

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CA (CAA) NO. 26/Chd/Hry/2017

**Under Sections 230 to 232
of the Companies Act, 2013**

In the matter of the scheme of amalgamation between:

CARAF BUILDERS & CONSTRUCTIONS PRIVATE LIMITED

(CIN: U45201HR2006PTC066880)

having its registered office at

10th Floor, Gateway Tower,

DLF City, Phase-III,

Gurugram – 122002, Haryana

... Applicant Company No.1-Transferor Company

WITH

DLF CYBER CITY DEVELOPERS LIMITED

(CIN: U45201HR2006PLC036074)

having its registered office at

10th Floor, Gateway Tower,

DLF City, Phase-III,

Gurugram – 122002, Haryana

.... Applicant Company No.2-Transferee Company

Judgment delivered on: 09.02.2018

Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial).

For the Applicants :
1. Mr. Naveen Dahiya, Advocate
2. Mr. Nahush Jain, Advocate

JUDGEMENT (ORAL)

This is a joint First Motion application filed by the applicant companies herein, namely; Caraf Builders & Constructions Private Limited, Transferor Company and DLF Cyber City Developers Limited ,Applicant No. 2/Transferee Company jointly described as 'Applicant – Companies; under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the

Companies Act, 2013 (for brevity, the 'Act') read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules') for sanctioning of the proposed Scheme of Amalgamation Annexure A-7 (for short, the "Scheme") of the Applicant- Companies as supported by the affidavit of Mr. Baljeet Singh, the Authorized Representative of the Transferor-Company and Mr. Navin Kedia, the Authorized Representative of the Transferee-Company in support of the joint application for seeking appropriate orders/direction for calling and convening meetings and for dispensing with some of the meetings. The joint application is maintainable in terms of Rule 3(2) of the Rules.

2. The learned counsel represented that the Board of Directors of the applicant-companies unanimously approved the "Scheme" by passing their respective Board Resolutions dated 06.11.2017 subject to sanctioning of the same by this Tribunal. That A-1 Company has authorized severally Mr. Baljeet Singh and Mr. Amit Grover, Directors; Mr. Himanshu Mittal, Chief Financial Officer; Mr. Pankaj Virmani, Company Secretary; Mr. Navin Kedia and Mr. R.P. Punjani, authorized signatories and A-2 Company has severally authorised Mr. Sriram Khattar, Managing Director; Mr. Ashok Kumar Tyagi, Director; Mr. Navin Kedia, Chief Financial Officer and Mr. R.P. Punjani, Company Secretary of the company to sign, file, submit or present necessary applications, petitions, supplementary applications/petitions etc. and to swear affidavits or execute bonds for the merger and to do such acts and deeds as are necessary and incidental with regard to the Scheme. These Board Resolutions are at Annexure A-8 (Colly).

3. It was represented by the learned counsel for the Applicant- Companies that as per the Memorandum and Articles of Association, Annexure A-1 (Page Nos. 33-129), the objects of A-1 Company are to purchase any land, plot(s) of land or immovable property or any right or interest therein either singly or jointly or in partnership with any person(s) or body corporate or partnership firm and to develop and construct thereon residential, commercial complex or complex(es) either singly or jointly or in partnership as aforesaid, comprising offices for sale or self-use or for earning rental income thereon by letting out individual units comprised in such building(s) etc.

4. It was submitted that as per the Certificate of Incorporation of A-1 Company (Annexure A-1), A-1 Company was incorporated on 31.03.2006. Its name was changed to DLF Assets India Private Limited and then again changed to Caraf Builders and Constructions Private Limited and therefore, a fresh certificate of incorporation was issued by the Registrar of Companies, NCT of Delhi and Haryana. The registered office of the Transferor-Company was shifted from the State of Delhi to the State of Haryana and a fresh certificate of incorporation dated 29.12.2016 was issued by the Deputy Registrar of Companies, NCT of Delhi and Haryana.

