

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSA No. 24 OF 2018

Under Section 230 to 232 of Companies Act, 2013
And

In the matter of Composite Scheme of Amalgamation and Arrangement of Ayuddha Builders and Developers Private Limited ('Ayuddha' or 'the Transferor Company 1') AND Pratyush Realty Private Limited ('Pratyush' or 'the Transferor Company 2') AND Varnika Realty Private Limited ('Varnika' or 'the Transferor Company 3') WITH Lily Realty Private Limited ('Lily' or 'the Company' or 'the Transferee Company') AND their respective shareholders

AYUDDHA BUILDERS AND DEVELOPERS

PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 2013 having its registered address at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, India

.....The Transferor Company 1 / First Applicant

PRATYUSH REALTY PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 2013 having its registered address at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, India

.....The Transferor Company 2 / Second Applicant

VARNIKA REALTY PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 2013 having its registered address at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, India

.....The Transferor Company 3 / Third Applicant

LILY REALTY PRIVATE LIMITED, a company incorporated under the provisions of Companies Act, 1956 having its registered address at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, India

.....The Transferee Company/ Fourth Applicant

Order delivered on 1st February, 2018

Coram:

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

Hon'ble **V .Nallasenapathy**, Member (T)

For the Applicant(s): Mr. Hemant Sethi i/b Hemant Sethi & Co.

Per: **V .Nallasenapathy**, Member (T)

ORDER

1. The Counsel for the Applicant states that the present Scheme is a Composite Scheme of Amalgamation and Arrangement of Ayuddha Builders and Developers Private Limited ('Ayuddha' or 'the Transferor Company 1') and Pratyush Realty Private Limited ('Pratyush' or 'the Transferor Company 2') and Varnika Realty Private Limited ('Varnika' or 'the Transferor Company 3') (Transferor Company 1, Transferor Company 2 and Transferor Company 3 collectively referred to as "Transferor Companies") with Lily Realty Private Limited ('Lily' or 'the Company' or 'the Transferee Company') and their respective shareholders (the 'Scheme'). This Composite Scheme of Amalgamation and Arrangement is proposed to merge the Transferor Companies with the Transferee Company without winding up the Transferor Company pursuant to the relevant provisions of the Companies Act.
2. The Counsel for the Applicants further submits that the Transferor Companies are mainly engaged in the business of real estate development and the Transferee Company is also mainly engaged in the business of real estate development.
3. The rationale for the proposed scheme is as under:

The management of the Transferor Companies and the Transferee Company believes that the restructuring would benefit the companies and its stake holders on account of following reasons:

- Simplification of group structure;
 - Rationalisation of administrative overheads; and
 - Greater administration efficiency.
4. That the meeting of the Equity Shareholders of the Transferor Company 1 be convened and held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, on Tuesday, 6th day of March, 2018 at 12.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Composite Scheme of Amalgamation and Arrangement of Ayuddha Builders and Developers Private Limited ('Ayuddha' or 'the Transferor Company 1') and Pratyush Realty Private Limited ('Pratyush' or 'the Transferor Company 2') and Varnika Realty Private Limited ('Varnika' or 'the Transferor Company 3') (Transferor Company 1, Transferor Company 2 and Transferor Company 3 collectively referred to as "Transferor Companies") with Lily Realty Private Limited ('Lily' or 'the Company' or 'the Transferee Company') and their respective shareholders.
 5. That the meeting of the Equity Shareholders of the Transferor Company 2 be convened and held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, on Tuesday, 6th day of March, 2018 at 1.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Composite Scheme of Amalgamation and Arrangement of Ayuddha Builders and Developers Private Limited ('Ayuddha' or 'the Transferor Company 1') and Pratyush Realty Private Limited ('Pratyush' or 'the Transferor Company 2') and Varnika Realty Private Limited ('Varnika' or 'the Transferor Company 3') (Transferor Company 1, Transferor Company 2 and Transferor Company 3 collectively referred to as "Transferor Companies") with Lily Realty Private Limited ('Lily' or 'the Company' or 'the Transferee Company') and their respective shareholders.
 6. That the meeting of the Equity Shareholders of the Transferor Company 3 be convened and held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, on Tuesday, 6th day of March, 2018 at 2.00 p.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Composite Scheme of Amalgamation and Arrangement of Ayuddha Builders and Developers Private Limited ('Ayuddha' or 'the Transferor Company 1') and Pratyush

Realty Private Limited ('Pratyush' or 'the Transferor Company 2') and Varnika Realty Private Limited ('Varnika' or 'the Transferor Company 3') (Transferor Company 1, Transferor Company 2 and Transferor Company 3 collectively referred to as "Transferor Companies") with Lily Realty Private Limited ('Lily' or 'the Company' or 'the Transferee Company') and their respective shareholders.

7. That the meeting of the Equity Shareholders of the Transferee Company be convened and held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra, on Tuesday, 6th day of March, 2018 at 11.00 a.m. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed merger embodied in the Composite Scheme of Amalgamation and Arrangement of Ayuddha Builders and Developers Private Limited ('Ayuddha' or 'the Transferor Company 1') and Pratyush Realty Private Limited ('Pratyush' or 'the Transferor Company 2') and Varnika Realty Private Limited ('Varnika' or 'the Transferor Company 3') (Transferor Company 1, Transferor Company 2 and Transferor Company 3 collectively referred to as "Transferor Companies") with Lily Realty Private Limited ('Lily' or 'the Company' or 'the Transferee Company') and their respective shareholders.
8. That at least one month before the said Meeting of the Equity Shareholders of Transferor Companies and Transferee Company, 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 / Hand Delivery / Speed Post or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the shareholders, at their last known address or email addresses as per the records of the respective company.
9. That atleast one month before the meeting of the shareholders of the Transferor Companies and Transferee Company to be held as aforesaid, a notice convening the said Meeting, 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 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 - 400 071.

