

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, AT MUMBAI

CSP NO. 760 OF 2017,  
CSP NO. 761 OF 2017.

In the matter of Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Jubilant Fintex Private Limited, The Transferor Company With Growmore Investments And Developers Private Limited, the Transferee Company

Jubilant Fintex Private Limited ..... Petitioner/Transferor Company.

AND

Growmore Investments And Developers Private Limited ..... Petitioner/Transferee Company.

Order delivered on: 24<sup>th</sup> January, 2018

**Coram:**

Hon'ble B.S.V. Prakash Kumar, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

**For the Applicant:** 1) Mr. Chandrakant Mhadeshwar, Advocate

**For the Regional Director:** 2) Mr. Ramesh Gholap, Assistant Director on  
Office of regional Director

**For Official Liquidator:** 3) Mr. Santosh Dalvi, Representative of  
Official Liquidator

Per:- V. Nallasenapathy, Member (T)

**MINUTES OF ORDER**

1. Heard learned Counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of Jubilant Fintex Private Limited (the Transferor Company) With Growmore Investments And Developers Private Limited (the Transferee Company).

3. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
5. The amalgamation of the Transferor Company with the Transferee Company would have the benefits that the Transferor Companies and the Transferee Company are under same management. Since no useful purpose is being served in continuing with multiple separate legal entities it is the preference to amalgamate these entities such that the business of the Transferor Company and the Transferee Company can be combined conveniently and carried out in conjunction more advantageously to achieve operational efficiency and cost minimization.
6. The Regional Director has filed his Report, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (5) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
  - a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc;*
  - b) *As per Clause 2.4 Definitions of the scheme. "Appointed Date" means 1<sup>st</sup> April 2017 or such other date as the National Company Law Tribunal at Mumbai may direct. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2017;*



- c) *As regards Clause 14 (Combination of Authorized Capital) of the Scheme M/s Growmore Investments And Developers Private Limited (the transferee Company) may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3) (i) of the Companies Act, 2013.*
  - d) *M/s Growmore Investments And Developers Private Limited, (The Transferee Company-GIDPL) is primarily engaged in the business of investing in lands and real estate and acquiring, buying, developing, maintaining, selling, hiring, letting on hire lease immovable properties & purchasing, taking on lease or otherwise acquire & hold any land or building etc, Hence the petitioner may be directed to comply with (RERA) Real Estate Regulation and Development Act, 2016 read with Maharashtra Rules and Regulation 2017;*
  - e) *As per existing practice, the petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 28<sup>th</sup> June 2017 has reserved a copy Company Scheme Application No. 615 & 616 of 2017 along with relevant orders etc.*
  - f) *The tax implication if any arising out of the scheme 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 files by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
  - g) *As the appointed date is 01/04/2017, Annual Return and Balance Sheet of both the Petitioner Companies for the financial year 2016-17 are due and should be filed with ROC Mumbai. Hon'ble Tribunal may kindly direct the Petitioner Companies to comply with Statutory Requirements of the Act and to file Annual Return and Balance Sheet for relevant period".*
7. As far as the observation of the Regional Director stated in paragraph IV (a) of his report are concerned, the Petitioner Company through their counsel undertake that in addition to compliance of AS-14 ( IND AS-103) 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 (IND AS-8 ) etc.

8. As far as the observation of the Regional Director stated in paragraph IV (b) of his report are concerned, the Petitioner Company through their counsel confirmed that the appointed date for the proposed shall be 1<sup>st</sup> April, 2017.
9. As far as the observation of the Regional Director stated in paragraph IV (c) of his report are concerned, the Petitioner Company states that the Petitioner Company undertake to comply with provisions of Section 232 3(i) of the Companies Act, 2013
10. As far as the observation of the Regional Director stated in paragraph IV (d) of his report are concerned, the Petitioner Company through their counsel states the Transferee Company is only investing its surplus fund to purchase office premises and shops and said offices premises and shops giving on rent. The Transferee Company is not carrying on business as developers or builders or acts broker on behalf of its client for purchase or sale of flats, shops, offices etc., However, the Transferee company undertake to file copy the scheme along with this order to Maharashtra Real Estate Regulation and Development Authority within 30 days from the receipt of this order.
11. As far as the observation of the Regional Director stated in paragraph IV (e) and (f) of his report are concerned, the Petitioner Companies states that the Petitioner Companies undertake 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. As far as the observation of the Regional Director stated in paragraph IV (g) of his report are concerned, the Petitioner Companies states that the Transferor Company and Transferee Company has already filed its Annual Return and Balance Sheet for the financial year 2016-17 with the ROC Mumbai on 30<sup>th</sup> November, 2017 and 06<sup>th</sup> October,



2017 and said form is approved and taken on record by the ROC Mumbai.

13. The Official Liquidator has filed his report in the Scheme Petition No. 760 of 2017, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
14. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 760 of 2017 and 761 of 2017 are made absolute in terms of prayer clauses (a) and (b) of the respective Petitions.
16. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry.
17. The Petitioner Company 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.
18. The Petitioners in both the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner in the Company Scheme Petition No. 760 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.

19. 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.

Sd/-

V. Nallasenapathy, Member (T)

Date 24/01/2017

Sd/-

B.S.V. Prakash Kumar Member (J)