5. The authorized, issued, subscribed and paid up share capital of the Transferor Company as on March 31, 2017 is as under:-

PARTICULARS	AMOUNT (Rs. in Lakhs)
AUTHORISED SHARE CAPITAL	
5,00,00,00,000 Equity Shares of Rs.10/- each.	5,00,000.00

50,00,00,000 0.01% Non - Cumulative Redeemable Preference Shares of Rs. 100/- each.	5,00,000.00
Total	10,00,000.00
ISSUED, SUBSCRIBED AND PAID-UP SHARE CAPITAL	
4,17,00,75,000 Equity Shares of Rs.10/- each.	4,17,007.50
33,92,00,000 0.01% Non - Cumulative Redeemable Preference Shares of Rs. 100/- each ("RPS-Series-1/2015").	3,39,200.00
Total	7,56,207.50

6. It was represented further that as per Memorandum and Articles of Association of A-2 Company (Annexure A-4) (Page Nos. 164-280), the objects of A-2 Company are to conceive, design, develop, set up and maintain an integrated techno township, cyber city, technology parks, software parks, and to carry on business of all related services and allied activities relating thereto etc.

7. The authorized, issued, subscribed and paid up share capital of the Transferee Company as on March 31, 2017 is as under:

PARTICULARS	AMOUNT (Rs. in Lakhs)
AUTHORISED SHARE CAPITAL	
450,05,00,000 Equity Shares of Rs. 10/- each.	4,50,050.00
30,00,00,000 Preference Shares of Rs. 100/- each.	3,00,000.00
Total	7,50,050.00
ISSUED, SUBSCRIBED AND PAID-UP CAPITAL	
1,50,05,00,000 Equity Shares of Rs. 10/- each.	1,50,050.00
15,96,99,999 0.01% Cumulative Compulsorily Convertible Preference Shares of Rs. 100/- each.	1,59,699.99
Total	3,09,749.99

8. The registered office of both the Applicant-Companies is situated within the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. It is represented that A-1 is a private limited company and A-2 is public limited company.

9. The list of Directors of A-1 Company is at Annexure A-3 and that of A-2 Company is at Annexure A-6.

10. Learned counsel for applicants represented that the applicant-companies do not contemplate any corporate debt restructuring exercise as contemplated under Section 230 (2) (c) of the Companies Act, 2013.

11. It is also stated in the affidavit that no proceedings under Section 235 to 251 of the Companies Act, 1956 and /or under Sections 206 to 229 of the Companies Act, 2013 are pending or instituted against the applicant-companies.

12. The Applicant Companies have made the prayers in the joint application for the following directions: -

“(a) To dispense with the requirement for convening the meetings of the equity and preference shareholders of the Applicant No. 1 and also to dispense with the requirement of issue and publication of notices for the same;

(b) To dispense with the requirement for convening the meetings of the equity and preference shareholders of the Applicant No. 2 and also to dispense with the requirement of issue and publication of notices for the same;

(c) To dispense with the requirement for convening the meetings of the secured creditors and unsecured creditors of the Applicant No. 1 and also

to dispense with the requirement of issue and publication of notices for the same;

- (d) To dispense with the requirement for convening the meeting of the secured creditors of the Applicant No. 2 and also to dispense with the requirement of issue and publication of notices for the same;*
- (e) To issue and pass necessary directions/order, as it may deem fit, for the purpose of convening of meeting of the unsecured creditors of the Applicant No. 2, including the requirement of issue and publication of notices for the same;*
- (f) To issue necessary direction for appointment of Chairperson, Alternate Chairperson and scrutinizers for the meetings to be held and terms of appointment and remuneration for the Chairperson and alternate chairperson;*
- (g) Issuing necessary directions fixing the time period within which the chairperson shall report the result of the meeting to this Hon'ble Tribunal;*
- (h) To issue necessary direction for filing the Petition, Application and other documents, as may be required, for sanctioning the Scheme of Amalgamation within 7 days of filing of the report by the Chairperson to this Hon'ble Tribunal; and/or*
- (i) To pass any other order or directions, as may be deemed fit in the facts and circumstances of the case, may also be granted."*

