

**In the National Company Law Tribunal
Single Bench, Chennai**

TP (HC)/CAA/67/2017
TP (HC)/CAA/68/2017
TP (HC)/CAA/69/2017
TP (HC)/CAA/70/2017

**In the matter of Scheme of Arrangement & Amalgamation of
Bhartiya Urban Infrastructure & Land Development Co. Pvt. Ltd.**

(Transferor Company 1)

And

Bhartiya Orissa Power Private Limited

(Transferor Company 2)

And

Bhartiya Realty & Infrastructure Private Limited

(Transferor Company 3)

With

Bhartiya City Developers Private Limited

(Transferee Company)

And

Their Respective Shareholders

Order delivered on: 16.08.2017

For the Petitioner Companies: K. Ramasamy, Advocate

Per: Anantha Padmanabha Swamy, Member (J)

ORDER

1. Under consideration are four Company Petition Nos. 331, 332, 333 & 334 of 2016 which have been transferred from the Hon'ble High Court of Madras to this Tribunal pursuant to the Companies (Transfer of proceedings) Rules, 2016 and renumbered as TP(HC)/CAA/67&68&69&70/2017. The Petitioner Companies have prayed for the sanction to the Scheme of Amalgamation (hereinafter referred to as '**Scheme**') by virtue of which Bhartiya Urban Infrastructure & Land Development Co. Private Limited (hereinafter

referred as ‘**Transferor Company 1**’), Bhartiya Orissa Power Private Limited (**Transferor Company 2**) and Bhartiya Realty & Infrastructure Private Limited (**Transferor Company 3**) are proposed to be amalgamated **with** Bhartiya City Developers Private Limited (hereinafter referred as ‘**Transferee Company**’) as a going concern. All the companies are within the jurisdiction of RoC, Chennai and having registered office at No. 56/7, Nallambakkam, Vandalur, Chennai-600048.

2. The Share Capitals of the Companies as on 31st December, 2015 are as under:

Particulars	Authorized Capital	Issue, Subscribed & paid-up Capital
Transferor Company 1	Rs. 1,56,10,00,000	Rs. 1,046,119,130
Transferor Company 2	Rs. 50,00,000	Rs. 1,00,000
Transferor Company 3	Rs. 5,000,000	Rs. 6,00,000
Transferee Company	Rs. 1,00,00,00,000	Rs. 1,00,00,00,000

3. At the outset, it is necessary to know the details of the scheme which needs determination. All three Transferor Companies and the Transferee Company are Private Limited Companies. The Board of Directors of the Transferor Companies and the Transferee Company in their board resolutions dated 15th June 2016 have approved the said Scheme of Arrangement. There are no Secured Creditors in the Transferor Company 1, Transferor Company 2 & Transferor Company 3 and the

Transferee Company has 40 Secured Creditors and the companies have furnished certificate from the chartered accountants individually to this effect. The Hon'ble Madras High Court vide its order dated 10.08.2016 in different Company Applications dispensed with holding the meeting of equity shareholders and unsecured creditors of all three Transferor Companies as well as the Transferee Company. In CA No. 711 of 2016, Hon'ble Madras High Court vide order dated 10.08.2016 also dispensed with holding the meeting of Secured Creditors of the Transferee Company. All the orders passed by the Hon'ble Madras High Court in different Company Applications were complied with by respective petitioner companies.

4. Learned Counsel for the Petitioner Companies submitted that the Transferor Companies are engaged in the business of acquisition by purchase, lease & exchange to develop houses, building townships, managing and operating power generating stations whereas the Transferee Company is engaged in construction, development, operation, maintenance and management of SEZs, townships, villas technology parks etc. The main objects of all companies are common.
5. Learned counsel further submitted that the said scheme is a composite scheme of arrangement and amalgamation between group companies of the Bhartiya group and the rational, reason and circumstances of the Scheme are that the scheme is expected to consolidate the Transferor

companies and the Transferee Company into a single company and a scheme of arrangement has been formulated under the provisions of Sections 391 to 394 of the Companies Act, 1956 for the transfer and vesting of all the properties, assets and liabilities of the Transferor companies to and in the Transferee Company and various other matters consequential or otherwise integrally connected with the scheme. The companies would benefit from the said Scheme due to the administrative and operational costs that will considerably be reduced; also it will strengthen, consolidate and stabilize the business of these companies and will facilitate further expansion and growth of their business. These combined resources will enhance its capability to expand and improve its efficiency of operations. The learned counsel further submits that no investigation proceedings are pending against the Petitioner Companies under section 235 to 251 or any other provisions of the Companies Act, 1956 or corresponding provisions of the Companies Act, 2013.

