

NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH
CHENNAI

15

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 21/12/2017 AT 10.30 AM

PRESENT: SHRI K. ANANTHA PADMANABHA SWAMY, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : CP/217, 218, 219/CAA/2017
NAME OF THE TRANSFEROR : CHERRY INTERNATIONAL TRADING PVT LTD
NAME OF THE TRANSFEROR : MEGAPRO INVESTEMENTS PVT LTD
NAME OF THE TRANSFERRE : XS REAL PROPERTIES PVT LTD
UNDER SECTION : 230

S.No.	Name (in Capital)	Represented by	Signature
1.	A.M. IZAN GO	COUNSEL FOR PETITIONER	J.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH, CHENNAI**

CP/217, 218 & 219/CAA/2017
[CA/145, 146 & 147/CAA/CB/2017]

Under Section 230 to 232 of the Companies Act, 2013

In the matter of Scheme of Amalgamation and
Composite Arrangement

Between

M/s. Cherry International Trading Private Limited
(Transferor Company 1)
And

M/s. Megapro Investments Private Limited
(Transferor Company 2)
With

M/s. XS Real Properties Private Limited
(Transferee Company)

Order delivered on: 21.12.2017

For the Petitioner(s): Mr. A.M.Ilango, Advocate.
Mr. N.Ramanathan, PCS.

**Per: K. ANANTHA PADMANABHA SWAMY,
MEMBER (JUDICIAL)**

ORDER

1. Under consideration three Company Petition Nos.217,
218 & 219/CAA/2017 filed by the Applicant
Companies, **M/s. Cherry International Trading
Private Limited** (Formerly known as “XS International

✓

Sale Private Limited") (Transferor Company 1), **M/s. Megapro Investments Private Limited** and **M/s. XS Real Properties Private Limited** (Transferee Company) under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, as a going concern.

2. The Details of Share Capital, Shareholders, Secured & Unsecured Creditors of the Companies are as under: -

Particulars	Authorised Capital	Issued, S&P Capital	No. of Equity Shareholders	No. of Secured Creditors	No. of Un-secured Creditors
Transferor Company-1	Rs.50,00,000/-	Rs.1,00,200/-	3	Nil	2
Transferor Company-2	Rs.20,00,000/-	Rs.1,00,200/-	3	Nil	1
Transferee Company	Rs.25,00,000/-	Rs.25,00,000/-	4	2	87

3. The Transferor Companies No.1, 2 are Private Limited Companies, having their Registered Office at Pebble Green, 13 & 14, Sterling Avenue, Sakthi Nagar, Porur, Chennai – 600 116 and the Transferee Company is a Private Limited Company, having its Registered Office at No. 12, South Mada Street, Sri Nagar Colony, Saidapet, Chennai-600 015. The Transferor Companies and the Transferee Company are engaged

✓

in the business of Real Estate and developers of industrial and other flats, building townships, etc. The Board of Directors of Petitioner Companies vide its Resolution dated 20.12.2016 approved the said Scheme of Amalgamation and Composite Arrangement (hereinafter referred to “**Scheme**”).

4. This Bench vide its common Order dated 24th August, 2017, passed in CA/145 & 146/CAA/CB/2017 dispensed with the convening and holding of the meeting of the Equity Shareholders. The Transferor Companies not have any secured creditors. Whereas, in CA/147/CAA/2017, dispensed with the convening and holding of the meeting of equity Shareholders and ordered to convening, holding and conducting meeting of secured creditors and un-secured creditors. In short the Petitioner Companies complied with all the Orders passed by this Bench.

5. The counsel appearing for the Petitioner Companies submitted that the rationale and circumstances that have necessitated the proposed scheme are that the

amalgamation of Cherry International Trading Private Limited and Megapro Investments Private Limited with XS Real Properties Private limited is in line with the global trends to achieve size, integration and greater financial strength with a view to enhancing shareholders' wealth. The Combination of the operations will create a unique level of integration and will enable substantial savings in cost and will enhance the value of the Company. Both the Transferor and the Transferee Companies will reap the benefits if the proposed amalgamation takes place, result in improved shareholder value for all the Companies by way of improved financial structure and cash flows, increased asset base and stronger consolidated revenue and profitability and higher net worth of combined entity.

6. The Regional Director, Southern Region (In short, '**RD**') in the Affidavit dated 29.11.2017 submitted that Clause 7 of Part II and III of the Scheme provides for the protection of the interest of the employees of the



Transferor Companies. It is further submitted that as per Report of the RoC, Chennai, the Transferor Companies and Transferee Company are regular in filing their statutory returns and no complaints are pending and no inspection or investigation has been conducted against Petitioner Companies.