13. Learned counsel for the applicant-companies submitted that as on 10.11.2017, A-1 company had seven equity shareholders and one preference shareholder as per list attached at Annexure A-9 (Colly.) The Transferee-Company is holding 4,17,00,74,994 shares of the Transferor-Company. The

only preference shareholder of the Transferor-Company is DLF Cyber City Developers Limited i.e Transferee-Company. All of them had given their consent but the same was not accompanied by an affidavit and, therefore, when the matter was listed on 12.12.2017, this Tribunal directed the companies to file consent of shareholders in the form of affidavits which were filed on 11.01.2018 along with the affidavit of Mr. Baljeet Singh, the authorized representative of A-1 company.

14. Learned counsel for the applicant-companies submitted that as on 10.11.2017, A-2 Company had seven equity shareholders and three preference shareholders as per list attached at Annexure A-14 (Colly.) (Page Nos. 471 to 473), all of whom had given their consent which was not on affidavit and therefore, when the matter was listed on 12.12.2017, this Tribunal directed A-2 Company to file consent of shareholders in the form of affidavits which were filed on 11.01.2018 along with the affidavit of Mr. Navin Kedia, the authorized representative of A-2 Company.

15. When the matter was listed on 31.01.2018, it was observed that the consent affidavits of the shareholders of both the companies are not properly verified. The matter was then listed for 08.02.2018 for removal of the aforesaid defect.

16. The learned counsel for the applicant-companies filed fresh consent affidavits on 07.02.2018 along with the affidavit of Mr. Baljeet Singh authorized representative of the applicant-company No. 1 and Mr. Navin Kedia, authorized signatory of applicant-company No. 2. The list of equity shareholders and preference shareholders of the applicant-company No. 1 is at Annexure A-1 (colly) of the affidavit. The consent affidavits of all the equity

shareholders and one preference shareholder i.e. DLF Cyber City Developers Limited (Transferee-Company) holding 100% preference shares of the transferor-company has authorized Mr. R.P. Punjani, Company Secretary and others vide Board Resolution dated 10.07.2014 to severally sign and execute documents, letters, papers, writings, consents, financial statement etc. and providing consent/assent/dissent for merger/amalgamation scheme(s) and to do all such acts, deeds as may be incidental thereto. The affidavit of Mr. R.P. Punjani, authorized signatory dated 02.02.2018 has been filed whereby he has consented to the dispensation of the meeting of preference shareholder.

17. Annexure A-3 of the affidavit is the list of equity shareholders and preference shareholders of the applicant-company No. 2 as on 10.11.2017. The consent affidavits of all the equity and preference shareholders along with the Board Resolutions are also attached with the compliance affidavit.

18. Learned counsel for applicant-companies submitted that there were no secured creditors in the A-1 Company as on 30.09.2017. The certificates of the Chartered Accountant of the applicant-companies to this effect are at Annexures A-11.

19. It has further been submitted that as on 30.09.2017 as per list Annexure A-12, (Page nos. 438-439), there are six unsecured creditors in A-1 company and out of these five have given their consents by way of affidavits for the dispensation of meeting of unsecured creditors, which constitutes 98.3% of the total debt. However, when the matter was listed on 12.12.2017, it was noticed that the designation of the Authorized Signatory of one of the unsecured creditor (i.e. KPMG) of A-1 Company is not mentioned in its consent. In this regard, the learned counsel of the applicant companies submitted on

16.01.2018 that A-1 Company has paid off the said creditor and no due certificate from the said creditor is also placed on record along with the affidavit filed on 11.01.2018.

