

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 228 (MAH) OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 ;

AND

In the matter of Scheme of Arrangement and Amalgamation between Neelkamal Infrastructures Private Limited (CIN: U45202MH2009PTC190424) (Transferor Company 1), Apex Techno Class Private Limited (CIN: U80904MH2011PTC215284) (Transferor company 2), Brahmakamal Realty Private Limited (CIN: U45202MH2009PTC190423) (Transferor Company 3) with Intensive Finance Private Limited (CIN: U65921MH2011PTC213129) (Transferee Company) and their respective Shareholders

Neelkamal Infrastructures Private Limited, a Company Incorporated under the provisions of Companies Act, 1956 having its registered office at Office No. 27/29, 4th Floor, Vanka Mohalla, Kolbhath Lane, Near Chira Bazar Mumbai – 400002 }
CIN: U45202MH2009PTC190424 }..... Applicant/ Transferor Company 1

Apex Techno Class Private Limited, a Company Incorporated under the provisions of Companies Act, 1956 having its registered office at Room No. 3, 2nd Floor, Rustom Building, 29 V N Road, Fort Mumbai – 400023 }
CIN: U80904MH2011PTC215284 }..... Applicant/ Transferor Company 2

Brahmakamal Realty Private Limited, a Company Incorporated under the provisions of Companies Act, 1956 having its registered office at Office Flat No 05 , Salasar Nagar No 1 Navghar Road, Bhayander (E) Thane MH 401105 }
CIN: U45202MH2009PTC190423 } Applicant/ Transferor Company 3

Intensive Finance Private Limited, a Company Incorporated under the

provisions of Companies Act, 1956 }
having its registered office at 131, 13th }
Floor, C-Wing Mittal Tower, Nariman }
Point, Mumbai, MH 400021 }
CIN: U65921MH2011PTC213129 } ...Applicant/ Transferee Company

Called for Hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Applicant Company

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

V. Nallasenapathy, Member (Technical)

DATE: 15th March, 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicants states that the Scheme of Amalgamation provides for the amalgamation of the Applicant Companies I, II and III, with the Transferee Company pursuant to the relevant provisions of the Act.
2. The Counsel for the Applicants further submits that the Transferor Companies are currently not engaged in any business. The Transferee Company is a Non-Banking Finance Corporation registered with the Reserve Bank of India and is engaged in the business of borrowing and lending funds as well as making other secured investments.
3. The Counsel for the Applicants further submits that rationale for Scheme is that in order to enhance capacity of the amalgamated entity and create economies of managerial and administrative costs, the managements of the Applicant Companies have decided to merge the companies, in the interests of maximizing overall shareholder value. Therefore, with a view to effect such plan, the Boards of Directors of the Applicant Companies propose that all the business and undertakings of Transferor Companies be transferred and vested in the Transferee Company on a going concern basis .
4. That the meeting of the Equity Shareholders of the First Applicant Company be convened and held at its registered office at Office No. 27/29, 4th Floor, Vanka Mohalla, Kolbhatt Lane, Near Chira Bazar Mumbai – 400002 on 20th, April 2017 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Neelkamal Infrastructures Private Limited (Transferor Company 1), Apex Techno Class Private Limited (Transferor company 2), Brahmakamal Realty Private Limited (Transferor Company 3) with Intensive Finance Private Limited (Transferee Company) and their respective Shareholders

5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at its registered office at Room No. 3, 2nd Floor, Rustom Building, 29 V N Road, Fort Mumbai – 400023 on 20th, April 2017 at 12:30 P.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Neelkamal Infrastructures Private Limited (Transferor Company 1), Apex Techno Class Private Limited (Transferor company 2), Brahmakamal Realty Private Limited (Transferor Company 3) with Intensive Finance Private Limited (Transferee Company) and their respective Shareholders.
6. That the meeting of the Equity Shareholders of the Third Applicant Company be convened and held its registered office at Office Flat No 05 , Salasar Nagar No 1 Navghar Road, Bhayander (E) Thane MH 401105 on 20th, April 2017 at 4:00 P.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Neelkamal Infrastructures Private Limited (Transferor Company 1), Apex Techno Class Private Limited (Transferor company 2), Brahmakamal Realty Private Limited (Transferor Company 3) with Intensive Finance Private Limited (Transferee Company) and their respective Shareholders.
7. That the meeting of the Equity Shareholders of the Applicant / Transferee Company be convened and held at its registered office at 131, 13th Floor, C-Wing Mittal Tower, Nariman Point, Mumbai, MH 400021 on 20th, April 2017 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the Scheme of Arrangement between Neelkamal Infrastructures Private Limited (Transferor Company 1), Apex Techno Class Private Limited (Transferor company 2), Brahmakamal Realty Private Limited (Transferor Company 3) with Intensive Finance Private Limited (Transferee Company) and their respective Shareholders.
8. That at least 30 clear days before the said Meetings of the Equity Shareholders of the First, Second, Third Applicant Company and Transferee Company to be held as aforesaid, a notice convening the said Meeting at the place date and time as aforesaid, together with a copy of the Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations)

Rule, 2016 notified on 14th December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the First and the Second Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the First, Second, Third Applicant Company and Transferee Company, at their last known address or email addresses as per the records of the Applicant Company.