7. Further, the RD submitted that under Clause 1 of Part IV of the Scheme, the authorised capital of the Transferor Companies will be merged with the authorised share capital of the Transferee Company. Therefore, he suggested that the Transferee Company may be directed to file the amended MoA and AoA with the ROC, Chennai, for his records.

8. He has further submitted that clause 1(a) of the Scheme of the Companies have stated that the Transferee Company would not be required to pay any fee or stamp duty for it's increase of the authorised share capital. He has mentioned that as provided under Clause (i) to Sub Section (3) of Section 232 of the Companies Act, 2013, the Transferee Company

has to pay the fees, if any, for the enhanced authorised capital subsequent to the amalgamation after setting off the fees paid by the Transferor Companies. He has suggested that the Transferee Company may be directed to comply with the provisions of the Act, by making an application with the RoC, Chennai, for payment of the balance fee as applicable under the provisions of the Act and Rules framed thereunder.

9. The RD further stated that Clause 9, Part II and III of the Scheme dealing with Accounting Standard has stated that the excess in the value of the assets over the value of the liabilities vested in the Transferee Company pursuant to the Scheme after adjusting for the aggregate face value of the shares issued by the Transferee Company to the members of the Transferor Companies will be adjusted in the "Reserves" of the Transferee Company. Therefore, the RD has suggested that the Companies as required under AS 14 should have mentioned "Capital Reserve" as the gain, if any, out of the Scheme is only notional and there is no cash



flow involved and to this extent the Companies may be directed to give an undertaking that they will comply with AS 14 in the Scheme. However, except the observations made above, the RD has not raised any other objection.

10. With regard to the observation made in RD Report, the Counsel for the Companies filed an Undertaking stating that the Companies are undertaking to amend the specific clauses of the said Scheme and payment of balance fees in respect of increased authorised capital.

11. The Official Liquidator (In short, '**OL**') in his Report dated 19.12.2017, submitted that as per Order dated 24.08.2017, he has nominated M/s. Sundaresan Lakshmanan & Co., Chartered Accountants (Auditor), Coimbatore, who is one of the empanelled Auditors by the Hon'ble High Court of Madras, to look into the Scheme and to scrutinize the books and accounts of the Transferor Companies. The Auditor has broadly reviewed and observed that under Section 7 of Part-II

& III of the proposed Scheme, the interest of all staff, workmen and other employees in the service of the Transferor Companies are safeguarded.

12. The OL further observed that the Companies have maintained proper books of accounts and written up in accordance with normally accepted accounting principles and entries have been made in the statutory registers and records in accordance with the requirements of the Companies Act, 1956 / relevant provisions of the Companies Act, 2013 well within the statutory time prescribed under the Act.

13. The OL further observed that the Transferor Companies have not accepted any deposits from the public, the question of commenting on compliance of the directions of the Reserve Bank of India relating to deposits, does not arise.

14. 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 of the creditors would lose or be prejudiced if the proposed scheme is sanctioned. The said Scheme will not cast 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 April, 2016.

15. There is no additional requirement for any modification and the said Scheme appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory compliances have been made under section 230 to 232 of the Companies Act, 2013. Taking into consideration of the above facts, the Company Petitions are allowed and the Scheme annexed with the Petitions are hereby sanctioned which shall be binding on the shareholders, creditors and employees of the Companies.



16. 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. The Transferee Company is directed to file the amended MoA and AoA with the ROC, Chennai, for records.

17. 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.

18. A certified copy of this Order shall be filed with the concerned Registrar of Companies within 30 days of the receipt of the Order. 

19. The Transferor Companies shall be dissolved without winding up from the date of the filing of the certified copy of this Order with the Registrar of Companies.
20. The Transferor Companies are also directed to pay Rs.30,000/- each to M/s. Sundaresan Lakshmanan & Co., Chartered Accountants (Auditor), Coimbatore, who investigated into the affairs of the Transferor Companies within 15 days of passing of this Order.
21. Upon receiving the certified copy of this Order, the RoC, Chennai, is directed to place all 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.
22. The Order of sanction to this Scheme shall be prepared by the Registry as per the relevant format provided under the Companies (Compromises,



Arrangements and Amalgamations) Rules, 2016
notified on 14th December, 2016.

23. Accordingly, the Scheme stands sanctioned and
CP/217, 218 & 219/CAA/2017 stand disposed of.



(K. ANANTHA PADMANABHA SWAMY)
MEMBER (JUDICIAL)

MS/TJS