

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSP NO. 1055 OF 2017

Under Sections 230 - 232 of the
Companies Act, 2013:

In the matter of Scheme of Amalgamation of
Flying Constructions Private Limited (First
Transferor Company) and Shravasti Developers
and Agro Private Limited (Second Transferor
Company) and Sumatinath Reality & Agro Private
Limited (Third Transferor Company) with Lodha
Impression Real Estate Private Limited
(Transferee Company) and their respective
Shareholders and Creditors

Flying Constructions Private Limited

(First Petitioner Company / First Transferor Company)

Shravasti Developers and Agro Private Limited

(Second Petitioner Company / Second Transferor Company)

Sumatinath Reality & Agro Private Limited

(Third Petitioner Company / Third Transferor Company)

Lodha Impression Real Estate Private Limited

(Fourth Petitioner Company / Transferee Company)

Judgement / Order Delivered on 7th day of February 2018

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s):

Adv. Ajit Singh Tawar and Adv. Rushil Aiya i/b Ajit Singh Tawar & Co.,
Advocates for Petitioners

For the Regional Director:

Ms. P. Sheela, Joint Director for the Regional Director

For the Registrar of Companies:

Mr. Ramesh Gholap, Deputy Registrar of Companies

For the Official Liquidator:

Mr. Santosh Dalvi, Representative from the office of Official Liquidator

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard the learned Counsel for the Petitioner Companies. None appears before the Tribunal to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Flying Constructions Private Limited (First Transferor Company) and Shravasti Developers and Agro Private Limited (Second Transferor Company) and Sumatinath Reality & Agro Private Limited (Third Transferor Company) and Lodha Impression Real Estate Private Limited (Transferee Company) and their respective shareholders.
3. The Petitioner Companies have approved the said scheme of Amalgamation by passing the Board Resolution, which are annexed to the Joint Company Scheme Petition.
4. The Learned Counsel for the Petitioners state that the petitions have been filed in consonance with the order passed in the Company Scheme Application No. 897 of 2017 of National Company Law Tribunal, Mumbai Bench.

5. The Learned Counsel for Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements if any, as required under Companies Act 2013 and the rules made thereunder. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners submit that Transferor Companies are currently carrying out the business activity of construction and development of real estate and allied activities. The Transferee Company is engaged in the business activity of construction and development of real estate and allied activities.
7. The amalgamation of the Transferor Companies with the Transferee Company would, inter-alia, have the following benefits:
 - (i) *Consolidation and simplification of group structure;*
 - (ii) *Achieving operational and management efficiency by way of consolidation of businesses;*
 - (iii) *Post the amalgamation of Transferor Companies with Transferee Company, Transferor Companies shall stand dissolved. Consequently, there would be lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory requirements, tax filings, company law requirements, etc and therefore reduction in administrative costs.*
8. The Regional Director has filed his report dated 7th Day of January 2018 and has stated that save and except as stated in Paragraph IV of the said Report, the Regional Director has stated that:

"IV. The observations of the Regional Director on the proposed Scheme to be considered are as under:-

1. *The Tax Implication if any arising out of the schemes 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 Company.*
2. *It is submitted that as the petitioner companies are into real estate business. In this regard, Petitioner Companies have to undertake to serve notice to Real estate Regulator under Real Estate (Regulation and Development) Act, 2016 read with rule to the Hon'ble NCLT and to the Directorate.*
3. *Petitioner Companies not submitted admitted copy of the petition with Minutes of Order of the Hon'ble NCLT and Chairman's Report of the Meeting of Shareholder and Creditors. In this regard petitioner to undertake to submit the same for the record of Regional Director.*
4. *Petitioner Companies in the clause 14 of the scheme inter alia mentioned that combination of Authorized Capital. In this regard Hon'ble NCLT may direct Transferee/Resulting Company to comply with provisions of Section 232 3 (i) of the Companies act, 2013, if applicable.*
5. *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
6. *The Hon'ble NCLT shall direct to the petitioners to specifically fix/ indicate "Appointed Date" in terms of provisions of section 232 (6) of Companies Act, further the*

scheme shall be effective from such appointment Date but operative from the effective Date.

9. In so far as the observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with the applicable provisions of the Income Tax Act, 1961 and all tax implications, if any, arising out of the scheme will be met and answered in accordance with law.
10. In so far as the observation made in paragraph IV (2) of the Report of Regional Director is concerned, the learned Counsel for the Petitioners submits that the Transferor Companies have no real estate project at present which requires registration under the Real Estate Regulation and Development Act, 2016 (RERA) read with Maharashtra Rules and Regulation 2017 and hence the same is not applicable to the present Scheme of Amalgamation.
11. In so far as the observation made in paragraph IV (3) of the Report of Regional Director is concerned, the learned Counsel submits that the Petitioner Companies has submitted copies of the petition and Chairman's Report of the Meeting of the Shareholders to the office of the Regional Director and further undertakes to submit the order for admission of Petition for their records.
12. In so far as the observation made in paragraph IV (4) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with the applicable provisions of Section 232(3)(i) of the Companies Act, 2013 as regards combination of Authorized Share Capital.

13. In so far as the observation made in paragraph IV (5) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake that the Scheme enclosed to the Company Scheme Application and the scheme enclosed to the Company Scheme Petition are one & same and there is no discrepancy or deviation.
14. In so far as the observation made in paragraph IV (6) of the Report of Regional Director is concerned, the learned Counsel further submits that, appointed date has been fixed as 2nd April, 2017 as mentioned in clause 1.1.2 of scheme which is in compliance with section 232 (6) of the Companies Act, 2013 and the Scheme shall be effective from such appointed date but operative from the effective date.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
16. The Official Liquidator has filed his report on 16th day of January, 2018 stating that the affairs of the Transferor Companies have been conducted in proper manner and that the Transferor Companies may be ordered to be dissolved without winding up.
17. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition No. 1055 of 2017 filed by the Transferor and

Transferee Company are made absolute in terms of prayers clauses (a) of the Joint Company Scheme Petition.

19. The Petitioner Companies are directed to file a certified copy of this order and the Scheme duly authenticated by the Deputy Director or Assistant Registrar, 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 the receipt of the Order.
20. The Petitioner Companies are directed to file a certified copy of this order along with a copy of Scheme with the concerned Registrar of Companies, electronically, along with E-Form INC-28, within 30 days from the date of receipt of the order from the Registry.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and Transferor Companies to pay cost of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The cost to be paid within four weeks from the date of receipt of Certified True Copy of Order.
22. All concerned authorities to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapthy, Member (T)

Sd/-

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