20. Learned counsel for applicants has represented that there were 13 secured creditors of A-2 company as on 30.09.2017 with the total credit of ₹70,894,479,162/-. The certificate of Chartered Accountant of the A-2 company in this regard is at Annexure A-16. As per the list at page 499 of the paper book, secured creditors are all the financial institutions including Axis Bank Ltd., Central Bank of India, Corporation Bank, Federal Bank etc. and in support of the contention, the applicant companies have placed on record affidavits of authorized representative of all these banks, supported with either power of attorney or the resolution of the meeting of the Managing Committee of the different financial institution/secured creditors. In view the affidavit submitted in respect of secured creditors, the meeting of secured creditors for the purposes of amalgamation can be dispensed with by virtue of provisions of sub-section (9) of Section 230 of the Companies Act, 2013.

21. It has further been submitted that as on 30.09.2017 as per list Annexure A-18, there are seven hundred and seven unsecured creditors in A-2 company amounting to ₹8,55,74,22,824/- (Page Nos.699-712).

22. The learned counsel further represented that meetings of shareholders of both the Applicant-Companies may be dispensed with in view of having obtained their consents by way of affidavits to the Scheme of Merger. It is further submitted that meeting of the unsecured Creditors of the A-1 Company may also be dispensed with in view of having obtained their consents by way of affidavits to the Scheme of Merger. It was further represented that as there

are no secured creditors in the A-1 Company. Hence, there is no need to call and convene their meeting. It is further submitted that meeting of the secured Creditors of the A-2 Company may also be dispensed with in view of having obtained their consents by way of affidavits to the Scheme. With regard to the unsecured creditors of the A-2 Company, the learned counsel has prayed for holding and convening of meeting of unsecured creditors of A-2 Company.

23. The certificate of the Statutory Auditors of the Transferee-Company with respect to the Scheme between Applicant-Companies to the effect that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 are attached as Annexure A-19 (page no. 713-715).

24. The learned counsel submitted further that A-1 Company is a closely held private limited company and A-2 Company is public limited company and are not listed on any stock exchange.

25. I have heard the learned counsel for the applicant-companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated between the Applicant-Companies with the assistance of learned counsel for the applicants.

26. The rationale for the "Scheme" is stated as below:

(i) The amalgamation will result in better, efficient and economical management, achieve cost savings, pooling of resources and rationalization of administrative expenses/services. The amalgamation will enable the Companies to pool their financial, commercial and other resources and considerable synergy of operations would be achieved.

- (ii) The amalgamation will result in reducing the corporate tiers in the holding structure, enabling the Company achieve optimal capital structure, eliminate inefficient share capital instruments and achieve efficiency in terms of operations and profitability of the merged entity under the new standards and regime.*
- (iii) With the enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility and strength and will be able to compete more effectively as a combined entity.*
- (iv) The Transferee Company as a consolidated entity after amalgamation will have better financial and business prospects. The Scheme would be beneficial to and in the best interest of the Shareholders & Creditors, if any, of the Transferor Company and the Transferee Company. The Scheme shall not in any manner be prejudicial to the interests of concerned members / creditors or general public at large.*
- (v) It would be advantageous to combine the activities of the Transferor Company and the Transferee Company into a single Company and consolidate their business and assets. The amalgamation would provide beneficial synergy of operations from administrative point of view, and conserve administrative resources and cost overheads, and duplication of management efforts.*

27. It is represented by the learned counsel for the applicant companies that the A-1 Company is the wholly owned subsidiary of the A- 2 Company. Upon sanctioning of the Scheme, the present entire issued, subscribed and paid-up Share Capital of the A-1 Company shall stand automatically cancelled

and extinguished and the A-1 Company shall stand dissolved without the process of winding up. Since, the A- 1 Company is the wholly owned subsidiary of the A- 2 Company, there would be no issue and allotment of Shares by the A- 2 Company.

28. The learned counsel for the Applicant-Companies further represented that in respect of the applicant-companies, the audited financial statements upto 31.03.2017 and unaudited supplementary accounting statements as on 30.09.2017 are at Annexure A-2(Colly) of A-1 Company and the audited financial statements upto 31.03.2017 and unaudited supplementary accounting statements as on 30.09.2017 are at Annexure A-5 (Colly) of A-2 Company.

