

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO 354 (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 Amalgamation amongst Sears Constructions Private Limited and Hiranandani Realtors Private Limited and their respective shareholders

Sears Constructions Private Limited, a Company	}
incorporated under the provisions of Companies Act, 1956	}
having its Registered Office at 514 Dalamal Towers,	}
FPJ Marg, Nariman Point, Mumbai	}.....Applicant No. 1
	(Transferor Company)

Hiranandani Realtors Private Limited, a Company	}
incorporated under the provisions of Companies Act, 1956	}
having its Registered Office at 514 Dalamal Towers,	}
FPJ Marg, Nariman Point, Mumbai	}.....Applicant No.2
	(Transferee Company)

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

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

V. Nallasenapathy, Member (Technical)

DATE: 12th April, 2017

MINUTES OF THE ORDER

1. The Counsel for the Applicants submit that the present Scheme is an Amalgamation of Sears Constructions Private Limited and Hiranandani Realtors Private Limited and their respective shareholders.
2. The Counsel for the Applicants further submit that the First Applicant Company is in the business of real estate development, construction and civil engineering. The Second Applicant Company is *inter-alia* engaged in the business of real estate development, construction and civil engineering, since both the First and Second

Applicant Companies are engaged in the similar line of business activities and forms a part of the same group it is thereby proposed to merge the Transferor Company with the Transferee Company in order to simplify the group structure, streamline compliances and other related benefits.

3. The Counsel for the Applicants further submit the rationale for the Scheme is that the amalgamation would result in the following benefits to the Transferee Company and the shareholders of the Transferor Companies and the Transferee Company:
 - a. *The Transferor and Transferee Company are from the same management and the nature of business carried on by both the Companies are complementary to each other.*
 - b. *With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of Sears Constructions Private Limited ('Transferor Company') into Hiranandani Realtors Private Limited ("Transferee Company").*
 - c. *The amalgamation of all undertaking of Transferor Company into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations.*
 - d. *The amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.*
4. That the Meeting of the Equity Shareholders of the First Applicant Company be convened and held at its Corporate Office at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076 on 20th May, 2017 at 9:30 A.M for the purpose of considering and if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement amongst Sears Constructions Private Limited and Hiranandani Realtors Private Limited and their respective shareholders.
5. That the meeting of the Equity Shareholders of the Second Applicant Company be convened and held at its Corporate Office at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076 on 20th May, 2017 at 10:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement amongst Sears

Constructions Private Limited and Hiranandani Realtors Private Limited and their respective Shareholders.

6. That the meeting of the Preference Shareholders of the Second Applicant Company be convened and held at its Corporate Office at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076 on 20th May, 2017 at 11:00 A.M for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement amongst Sears Constructions Private Limited and Hiranandani Realtors Private Limited and their respective Shareholders.
7. That at least one month before the said Meetings of the Equity and Preference Shareholders of the First and Second Applicant Company to be held as aforesaid, a notice convening the said Meetings 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 Shareholders of the First and the Second Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
8. That at least one month before the Meetings of the Shareholders of the First and Second Applicant 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.
9. That the Notice of the Meetings of the First and the Second Applicant Companies shall be advertised in two local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the Meeting.

10. That Mr. Radhakrishnan C. Pillai, Director of the First Applicant Company, and failing him, Mr. Surendra L. Hiranandani, Director of the First Applicant Company shall be the Chairman of the aforesaid Meeting of the Equity Shareholders of the First Applicant to be held at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076, on 20th May, 2017 at 9:30 A.M or any adjournment or adjournments thereof.
11. That Mr. Radhakrishnan C. Pillai, Director of the Second Applicant Company, and failing him, Mr. Surendra L. Hiranandani, Director of the Second Applicant Company shall be the Chairman of the aforesaid Meeting of the Equity Shareholders and Preference Shareholders of the Second Applicant Company to be held at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076, on 20th May, 2017 at 10:00 A.M and 11 A.M. or any adjournment or adjournments thereof.
12. 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).
13. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
14. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the First and Second Applicant Company at their Registered Office(s) at 514, Dalamal Tower, 211 FPJ Marg, Nariman Point, Mumbai – 400 021 not later than 48 hours before the aforesaid Meetings.
15. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the First and Second Applicant Company or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the Meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.

16. That Mr. Girish L. Papat, Practicing Company Secretary is hereby appointed as Scrutinizer of the Meeting of the Equity shareholders of the First Applicant Company proposed to be held on 20th May, 2017 at 9:30 A.M. at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076 and his remuneration is fixed as Rs. 15,000/-.
17. That Mr. Girish L. Papat, practicing Company Secretary is hereby appointed as Scrutinizer of the Meeting of the Equity and Preference shareholders of the Second Applicant Company proposed to be held on 20th May, 2017 at 10:00 A.M. and 11A.M at Olympia, Central Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076 and his remuneration is fixed at Rs. 15,000/-.
18. 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.
19. 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.
20. The First Applicant and Second Applicant Company is directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the First and Second 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 and Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
21. The First Applicant Company is also directed to serve notice along with copy of scheme upon Official Liquidator. M/s V.S Gokhale & Co. are appointed to assist the Official Liquidator to scrutinize books of accounts of the Applicant Company for the last 5 years. The Transferee Company to pay fees of Rs. 2,00,000/-.
22. The Counsel for the First Applicant Company further submits that since the Scheme is an amalgamation between the Applicant 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 First Applicant Company to issue notice to all its Secured and Unsecured Creditors 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 Applicant Company.

23. The Counsel for the Second Applicant Company further submits that since the Scheme is an amalgamation between the Applicant Company and their respective shareholders only a meeting of the Equity and Preference 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 Second Applicant Company to issue notice to all its Secured and Unsecured Creditors 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 Applicant Company.

24. The First and Second Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, Creditors, publication of notices in newspapers and to the regulatory authorities as stated in clause 20 and 21 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-
V. Nallasenapathy, Member (T)

Sd/-
M. K. Shrawat, Member (J)