9. That at least 30 clear days before the meetings of the Equity Shareholders of the First, Second, Third Applicant Company and Transferee Company to be held as aforesaid, a notice convening the said Meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the First and Second Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, chembur, Mumbai – 400071.
10. That the Composite Notice of the Meetings of the Equity Shareholders shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in-Mumbai not less 30 days before the date fixed for the meeting.
11. That Mr. Jagdish Prasad Rathi, Director of the First Applicant Company, and failing him, Ms. Babita Rathi, also Director of the First Applicant, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant to be held its registered office at Office No. 27/29, 4th Floor, Vanka Mohalla, Kolbhatt Lane, Near Chira Bazar Mumbai – 400002 on 20th, April 2017 at 11:00 A.M. or any adjournment or adjournments thereof.
12. That Mr. Jagdish Prasad Rathi, Director of the Second Applicant Company, and failing him, Ms. Babita Rathi, also Director of the Second Applicant, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant to be held its registered office at Room No. 3, 2nd Floor, Rustom Building, 29 V N Road, Fort Mumbai – 400023 on 20th, April 2017 at 12:30 P.M. or any adjournment or adjournments thereof.

13. That Mr. Jagdish Prasad Rathi, Director of the Third Applicant Company, and failing him, Ms. Babita Rathi, also Director of the Third Applicant, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Third Applicant to be held its registered office at Office Flat No 05, Salasar Nagar No 1 Navghar Road, Bhayander (E) Thane MH 401105 on 20th, April 2017 at 4:00 P.M. or any adjournment or adjournments thereof.
14. That Mr. Dhirander Kumar Surana, Director of the Transferee Company, and failing him, Ms. Susheela Surana, also Director of the Transferee, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Transferee to be held its registered office at 131, 13th Floor, C-Wing Mittal Tower, Nariman Point, Mumbai, MH 400021 on 20th, April 2017 at 11:00 A.M. or any adjournment or adjournments thereof.
15. That the Chairman appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the Meetings referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).
16. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
17. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meetings, are filed with the First Applicant Company at its Registered Office at Office No. 27/29, 4th Floor, Vanka Mohalla, Kolbhatt Lane, Near Chira Bazar Mumbai – 400002 not later than 48 hours before the aforesaid meeting.
18. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meetings, are filed with the Second Applicant Company at its Registered Office at Room No. 3, 2nd Floor, Rustom Building, 29 V N Road, Fort Mumbai – 400023 not later than 48 hours before the aforesaid meeting.
19. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meetings, are filed with the Third Applicant Company at its Registered Office at Office Flat No 05, Salasar Nagar No 1

Navghar Road, Bhayander (E) Thane MH 401105 not later than 48 hours before the aforesaid meeting.

20. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorisation duly signed by the person entitled to attend and vote at the meetings, are filed with the Transferee Company at its Registered Office at 131, 13th Floor, C-Wing Mittal Tower, Nariman Point, Mumbai, MH 400021 not later than 48 hours before the aforesaid meeting.
21. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First, Second, Third Applicant Companies and the Transferee Company or depository records and where the entries in the books / register / depository records are disputed, the Chairmen of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
22. That the Chairman to file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
23. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
24. The Transferor Companies are directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served upon the First Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
25. The Transferee Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies (iv) Reserve Bank of India with a direction that they may submit their representations, if any, within a period of thirty days from the date of receipt of

such notice to the Tribunal with copy of such representations shall simultaneously be served upon the Transferee Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

26. The Counsel for the First, Second and Third Applicant Companies submits that there are no Secured and Unsecured Creditors in the First, Second and Third Applicant Companies, therefore the question of sending notices to the Secured and Unsecured Creditors does not arise.
27. The Counsel for the Transferee Company further submits that since the Scheme is an Arrangement between the Transferee Company and their respective shareholders only a meeting of the Equity Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This bench hereby directs the Transferee Company to issue notice to all its Secured and Unsecured Creditors as on 20th February 2017 under section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Transferee Company.
28. The First, Second and the Third Applicant Company are also directed to serve notice along with copy of scheme upon Official Liquidator. M/s P.M Agarwal & Associates, Chartered Accountants are appointed to assist the Official Liquidator to scrutinize books of accounts of the First, Second and the Third Applicant Company for the last 5 years, a composite fee of Rs. 30,000/-.
29. The Transferor Companies and the Transferee Company to file affidavit of service in the Registry proving dispatch of notices to the regulatory authorities as stated in clause 24 & 25 above, and notices to shareholders, creditors and publication of the notices in newspaper and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)