

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**MUMBAI BENCH**

CSA NO. 889 OF 2017

Under Section 230 to 232 of Companies
Act, 2013

In the matter of Scheme of Amalgamation of Ajitnath Hi-Tech Builders Private Limited ('Transferor Company 1') and Shri Kaiilas Properties & Agrofarms Private Limited ('Transferor Company 2') and Aanant Developers Private Limited ('Transferor Company 3') and Lodha Elevation Buildcon Private Limited ('Transferor Company 4') with Lodha Developers Private Limited ('Transferee Company') and their respective shareholders

Ajitnath Hi-Tech Builders Private LimitedApplicant Company

Judgment / Order delivered on 21st September, 2017

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Applicant(s): Mr. Ajit Singh Tawar and Mr. Rushil Aiya i/b Ajit Singh Tawar & Co.,
Advocates for Applicant

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

Order

UPON the application of the Applicant Company above named by a Company Notice of Admission **AND UPON HEARING** Mr. Ajit Singh Tawar and Mr. Rushil Aiya i/b Ajit Singh Tawar & Co, Advocates for the Applicant Company. **AND UPON READING** the Application along with the Notice of Admission dated 8th September 2017 of Mr. Abhijeet Shinde, Authorized representative of the Applicant Company, in support of Notice of Admission along with Application and Exhibits therein referred to, **IT IS ORDERED THAT:**

1. The meeting of the Equity Shareholders of the Applicant Company be convened and held at 10th Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai- 400 011 on Thursday, 2nd day of November, 2017 at 11:00 AM, for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed amalgamation embodied in the Scheme of Amalgamation of Ajitnath Hi-Tech Builders Private Limited and Shri Kaiilas Properties & Agrofarms Private Limited and Aanant Developers Private Limited and Lodha Elevation Buildcon Private Limited with Lodha Developers Private Limited and their respective shareholders('Scheme').
2. At least one month before the said meeting of the Equity Shareholders of the 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, a copy of 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) Rule, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
3. At least one month before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published once each in 'The Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai and stating that copies of the Scheme 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) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, Ajit Singh Tawar & Co., 13, Apollo House, Mumbai Samachar Marg, Near BSE, Fort, Mumbai 400001.

4. That Mr. Abhijeet Shinde, Authorised Person of the Applicant Company, and failing him, Mr. Varun Shinde, Authorised Person of the Applicant Company, and failing him, Mr. Mitesh Kamariya, Authorised Person of the Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at 10th Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai– 400 011 on Thursday, 2nd day of November, 2017 at 11:00 AM or any adjournment or adjournments thereof.
5. That Mr. Sharatkumar Shetty, Practicing Company Secretary, is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at 10th Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai– 400 011 on Thursday, 2nd day of November, 2017 at 11:00 AM or any adjournment or adjournments thereof.
6. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meeting, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s) eligible to vote at the aforesaid meeting.
7. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
8. That the voting shall be allowed on the proposed Scheme by voting in person or by proxy. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at its Registered Office not later than 48 hours before the aforesaid as required under Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

9. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books/ register of the Applicant Company and where the entries in the books / register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
10. That the Chairman of the meeting of the Applicant Company to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
11. That the Chairman of the meeting of the Applicant Company to report to this Tribunal, the results of the aforesaid meeting within thirty (30) days of the conclusion of the meeting.
12. That since there are no Secured Creditors in the Applicant Company, therefore the question of sending notices to Secured Creditors does not arise.
13. That Counsel for Applicant Companies further submit that since the Scheme is an arrangement between the Applicant Companies involved in the Scheme and their respective shareholders and only meetings of the Equity Shareholders of the Applicant Companies are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby also directs the Applicant Company to issue notice to unsecured creditors having outstanding balance in excess of Rs. 25,00,000/- (Rupees Twenty Five Lakhs Only) 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 Applicant Company.
14. That the Applicant Company is directed to serve notices along with copy of Scheme upon:- (i) concerned Income Tax Authority within whose jurisdiction the Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai (iii) Registrar of Companies (iv) the Official Liquidator, High Court, Bombay, and (v) the authorities under the Real Estate (Regulation and Development) Act, 2016

as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty (30) days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

15. The Applicant Company to serve the notice upon the concerned office of the Official Liquidator, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The Tribunal is appointing Chartered Accountant, NB Shah & Associates with remuneration of Rs. 75,000/- for the services. If no response is received by the concerned Office of the Official Liquidator within 30 days of the date of receipt of the 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.
16. The 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 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy,
Member (T)

Sd/-

B.S.V. Prakashkumar,
Member (J)