

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

**TRANSFER COMPANY SCHEME PETITION NO.115 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.607 OF 2016**

Saikrupa Infotech Private Limited

....Petitioner Company/
Transferor Company No.1

And

**TRANSFER COMPANY SCHEME PETITION NO. 116 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.608 OF 2016**

Pushpadanta Developers & Farms Private LimitedPetitioner Company/
Transferor Company No.2

And

**TRANSFER COMPANY SCHEME PETITION NO.117 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.609 OF 2016**

Accent Buildtech Private Limited

....Petitioner Company/
Transferor Company No.3

And

**TRANSFER COMPANY SCHEME PETITION NO. 118 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.610 OF 2016**

Ashwini Hi-Rise and Farms Private Limited

....Petitioner Company/
Transferor Company No.4

And

**TRANSFER COMPANY SCHEME PETITION NO. 119 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.611 OF 2016**

Flying Constructions Private Limited

....Petitioner Company/
Transferee Company

In the matter of the Companies Act (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 the Scheme of Amalgamation of
(1) Saikrupa Infotech Private Limited (SIPL) and
(2) Pushpadanta Developers & Farms Private
Limited (PDFPL) and
(3) Accent Buildtech Private Limited (ABPL) and
(4) Ashwini Hi-Rise and Farms Private Limited
(AHFPL)

with

Flying Constructions Private Limited (FCPL)

and

their respective Shareholders & Creditors

Called for Hearing

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

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director in all
Transfer Company Scheme Petitions

Mr. Raghunath Pola, Deputy ROC in the office of Registrar of Companies in all
Transfer Company Scheme Petitions

Mr. Vinod Sharma, Official Liquidator present in Transfer Company Scheme
Petition Nos. 115 to 118 of 2017

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

Date: 6th April, 2017

1. Heard Advocate 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 Saikrupa Infotech Private Limited (SIPL) and Pushpadanta Developers & Farms Private Limited (PDFPL) and Accent Buildtech Private Limited (ABPL) and Ashwini Hi-Rise and Farms Private Limited (AHFPL) with Flying Constructions Private Limited (FCPL) and their respective Shareholders & Creditors.
3. The Learned Advocate for the Petitioners state that the First Transferor Company is engaged in business of developers, designer, repairs, service and dealers in all types of information Technology (IT) and IT related, hardware and hardware related, software and software related research and other related activities and remaining Transferor Companies and Transferee Company are engaged in real estate development and construction related activities.
4. The Learned Advocate for the Petitioners state that the Transferor Companies being subsidiaries of Transferee Company (direct) are engaged in the same line of business and are being managed and owned by the same management and in order to reduce the cost of managing separate companies and to make the management of the business operations of the companies more effective, it is proposed to amalgamate the Transferor Companies with the Transferee Company and the amalgamation would enable the management to bring the entire business of all the five companies under one umbrella and consolidation of the business operations of the Transferor Companies and Transferee Company by way of amalgamation would lead to a more efficient utilization of resources and create a stronger base for future growth of the amalgamated entity and greater efficiency in cash management of the amalgamated entity, and unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund growth opportunities and benefit of operational synergies to the combined entity and 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 Petitioner states 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 Companies have 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 dated 24th March, 2017 in the Transfer Company Scheme Petition No.115 of 2017 to Transfer Company Scheme Petition No.118 of 2017 and has stated that the business of the Transferor Company No.1, Transferor Company No.2, Transferor Company No.3 and Transferor Company No.4 have not been conducted in prejudicial manner. However, he has made certain observations in paragraph 10, 11 and 12 of his Report that:

"10. That the Official Liquidator humbly submits that on perusal of the Chartered Accountant's Report, the questionnaire relating to the same and the Petition, it is noticed that the affairs of (I) M/s. Saikrupa Infotech Pvt. Ltd. the Chartered Accountant in his report

dated 01/03/2017. The concern expressed by the Chartered Accountants are under:

“subject to non-deduction/non-payment of TDS of Rs.8,90,524/- which will be discharged by Transferee Company post Amalgamation alongwith interest and penalty, if any, the affairs of the Company have not been conducted in a manner prejudicial (a) to the interest of its members or (b) to public interest and it would be in order for you to file the representation before the Hon’ble National Company Law Tribunal, Mumbai Bench, Mumbai as required under section 230(5) of the Companies Act, 2013.”

11. That the Official Liquidator humbly submits that on perusal of the Chartered Accountant’s Report, the questionnaire relating to the same and the Petition, it is noticed that the affairs of (II) M/s. Pushpadanta Developers & Farms Pvt. Ltd. the Chartered Accountant in his report dated 01/03/2017. The concern expressed by the Chartered Accountants are under:

“subject to non-deduction/non-payment of TDS of Rs.39,20,098/- which will be discharged by Transferee Company post Amalgamation alongwith interest and penalty, if any, the affairs of the Company have not been conducted in a manner prejudicial (a) to the interest of its members or (b) to public interest and it would be in order for you to file the representation before the Hon’ble National Company Law Tribunal, Mumbai Bench, Mumbai as required under section 230(5) of the Companies Act, 2013.”

12. That the Official Liquidator humbly submits that on perusal of the Chartered Accountant’s Report, the questionnaire relating to the same and the Petition, it is noticed that the affairs of (II) M/s. Accent Buildtech Private Limited the Chartered Accountant in his report dated 01/03/2017. The concern expressed by the Chartered Accountants are under:

“subject to non-deduction/non-payment of TDS of Rs.11,81,140/- which will be discharged by Transferee Company post Amalgamation alongwith interest and penalty,

if any, the affairs of the Company have not been conducted in a manner prejudicial (a) to the interest of its members or (b) to public interest and it would be in order for you to file the representation before the Hon'ble National Company Law Tribunal, Mumbai Bench, Mumbai as required under section 230(5) of the Companies Act, 2013."

9. As far as the observations made in the paragraph 10, 11 and 12 of the Official Liquidator's Report is concerned, the Learned Advocate for the Petitioner Companies states that the Transferee Company undertakes to discharge the respective outstanding TDS liability pending against the Transferor Company No.1, Transferor Company No.2 and Transferor Company No.3 alongwith interest and penalty, if any, as mentioned in Clauses 3.8 and 3.9 of the Scheme of Amalgamation.
10. The observations made by the Official Liquidator have been explained by the Petitioner Companies in Para 9. The clarification and undertaking given by the Petitioner Companies are hereby accepted.
11. The Regional Director has filed his Report dated 8th March, 2017 stating therein save and except as stated in para IV (a) and IV (b) 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 :
 - 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 Statements 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 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 Companies.

12. As far as the observations made in paragraph IV (a) of the Report 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 and also ensures that the Financial Statements of the Transferee Company will not impair the true and fair view of the Financial Statements of the Transferee Company after post-amalgamation.
13. As far as the observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the tax implication, if any, arising out of the Scheme is subject to final decision of the Income Tax Authority and the decision of the Income Tax Authority shall be binding on the Petitioner Companies.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 12 and 13. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petition No.115 of 2017 to Transfer Company Scheme Petition No.118 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) to (c) and Transfer Company Scheme Petition No.119 of 2017 filed by the Petitioner Company is made absolute in terms of prayer clauses (a) and (b).

17. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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.
18. 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.
19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region Mumbai in Transfer Company Scheme Petition No.115 of 2017 to Transfer Company Scheme Petition No.119 of 2017 and costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No.115 of 2017 to Transfer Company Scheme Petition No.118 of 2017. Costs to be paid within four weeks from the date of the Order.
20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
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)

Sd/-
V. Nallasenapathy
Member (Technical)