10. That the Notice of the Meeting 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. Ritesh Sheth , Director, and failing him, Mr. Haresh Kumar , Director, and failing him, Mr. Amit Jha, Authorised Signatory of the Transferor Company 1 shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Transferor Company 1 to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 12.00 p.m. or any adjournment or adjournments thereof.
12. That Mr. Ritesh Sheth , Director, and failing him, Mr. Haresh Kumar , Director and failing him, Mr. Amit Jha, Authorised Signatory of the Transferor Company 2 shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Transferor Company 2 to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 1.00 p.m. or any adjournment or adjournments thereof.
13. That Mr. Ritesh Sheth, Director, and failing him, Mr. Rajesh Turakhia , Director and failing him, Mr. Amit Jha, Authorised Signatory of the Transferor Company 3 shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Transferor Company 3 to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 2.00 p.m. or any adjournment or adjournments thereof.
14. That Mr. Rajesh Turakhia, Director, and failing him, Mr. Rajendra Singh, Director, and failing him, Mr. Amit Jha, Authorised Signatory of the Transferee Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Transferee Company to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 11.00 a.m. or any adjournment or adjournments thereof.

15. That the respective Chairmen appointed for the aforesaid Meetings to issue the advertisement and send out the notices of the respective Meetings referred to above. The said Chairmen shall have all powers as per respective company's Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, 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 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/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the respective Applicants at their respective Registered Office(s) not later than 48 hours before the aforesaid meetings.
18. That the value and number of the shares of each shareholder shall be in accordance with the books / register of the Transferor Companies and Transferee Company and where the entries in the books / register / depository records are disputed, the respective Chairmen of the Meetings shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
19. That Mr. Manish P Jain (Membership no. 113759) of Manish P Jain & Associates, (Firm Registration no. 123908W) is hereby appointed as Scrutinizers of the meeting of the Equity Shareholders of the Transferor Company 1 to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 12.00 p.m. or any adjournment or adjournments thereof.
20. That Mr. Manish P Jain (Membership no. 113759) of Manish P Jain & Associates, (Firm Registration no. 123908W) is hereby appointed as Scrutinizers of the meeting of the Equity Shareholders of the Transferor Company 2 to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 1.00 p.m. or any adjournment or adjournments thereof.

21. That Mr. Manish P Jain (Membership no. 113759) of Manish P Jain & Associates, (Firm Registration no. 123908W) is hereby appointed as Scrutinizers of the meeting of the Equity Shareholders of the Transferor Company 3 to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 2.00 p.m. or any adjournment or adjournments thereof.
22. That Mr. Manish P Jain (Membership no. 113759) of Manish P Jain & Associates, (Firm Registration no. 123908W) is hereby appointed as Scrutinizers of the meeting of the Equity Shareholders of the Transferee Company to be held at 3rd Floor, Bengal Chemical Building, 502, Veer Savarkar Marg, Prabhadevi, Mumbai - 400 025, Maharashtra on Tuesday, 6th day of March, 2018 at 11.00 a.m. or any adjournment or adjournments thereof..
23. That the Chairmen of respective meetings to each file an affidavit not less than seven (7) days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
24. That the Chairmen of the respective meetings to report to this Tribunal, the results of the aforesaid meeting within thirty days of the conclusion of the meeting.
25. The Transferor Companies are also directed to serve notice along with copy of scheme upon Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013. M/s Jacob Koshy & Co. Chartered Accountants is appointed with a remuneration of Rs. 75,000/- for the services. If no response is received by the Tribunal from Official Liquidator within thirty days of the date of receipt of notice, it will be presumed that Official Liquidator has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
26. The Transferor Companies and Transferee Company are directed to serve notices along with copy of scheme upon:- (i) concerned Income Tax Authority with in whose jurisdiction the Applicant Companies' assessments are made, (ii) the Central Government through the office of Regional Director, Western region, Mumbai, (iii) the Official Liquidator, Mumbai (in case of Transferor Companies) (iv) 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 Transferor and Transferee Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

27. The Counsel for the Applicants submits that since the Scheme is an arrangement between the Transferor Companies and their respective shareholders only, a meeting of the shareholders of the Transferor Companies is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. The Counsel for the Applicant Companies further submits that there are no Secured Creditors in the Transferor Companies, therefore the question of sending notices to the Secured Creditors does not arise. This bench hereby directs the Transferor Companies to issue notice to all Unsecured Creditors, 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 Transferor Companies.
28. The Counsel for the Applicants submits that since the Scheme is an arrangement between the Transferee Company and their respective shareholders only, a meeting of the shareholders of the Transferee Company 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 Secured and Unsecured Creditors, 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.
29. The Transferor Companies and Transferee Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, unsecured creditors, secured creditors (in case of Transferee Company) publication of notices in newspapers and to the regulatory authorities as stated in clause 26 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

Sd/-

V .Nallasenapathy, Member (T) B.S.V. Prakash Kumar, Member (J)
1.2.2018