

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

Company Petition No. 19/ALD/ 2017

Company Application.30/2016

(Under Section 230-232 of Companies Act, 2013)

IN THE MATTER OF:

GPL BUILDTECH PRIVATE LIMITED

REGISTERED OFFICE: 31/472, C/1,

SULTANGANJ BYPASS ROAD

AGRA-282004, UTTAR PRADESH

.....Petitioner Company No.1/Transferor Company 1

AND

M/S GPL DEVELOPERS PRIVATE LIMITED

REGISTERED OFFICE: 31/472, C/1,

SULTANGANJ BYPASS ROAD,

AGRA-282004, UTTAR PRADESH

..... Petitioner Company NO.2/Transferor Company 2

AND

M/S GPL INFRATECH PRIVATE LIMITED

REGISTERED OFFICE: 31/472, C/1,

SULTANGANJ BYPASS ROAD,

AGRA-282004, UTTAR PRADESH

..... Petitioner Company No.3/Transferor Company 3

**M/S GANPATI INFRASTRUCTURE DEVELOPMENT COMPANY
LIMITED,**

REGISTERED OFFICE: 31/472, C/1,

SULTANGANJ BYPASS ROAD,

AGRA-282004, UTTAR PRADESH

..... Petitioner Company No.4/Transferee Company No.4

JUDGMENT/ORDER DILIVERED ON 25.09.2017

CORAM: Sh. Harihar Prakash Chaturvedi, Member (Judicial)

For the Petitioner : Sh. Shahid Kazmi, Advocate

For the Central Government : Sh. M.K. Bagri OL, Allahabad

AS PER : SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

Order / Judgement

1. The Present Company Petition is filed by the Petitioner Companies before
this tribunal under Section 230/232 of Companies Act, 2013 read with



National Company Law Tribunal Rules, 2016 along with The Companies (Compromises, Arrangement and Amalgamations) Rules, 2016 seeking prayer for sanctioning the scheme of amalgamation between **M/S GPL BUILDTECH PVT.LTD.**, (herein after referred to as *Petitioner Company No.1* or *Transferor Company 1*), **M/S GPL DEVELOPERS PVT.LTD.**, (herein after referred to as *Petitioner Company No.2* or *Transferor Company 2*), **GPL INFRATECH PVT.LTD.**, (herein after referred to as *Petitioner Company No.3* or *Transferor Company 3*), as amalgamating with **M/S GANPATI INFRASTRUCTURE DEVELOPMENT LTD.**, (herein after referred to as *Resulting/Transferee Company*).

2. It is submitted in the Present Company Petition that the proposed Scheme of Amalgamation has already been approved by the Board of Directors and shareholders of the respective Companies in their EOGM held on **27.08.2016**.

The main object and salient features of the proposed Company Scheme for amalgamation are described as under:

- a. The proposed Scheme of Amalgamation will result in leveraging the human and physical resources of all the Companies which will enhance their profitability and long term viability.
- b. The Scheme of amalgamation will result in usual economics of a centralized and larger company including reduction in overheads, better and more productive utilization of various resources and reduction in procedural & administrative works/costs.
- c. The said scheme of amalgamation has been proposed, inter alia, to consolidate the group structure and provide for overall business efficiency. To combine their managerial and marketing strength, to stream line administration, to build a wider capital and financial base and to promote and secure overall interest and growth and economics of the Companies Concerned.
- d. The said Scheme of Amalgamation will contribute in furthering and fulfilling the objects of the Companies Concerned and in facilitating further expansion, growth and development of their Business.



- e. *The said Scheme of Amalgamation will strengthen, consolidate and stabilize the business of the said Companies and the resulting amalgamated company would be able to participate more vigorously and profitably in the competitive market scenario.*
- f. *The Amalgamation would enable pooling of managerial, financial and human resources of the concerned companies for the most beneficial utilization of these factors in the amalgamated company and lead to the emergence of a single large company with a strong financial base which will be able withstand and achieve economies of scale.*
- g. *The said Scheme of merger will have beneficial results for the companies concerned, their shareholders, employee and all concerned.*
- h. *All the assets and liabilities of the Transferor Companies will be transferred to and vest in the Transferee Company.*
- i. *The Amalgamation shall take effect from **1st April, 2015** or such other date as the Hon'ble Tribunal may approve.*
- j. *All the employee of Transferor Companies shall become employees of Transferee Company without any change in their service condition and with their continuity of service.*

3. As per the Proposed Company Scheme annexed with the Present Petition the **Appointed Date** of the scheme is **01.04.2015**.

4. It is submitted that the proposed Scheme of Amalgamation is not intended to in any manner, to have any beneficial effect on the managerial interest, if any, of the Directors of the Petitioner Companies, except to the extent of their shareholdings. That the Proposed Scheme will not adversely affect the rights or interest of any creditor and debenture holders of the Petitioner Companies or their respective shareholders, in any manner whatsoever.