29. It is represented by learned counsel for the applicant companies that the 'Scheme' provides that on the 'Scheme' becoming effective all the staff, workmen and employees of Transferor-Company shall become the employees or other labour of the Transferee-Company with effect from the Appointed Date without any break or interruption in service and terms and conditions as to employment and remuneration not less favourable than those on which they are engaged or employed by the Transferor- Company whereas there will be no effect on the employees of the Transferor- Company.

30. It is also stated that if any suit, writ petition, appeal, revision or other proceedings of whatsoever nature (hereinafter called "the proceedings") by or against the Transferor-Company is pending, the same shall not abate, be discontinued or be in any way prejudicially affected by reason of the transfer of the business of the Transferor-Company or because of anything contained in the Scheme, but the proceedings may be continued, prosecuted and

enforced by or against the Transferee-Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor-Company as if the Scheme had not been made. On and from the Scheme coming into effect, the Transferee-Company shall and may, if required, initiate any legal proceedings for and on behalf of the Transferor-Company. It is also submitted by the applicants that both the companies are profit making, and both are not listed companies.

31. In view of the above, following directions are issued with respect to calling, convening and holding of meetings of the shareholders, secured and unsecured creditors or dispensing with the same as well as issue of notices including by way of paper publication which are as follows:

A. In relation to A-1 Company/ Transferor Company:

- a. Meeting of the equity shareholders is dispensed with as there are seven equity shareholders and the consent of all the equity shareholders on affidavits have been obtained and placed on record.
- b. Meeting of the preference shareholders is dispensed with as there is only one preference shareholders and its consent on affidavit has been obtained and placed on record.
- c. Meeting of secured creditors is dispensed with as there are thirteen secured creditors and all of whom have given their consent by way of affidavit which is placed on record.
- d. Meetings of unsecured creditors is dispensed with as out of total six unsecured creditors, five unsecured creditors

constituting 98.3% of the total debt in value have given their consent by way of affidavit.

B. In relation to A-2 Company/Transferee Company:

- a. Meeting of the equity shareholders is dispensed with as there are seven equity shareholders and the consent of all the equity shareholders on affidavits have been obtained and placed on record.
- b. Meeting of the preference shareholders is dispensed with as there are only three preference shareholders and the consent on affidavits of it has been obtained and placed on record.
- c. Meeting of secured creditors is dispensed with as there are thirteen secured creditors all of whom have furnished their consent by way of affidavits which have been placed on record.
- d. Meeting of unsecured creditors to be convened on 31.03.2018 at Tulip Hall, DLF Club V, Opposite Trinity Tower, Club Drive, DLF V, Gurugram, Haryana-122002 at 11.00 a.m, subject to notice of meeting being issued. The quorum of the meeting of the unsecured creditors shall be 75 in number and 40% of value of unsecured creditors.

C. In case the required quorum as noted above for the meeting of the unsecured creditors of the A-2 Company is not present at the commencement of the meetings, the meetings shall be adjourned by 30 minutes, and thereafter the persons present and voting shall be deemed to constitute the quorum. For the

purpose of computing the quorum the valid proxies shall also be considered, if the proxy in the prescribed form, duly signed by the person entitled to attend and vote at the meeting, is filed with the registered office of the A-2 Company at least 48 hours before the meeting. The Chairperson and Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy register is properly maintained.

- D. It is further directed that where at a meeting majority of persons representing three-fourth in value of the creditors, voting in person or by proxy or by postal ballot, agree to the proposed Scheme.
- E. Mr. Justice Vinay Mittal (Retd.), # 115, Sector 16, Chandigarh (Mobile No. 9988100579) is appointed as the Chairperson for the meeting to be called under this order. He shall be paid fee of ₹1.50 lacs for his services as the Chairperson.
- F. Mr. Pankaj Kumar Aggarwal, Advocate # C-586, LGF Defence Colony, New Delhi (Mobile No.8587811997) is appointed as the Alternative Chairperson for the meetings to be called under this order. He shall be paid fee of ₹75,000/- for his services as the Alternative Chairperson.
- G. Mr. Naveen Sehrawat, Advocate, address: Chamber No.68, Western Wing, Tis Hazari Courts, Delhi-110054, (Mobile Number: 09999926997) is appointed as the Scrutinizer, as

suggested by the learned counsel for the applicant companies, for the above meeting to be called under this order. He shall be paid fee of ₹75,000/- for his services as the Scrutinizer.

