

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CSA No. 1103 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 of R&H Homes Private Limited ('the  
Transferor Company 1' or 'R&H Homes') and Shree Nuj Constructions Private  
Limited ('the Transferor Company 2' or 'Shree Nuj') and Vrusti Real Estate  
Developers Private Limited ('the Transferor Company 3' or 'Vrusti') and  
Dynasty Home Makers Private Limited ('the Transferor Company 4' or  
'Dynasty') with Kanakia Spaces Realty Private Limited ('the Transferee  
Company' or 'KSRPL') and their respective shareholders

R&H Homes Private Limited ....the First Applicant Company

Shree Nuj Constructions Private Limited ....the Second Applicant Company

Vrusti Real Estate Developers Private Limited ....the Third Applicant Company

Dynasty Home Makers Private Limited ...the Fourth Applicant Company

(Transferor Companies)

AND

Kanakia Spaces Realty Private Limited.....the Fifth Applicant Company

(Transferee Company)

Order delivered on 11<sup>th</sup> January, 2018

Coram:

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

Hon'ble V. Nallasenapthy, Member (T)

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

**Per: B.S.V Prakash Kumar, Member (J)**

**Order**

1. The Counsel for the Applicant Companies states that the present Scheme is a Scheme of Amalgamation of R&H Homes Private Limited ('the Transferor Company 1' or 'R&H Homes') and Shree Nuj Constructions Private Limited ('the Transferor Company 2' or 'Shree Nuj') and Vrusti Real Estate Developers Private Limited ('the

Transferor Company 3' or 'Vrusti') and Dynasty Home Makers Private Limited ('the Transferor Company 4' or 'Dynasty') with Kanakia Spaces Realty Private Limited ('the Transferee Company') and their respective shareholders.

2. The Transferor Companies are engaged in the business of construction and development of real estate properties in India. The Transferee Company is engaged in development of real estate residential and commercial projects in India.

The Scheme of Amalgamation shall have the following benefits:

- Consolidation of companies within the Group;
- Reduction of intra - group transactions and compliance requirements under various laws;
- Reduction of operating and compliance costs; and
- Achieve administrative, operational and management efficiencies.

Keeping in view the provisions of Section 230 to 232 of the Companies Act, 2013, directions are issued in relation to the calling, convening and holding of meeting of shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company as follows:

3. That the meeting of the Equity Shareholders of the First Applicant Company shall be convened and held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 2<sup>nd</sup> March 2018 at 10:00 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of R&H Homes Private Limited and Vrusti Real Estate Developers Private Limited and Shree Nuj Constructions Private Limited and Dynasty Home Makers Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.
4. That the meeting of the Equity Shareholders of the Second Applicant Company shall be convened and held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 2<sup>nd</sup> March 2018 at 11:00 AM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of R&H Homes Private Limited and Vrusti Real Estate Developers Private Limited and Shree Nuj Constructions Private Limited and Dynasty Home Makers Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.
5. That the meeting of the Equity Shareholders of the Third Applicant Company shall be convened and held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri

Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 2<sup>nd</sup> March 2018 at 12:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of R&H Homes Private Limited and Vrusti Real Estate Developers Private Limited and Shree Nuj Constructions Private Limited and Dynasty Home Makers Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.

6. That the meeting of the Equity Shareholders of the Fourth Applicant Company shall be convened and held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 2<sup>nd</sup> March 2018 at 1:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of R&H Homes Private Limited and Vrusti Real Estate Developers Private Limited and Shree Nuj Constructions Private Limited and Dynasty Home Makers Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.
7. That the meeting of the Equity Shareholders of the Fifth Applicant Company shall be convened and held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 2<sup>nd</sup> March 2018 at 2:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of R&H Homes Private Limited and Vrusti Real Estate Developers Private Limited and Shree Nuj Constructions Private Limited and Dynasty Home Makers Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.
8. That the meeting of the Preference Shareholders of the Fifth Applicant Company be convened and held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 2<sup>nd</sup> March 2018 at 3:00 PM for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Amalgamation of R&H Homes Private Limited and Vrusti Real Estate Developers Private Limited and Shree Nuj Constructions Private Limited and Dynasty Home Makers Private Limited with Kanakia Spaces Realty Private Limited and their respective shareholders.
9. That at least one month before the said meetings of the Shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company to be held as aforesaid, a notice convening the said meeting at the place date and time as aforesaid,

together with a copy of the Scheme of Amalgamation as annexed, a copy of the 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) Rules, 2016 notified on 14<sup>th</sup> 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 Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company, at their last known addresses or email addresses as per the records of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company respectively.

10. That at least one month before the meetings of the Shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth 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 copy of the Scheme of Amalgamation 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) Rules, 2016 and the Form of Proxy can be obtained free of charge at the registered offices of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company as aforesaid and / or at the office of their Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400071.
11. That the notice of the meetings 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.
12. That Mr. Jatin Shah, Company Secretary of First Applicant Company, failing him Mrs. Rashmi Shah, Authorized Signatory of First Applicant Company and failing her Mr. Aditya Agarwal, Authorized Signatory of First Applicant Company shall be the

Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant Company to be held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 31<sup>st</sup> March, 2018 at 10:00 AM or any adjournment or adjournments thereof.

