, rationalization and standardization of administrative expenses.

5. The Learned Advocate for the Petitioners state that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate for the Petitioners further states that the Petitioner Companies have complied with all the directions passed in the respective Company Summons for Directions and that the Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Summons for Directions.
7. The Learned Advocate appearing on behalf of the Petitioner Companies have stated that the Petitioner Company has complied with all requirements as per directions of the Hon'ble Bombay High Court and they have filed necessary affidavit of compliance in the Hon'ble Bombay High Court. Moreover, the Petitioner Companies 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 undertakings given by the Petitioner Companies are accepted.
8. The Official Liquidator has filed his report on 6<sup>th</sup> December, 2016 in the Hon'ble Bombay High Court Company Scheme Petition No. 504 of 2016 to High Court Company Scheme Petition No. 508 of 2016 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 an Affidavit on 8<sup>th</sup> December, 2016 stating therein Save and except as stated in para 6(i) to (ii) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6 of the said Affidavit, the Regional Director has stated that :
  - (i) *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.*

*(ii) As mentioned in the respective letters as mentioned at point 5(xvii) above, the Office of the Income Tax Officer – 9(1)(1), Mumbai has sent letter to this Directorate vide Letter No. ITO - 9(1)(1) Amalgamation/2016-17 dated 22/08/2016, Office of the Income Tax Officer -6(1)(3) has sent letter to this Directorate vide letter no. ITO-6(1)-3/Amalgamation/Balaji Hi-Tech/ROC/2016-17 dated 17.10.2016 and Office of the Asst. commissioner of Income Tax 1(3)(1), Mumbai has sent letter to this Directorate vide letter no. ACIT 1(3)(1)/Scheme of Arrangement/2016-17 dated 08.09.2016. The Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of the scheme by Hon'ble High Court may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

10. As far as the observations made in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Companies undertakes that in addition to compliance of Accounting Standards 14, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable accounting standards including Accounting Standard 5.

11. As far as the observations made in paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Petitioner Companies are bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.

12. Mr. S. Ramakantha, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai,

states that they are satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by the 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, the Transfer Company Scheme Petition No.69 of 2017 to Transfer Company Scheme Petition No.73 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c) and Transfer Company Scheme Petition No.74 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b).
15. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Assistant Registrar, 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 receipt of the order.
16. The Petitioner Companies are further directed to file a 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 physical copy, as per the relevant provisions of the Companies Act, 2013.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai in Transfer Company Scheme Petition No.69 of 2017 to Transfer Company Scheme Petition No.74 of 2017 and cost of Rs.25,000/- each to the Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No.69 of 2017 to Transfer Company Scheme Petition No.73 of 2017. Costs to be paid within four weeks from the date of the Order.

18. Filing and issuance of the drawn up order is dispensed with.

19. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

**B.S.V. Prakash Kumar**

Member (Judicial)

Sd/-

**V. Nallasenapathy**

Member (Technical)