- H. The fee of Chairperson, Alternate chairperson and Scrutinizer along with the travelling expenses and other out of pocket expenses for them shall be borne by the Transferee-Company.
- I. It is further directed that individual notice of the said meeting shall be sent by the A-2 Company to the unsecured creditors of the A-2 Company as 30.11.2017. Notice shall be sent through registered post or speed post or through courier or e-mail, 30 days in advance before the schedule date of meeting, indicating the day, date, the place and time as aforesaid, together with a copy of "Scheme", copy of explanatory statement required to be sent under the Companies Act, 2013 and the applicable Rules along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.
- J. It is further directed that along with the notices A-2 Company shall also send, statement explaining the effect of the scheme on the creditors, key managerial personnel, promoters and non-promotor members etc. along with effect of the arrangement for amalgamation on any material

interests of the Directors of the Company or the debenture trustees, if any, as provided under sub-section 3 of Section 230 of the Act.

- K. It is also directed that the supplementary accounting statement relating to the period ending 30.09.2017 be also circulated for the aforesaid meetings apart from other requirements of sub-section 2 of Section 230 of the Act.
- L. That the A-2 Company shall publish with a gap of at least 30 clear days before the aforesaid meeting, indicating the day, date and the place and time of meetings as aforesaid, to be published in the Financial Express (English), Delhi/NCR Edition and Jansatta (Hindi), Delhi/NCR Edition. It is stated in the advertisement that the copies of "Scheme", the Explanatory Statement required to be published pursuant to Section 230 to 232 of the "Act" and the form of proxy shall be provided free of charge at the registered office of the A-2 Company. The A-2 Company shall also publish the notice on its respective website, if any.
- M. It shall be the responsibility of the A-2 Company to ensure that the notices are sent under the signature and supervision of the authorized representative of the company on the basis of Board resolutions and that they shall file their affidavits in the Tribunal at least ten days before the date fixed for the meeting.

- N. Voting shall be allowed on the “Scheme” in person or by proxy or through electronic means as may be applicable to the A-2 company under the Act and Rules framed thereunder.
- O. The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA 4, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within 07 (seven) days of the conclusion of the meeting. He would be fully assisted by the authorized representative / Company Secretary of the A-2 Company and the Scrutinizer, who will assist the Hon’ble Chairperson and Alternate Chairperson in preparing and finalizing the reports.
- P. The A-2 Company shall individually and in compliance of sub-section (5) of Section 230 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA 3 along with a copy of the Scheme, the Explanatory Statement and the disclosures mentioned in Rule 6 of the “Rules” to (i) the Central Government through the office of the Regional Director, Northern Region; (ii) Registrar of Companies, NCT of Delhi & Haryana; (iii) Commissioner of Income Tax within whose jurisdiction the Applicant-Companies are assessed by mentioning the PAN numbers of all the companies; (iv) Official Liquidator, Punjab, Haryana and Chandigarh and

other Sectoral Regulators, if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representations shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

- Q. The A-2 Company further shall furnish copy of the Scheme free of charge within one day of any requisition for the “Scheme” made by any creditor or member/shareholder entitled to attend the meeting as aforesaid.
- R. The authorized representative(s) of the A-2 Company shall furnish affidavits of service of notice of meeting and publication of advertisement and compliance of all directions contained herein at least a week before the date of meeting.
- S. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the “Rules” as well as the provisions of the Companies Act, 2013 by the Applicants.

32. With the aforesaid directions, this First Motion Petition stands disposed of. A copy of this order be supplied to the learned counsel for the Applicant-Companies who in turn shall supply copy of the same to the Chairperson, Alternate Chairperson and the Scrutinizer.

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

February 09, 2018
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