13. That Mr. Jatin Shah, Company Secretary of Second Applicant Company, failing him Mrs. Rashmi Shah, Authorized Signatory of Second Applicant Company and failing her Mr. Aditya Agarwal, Authorized Signatory of Second Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company to be held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 31<sup>st</sup> March, 2018 at 11:00 AM or any adjournment or adjournments thereof.
14. That Mr. Jatin Shah, Company Secretary of Third Applicant Company, failing him Mrs. Rashmi Shah, Authorized Signatory of Third Applicant Company and failing her Mr. Aditya Agarwal, Authorized Signatory of Third Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Third Applicant Company to be held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 31<sup>st</sup> March, 2018 at 12:00 PM or any adjournment or adjournments thereof.
15. That Mr. Jatin Shah, Company Secretary of Fourth Applicant Company, failing him Mrs. Rashmi Shah, Authorized Signatory of Fourth Applicant Company and failing her Mr. Aditya Agarwal, Authorized Signatory of Fourth Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Fourth Applicant Company to be held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 31<sup>st</sup> March, 2018 at 1:00 PM or any adjournment or adjournments thereof.
16. That Mr. Jatin Shah, Company Secretary of Fifth Applicant Company, failing him Mrs. Rashmi Shah, Authorized Signatory of Fifth Applicant Company and failing her Mr. Aditya Agarwal, Authorized Signatory of Fifth Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Fifth Applicant Company to be held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 31<sup>st</sup> March, 2018 at 2:00 PM or any adjournment or adjournments thereof.

17. That Mr. Jatin Shah, Company Secretary of Fifth Applicant Company, failing him Mrs. Rashmi Shah, Authorized Signatory of Fifth Applicant Company and failing her Mr. Aditya Agarwal, Authorized Signatory of Fifth Applicant Company shall be the Chairman of the aforesaid meeting of the Preference Shareholders of the Fifth Applicant Company to be held at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra on 31<sup>st</sup> March, 2018 at 3:00 PM or any adjournment or adjournments thereof.
18. That the Chairman appointed for the aforesaid meetings to issue the advertisement and send out the notices of the meetings referred to aboveshall have all powers as per the Articles of Association of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Companyrespectively 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).
19. That the quorum of the aforesaid meetings of theShareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
20. 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 Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Companyat their Registered Office at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra,not later than 48 hours before the aforesaid meeting, as per the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.
21. That the value and number of the shares of each Shareholder shall be in accordance with the books / registers of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Companyor 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.
22. That Ms. Ria Kunal Ahuja, Practicing Company Secretary (Membership Number: 29556& Certificate of Practice: 16838),is hereby appointed as Scrutinizer of the

meetings of the Shareholders of the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company proposed to be held on 2nd March 2018 at 215 - Atrium, 10th Floor, Opposite Divine School, Andheri Kurla Road, Andheri - East, Mumbai 400059, Maharashtra.

23. That the Chairman of each of the aforesaid meetings shall file an affidavit not less than seven (7) days before the date fixed for the holding of the respective meetings and to report to this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
24. That the Chairman of each of the aforesaid meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings.
25. The First Applicant Company is directed to serve notices along with copy of the Scheme of Amalgamation upon:- (i) concerned Income Tax Authority (Ward: Central Circle 2(4), C.G.O. Building Annexe, 101, M.K. Road, Mumbai-400 020 PAN: AAECR0460J) with in whose jurisdiction the First Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai and (iv) Official Liquidator, Mumbai 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 Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
26. The Second Applicant Company is directed to serve notices along with copy of Scheme of Amalgamation upon:- (i) concerned Income Tax Authority (Ward 10(1)(4), Aayakar Bhavan, M.K. Marg, Mumbai - 400020, PAN: AAOCS1657C) within whose jurisdiction the Second Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai and (iv) Official Liquidator, Mumbai, 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 simultaneously be served upon the Second Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

27. The Third Applicant Company is directed to serve notices along with copy of Scheme of Amalgamation upon:- (i) concerned Income Tax Authority (Ward 10(1)(4), AayakarBhavan, M.K. Marg, Mumbai – 400020, PAN:AACCV4587C) within whose jurisdiction the Third Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai and (iv) Official Liquidator, Mumbai, 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 simultaneously be served upon the Third Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
28. The Fourth Applicant Company is directed to serve notices along with copy of Scheme of Amalgamation upon:- (i) concerned Income Tax Authority (Ward 10(1)(4), AayakarBhavan, M.K. Marg, Mumbai – 400020, PAN:AACCC7846D) within whose jurisdiction the Fourth Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai and (iv) Official Liquidator, Mumbai, 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 simultaneously be served upon the Fourth Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
29. The Fifth Applicant Company is directed to serve notices along with copy of Scheme of Amalgamation upon:- (i) concerned Income Tax Authority (Ward 10(1)(4), AayakarBhavan, M.K. Marg, Mumbai – 400020, PAN:AACCC4199F) within whose jurisdiction the Fifth Applicant Company's assessments are made, (ii) the Central Government through the office of Regional Director, Western Region, Mumbai, (iii) Registrar of Companies, Mumbai and (iv) Official Liquidator, Mumbai, 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 simultaneously be served upon the Fifth Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposals.
30. The First, Second, Third and Fourth Applicant 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 S.V Godbole, Chartered

Accountants are appointed with a remuneration of Rs. 10,000/- each for the Transferor Companies 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.

31. The Counsel for the First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company further submits that since the Scheme is an Amalgamation between the Applicant Companies 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 First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth Applicant Company to issue notice to all its Secured and Unsecured Creditors to whom the amounts are due and payable as required 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 respective Applicant Company.
32. The First Applicant Company, the Second Applicant Company, the Third Applicant Company, the Fourth Applicant Company and the Fifth 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 clauses 10 to 30 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapthy, Member (T)

11.1.2018

Sd/-

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