6. To dispose of this petition as per the provisions of the Companies Act, 2013, the notices were issued to the statutory authorities as per the procedure prescribed. However, there were no objection to the scheme under reference.
7. The Regional Director, Southern Region (In short, 'RD') in its report affidavit dated 28.02.2017 submitted that the Transferor Company is regular in filing its statutory returns and no investigation is pending

against the company, therefore, RD decided not to make any objection to the Scheme and submitted that the petition may be disposed of on merits. However, in Para 10 of the RD report, it has been pointed out that RoC, Chennai has stated that as per Clause 11(h) of the said scheme, the accounting treatment is not in compliance with AS 14 standard which is applicable in case of amalgamation/ arrangement. Also as Para 11 of the report, the company vide its letter dated 07.12.2016 conveyed that it has obtained the consent of the shareholders who are also holding compulsorily/optionally Convertible Preference Shares in the Transferor Company 1. However, a perusal of the scheme reveals that the above said preference shares are held by non-shareholders also. Therefore, the petitioner companies may be directed to obtain the consent of the Compulsorily/Optionally Convertible Preference Shareholders also. In the light of Para 10 and 11 of the RD Report, this Hon'ble Tribunal may consider the issues raised under para 10 and 11 of the report and direct the petitioner companies accordingly before disposing of the petition.

8. With regard to observation made by the RD, the learned counsel for the Petitioner Companies submitted that the scheme will comply with AS 14 standard and the Transferee Company will not issue bonus shares from Capital Reserve and will strictly comply with the provisions of section 63 of the Companies Act, 2013. In relation to observation made in Para 11 of the report of RD, it is submitted that equity shareholders in their

consent affidavit have categorically stated that they have given consent for holding of meeting of shareholders which means for both equity and preference shareholders, therefore, the question of obtaining consent from any shareholders as stated in para no. 11 is not sustainable.

9. The Official Liquidator (In short, 'OL') has submitted three individual reports dated 26th May, 2017 in relation to all three Transferor Companies. It submitted that M/s. Maharaj N R Suresh & Co appointed by the Hon'ble High Court, have scrutinized the books and accounts of the Transferor Companies. The Auditor observed that the Transferor Companies have maintained and written up all the statutory books in accordance with normally accepted accounting principle and policies in accordance with the requirements of the Companies Act, 2013 and also the affairs of the company have not been conducted in a manner prejudicial to the interest of its members, creditors or to public interest and submitted that the petition may be decided appropriately.
10. The OL further submits that as per the proposed scheme, the interest of all the employees in the services of all the Transferor companies are safeguarded.
11. Further perusal of the scheme shows that the accounting treatment is in conformity with the established accounting standards. In short, there is no apprehension that any creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme of arrangement and

amalgamation will not cost any additional burden on the stakeholders and also will not prejudicially affect the interests of any class of the creditors in any manner. The Appointed date of the said Scheme is 1st January, 2015.

12. We do not feel that any modification is required in the said Scheme as the same appears to be fair and reasonable, not contrary to public policy and also not violative of any provisions of law. All the statutory compliances have been made. Taking into consideration all the above, the Company Petition is allowed and the scheme of arrangement and amalgamation annexed with the petition is hereby sanctioned which shall be binding on the Transferor Companies, the Transferee Company and all creditors.

13. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law.

14. The Petitioner Companies are directed to comply with the undertakings taken by them in response to the RD Report with regard to compliance of AS 14 standard.

15. The Companies to the said Scheme or other person interested, shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.
16. Upon receiving the certified copy of this order, the RoC, Chennai is directed to place all the documents relating to the Transferor Companies with that of the Transferee Company and the files relating to the Transferor Companies shall be consolidated with the files and records of the Transferee Company.
17. The Companies do file with the Registrar of Companies the certified copy of this Order within 30 days of the receipt of the order.
18. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 as has been notified on 14th December, 2016.
19. Accordingly, the Company Petition stands disposed of.



Anantha Padmanabha Swamy
Member (J)