5. It has been stated that the Proposed Scheme of Amalgamation does not involve in any compromise with the creditors and debenture holders of the Petitioner Companies in any manner whatsoever. As such, the Scheme of Amalgamation does not in any manner adversely affect the interests of any creditor and debenture holder of the Petitioner Companies. Further due provisions are made in the Proposed Company Scheme for payment of all their liabilities as and when the same will fall due in the usual course.

It is also stated that the Auditors of the GPL Buildtech Private Limited, GPL Developers Private Limited, GPL Infratech Private Limited, Ganapati Infrastructure Development Limited, have not disclosed any mis-management in the affairs of respective companies e.g. Transferor Companies and Transferee Company.

It is also reported that the Transferee Company has duly complied with the all accounting standards applicable there to. In support of this, the Petitioner Companies have obtained certificate from the auditor of the Transferee Company certifying that the accounting treatment under the Scheme is found in compliance with the Accounting Standards, such was annexed earlier as Annexure- 19 with the previous **Company Application No. 30 of 2016** which is now clubbed together with the Present Company Petition.

6. From a perusal of the Present Company Petition it is seen that the Petitioner Companies initially filed a First Stage Motion Petition before Hon'ble Allahabad High court, later on the matter was transferred to this bench of the NCLT by virtue of Statutory Provision under section 434(1) of Companies, Act, 2013.

The Petitioner Companies in the prayer clause of such Company Application (CA No. 30/2016) have earlier sought directions from this Tribunal to dispense with the meetings of its shareholders, secured and unsecured creditor. This Bench



its **order dated 02.03.2017** allowed such request of Amalgamating Companies to dispense with their meetings of Shareholders, secured and unsecured creditors.

7. In addition to the above this Tribunal further directed to the Petitioner Companies to issue a notice and serve a copy of the Company Petition to the Central Government through the office of Regional Director (Northern Region), Ministry of Corporate Affairs, Registrar of Companies, Kanpur and Official Liquidator, Allahabad and to make paper publication thereof in English and Hindi newspapers.

In Compliance of the above stated direction the authorised representative of the applicant companies has filed an affidavit of service confirming such the notices are dully published in the English 'The Business Standard' and in the Hindi 'The Business Standard' New Delhi Edition. The Petitioners further served notices of the present Company Petition to the Central Government through the Office of Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and Registrar of Companies, U.P at Kanpur and further to the Income Tax Officer at Agra.

8. In response to the above mentioned notices issued. The Registrar of Companies, Kanpur filed its report, before this Tribunal reporting such that there is no prosecution, filed against Transferor Companies and Transferee Company nor any proceeding under section 235 to 251 of the Act, 1956 is pending against the Companies nor any violation is reported against it under section 383A/215 of the Companies Act, 1956.

Further, Shri Mahesh Kumar, the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, after receiving a report from the Registrar of Companies filed his representation Affidavit before this Tribunal stating that his Office is having no objections to present Company scheme as there seems no prosecution/ proceedings pending against the Transferor and Transferee Companies and against its Directors for any alleged violation of laws under the Companies Act, FEMA, IPC, SEBI Act, RBI Act before any Court.



Notwithstanding the above, in Para 7 of his affidavit in respect of other Compliance, he has observed as under:

Para 7: That the Deponent is to say that the petitioner companies may be directed to give an undertaking in relation to payment of stamp duty as may be applicable consequent upon the transfer of assets due to the Amalgamation.

9. In the present matter The Official Liquidator, Allahabad also filed his report, mentioning about detail particulars of Authorized, Issued, Subscribed and Paid up Capital of the Transferor and Transferee Company as on 31/03/2015.

As per para 19 of the OL's report it is informed that under the provisions of section 230-232 of the Companies Act, 2013, his office is required to scrutinize the Books of Accounts and other documents of the Companies for preparation and submission of a report. Pursuant, thereto Shri R.C Sharma being Authorized representative / Company Secretary of Transferor Companies and the Transferee Company has produced Books of Accounts and statutory records, before the office of Official Liquidator.

After making scrutiny there of The Official Liquidator dully submitted his report stating such the affairs of the Transferor Companies have not been conducted in manner prejudicial to the interest of their member or to the public at large. Further in para 22 of its report it is informed that the Office of the OL, Allahabad is having no objection for dissolution of the transferor Companies without being wound up pursuant to provisions of Section 230-232 of the Companies Act, 2013 and rules made there under.

We have gone through the above stated averments made in the Company

Petition and perused the documents annexed therewith we further perused

carefully the Representation Affidavit of the RD(N.R.) along with Report of

ROC and O.L filed in the present case. We examined the Merits of Present

Company Petition and proposed Company scheme of Amalgamation in the

light of Judicial Trend as settled by the High Court's that *the Court must*

examine the scheme on its own merits and is not bound to treat the scheme

as fait accompli. It is well-settled that in exercising its discretion in

according sanction, the court will consider, first, whether the statutory

provisions have been complied with; secondly, whether the classes were

fairly represented by those who attended the meeting and whether the



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statutory majority were acting bona fide, and, thirdly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined.

Further the Court is required to consider circumstances before giving its approval. Some of the outstanding circumstances may be illustrated as under:

- a. The proposal for the Scheme was made in good faith;
- b. The Scheme is fair and reasonable;
- c. The Scheme will yield to smooth and satisfactory working;
- d. The Scheme does not offend public or commercial morality;
- e. The Scheme is not detrimental to the interests of the creditors or members or public interest.

By following the above narrated legal canon's, we duly considered the Merits of the Proposed Company Scheme. We are of the view that the proposed scheme does not seem to be contrary to the public policy, nor prejudicial to the its shareholders and detrimental to public at large as the Transferor Companies are Subsidiaries of the Transferee Company.

Further the Board of Directors of the Transferor Companies and Transferee Company have considered and approved the proposed Company Scheme.

That apart the shareholders secured and unsecured creditors both have given their consent to and expressed their objection for Approval of the Proposed Company Scheme.



The salient feature of the Company Scheme of Amalgamation makes certain provision to secure the Interest of the Company and its shareholders, creditors, stakeholders and the employee which may be described as under:

- (a) All the assets and liabilities of the subsidiary Transferor Company(s) will be transferred to and vest with the Transferee Company.
- (b) The Scheme of amalgamation shall take effect from 1st April, 2015 or such other date, as the Tribunal may approve.

(c) All the employees of the Transferor Companies shall become employee of the Transferee Company without any change in their respective service condition and with their continuity in service.

(d) That subsequent to the date of the audited accounts for the year ended on 31.03.2015, there has been no substantial change in the financial position of the Transferor Companies No.1, 2 & 3 except those arising or resulting from normal course of business. The petitioners undertake to comply with the Accounting Standard-14 issued by the Institute of Chartered Accountants of India to the instant Scheme.

(e) That the Transferor Companies and the Transferee Company have accordingly, arrived at the proposed Scheme of Amalgamation/Merger with effect from 1st of April, 2015 Certified Copy of all the Transferor Companies and the Transferee Company are annexed with Company Application No.30 of 2016. A true copy of the Scheme of Amalgamation has been annexed with the Present Petition.

(f) That the meetings of the Board of Directors of the Transferor Companies



as well as of the Transferee Company have duly approved the proposed Scheme of Amalgamation, which includes the exchange ratio as have been determined by M/s A.J. Associates, Chartered Accountants. A copy of the Share Valuation report is annexed with Present Company application.

(g) That the Transferor Companies are subsidiary of the Transferee Company by virtue of Section 2(87) of the Companies Act, 2013 and no further shares shall be issued by the Transferee Company, as a company cannot issue shares to itself, henceforth, all the Equity Shares, held by the Transferee Company and its nominees, if any, in the Transferor Companies shall be cancelled and share certificates extinguished, accordingly, there will be no issue and allotment of Equity Shares of the

Transferee Company to the Shareholders of the Transferor Companies upon this Scheme becomes effective.

10. Thus, In the light of the above stated factual position of the Companies and of the proposed scheme all the requisite Statutory compliance either seems to have been complied with or, are further undertaken to be complied with by the Petitioner Companies as per the undertaking given in the Affidavit. Therefore, the proposed Company Scheme, seems to be reasonable and fair, in conformity with statutory provisions. Hence deserve for approval.

Accordingly, the Present Company petition is allowed in terms of Prayer Clause and the Proposed Company Scheme of Arrangement/amalgamation which is annexed to the present Company Petition is hereby sanctioned, and to be acted upon by the Petitioner Companies as per the terms and condition contained therein.

11. Consequent upon approval and sanction of the Company Scheme, all the property, rights and powers and transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of Act, be transferred to and vested in the Transferee Company for all intents and interest of the Transferor Companies therein but subject nevertheless to all charges now affecting the same.



12. All the liabilities of the Transferor Companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company.

13. Notwithstanding the above while sanctioning the above company scheme, we make it clear that this order should not be meant for an order in any manner for granting exemption from payment of stamp duty, taxes. Statutory charges or other payment in accordance with law or in respect to any

relaxation, compliance with any other requirement which may be specifically required under the law.

14. That Petitioner Companies shall within thirty days of the date of the receipt of copy of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and the Transferor Companies on such certified copy being so delivered shall deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor Companies and registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly.

15. Further a cost of Rs. 20,000/- is awarded in favour of the Central Government through the office of the Registrar of Companies (Kanpur), Regional Director (N.R.) as the case may be towards Legal Expenses incurred which is payable by the Petitioner companies within four weeks from the receipt of an authentic copy of this order.

16. The Petitioner counsel to furnish a copy of draft order of sanction of the Scheme in the prescribed format under Companies Compromises, Arrangement and Amalgamations) Rules, 2016 read with other rules for scrutiny and authentication to be made by the Registry of this Tribunal.

17. All Concerned Regulatory Authorities to act on an Authentic copy of this order annexed with the Company Scheme and duly authenticated by the Registry of this Tribunal.



Dated- 25/09/2017

**H.P. Chaturvedi,
Member (Judicial)**

Typed by:
Aman Kumar Dwivedi
(Law Clerk cum Research Assistant)