

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
SPECIAL BENCH, COURT NO. I

Company Application No.CA (CAA) – 13(PB)/2019

Connected with

Company Petition CAA – 32(PB)/2019

IN THE MATTER OF:

SECTIONS 230 to 232 OF THE COMPANIES ACT, 2013

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

REDSEA REALTY PRIVATE LIMITED

(TRANSFEROR COMPANY/ PETITIONER NO.1)

WITH

AAKASHGANGA REALTY PRIVATE LIMITED

(TRANSFeree COMPANY/ PETITIONER NO.2)

Coram:

DR. DEEPTI MUKESH, MEMBER (JUDICIAL)

SH. S.K. MOHAPATRA, MEMBER (TECHNICAL)

MEMO OF PARTIES:

REDSEA REALTY PRIVATE LIMITED

A Company incorporated under Companies Act, 1956

Having its registered office at:

H-65, Connaught Circus,

New Delhi- 110001

... TRANSFEROR COMPANY / PETITIONER NO.1

AAKASHGANGA REALTY PRIVATE LIMITED

A Company incorporated under Companies Act, 1956

Having its registered office at:

H-65, Connaught Circus,

New Delhi- 110001

.... TRANSFEREE COMPANY/ PETITIONER NO. 2

AND

THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS

Present:

For the Applicants: Mr. P. Nagesh, Mr. Afnaan Siddiqui, Adv.

Mr. Suman Kumar, Adv.

For the ITD : Mr. Puneet Rai, Sr. Standing Counsel for ITD
with Mr. Nalin Mishra, Adv.

For the RD : Ms. Chetna Kandpal, CP

For the OL : Mr. Akshay Joshi & Mr. Amish Tandon, Adv.

Judgment Delivered on: 25.09.2019

ORDER

1. The present petition is filed by the companies above named for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders and creditors by way of amalgamation between Redsea Realty Private Limited and Aakashganga Realty Private Limited under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013(for brevity 'the Act') read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity 'the Rules') in relation to the Scheme of Arrangement (hereinafter referred to as the 'SCHEME') proposed between both the companies. The said Scheme is annexed to the petition.

2. The Transferor Company namely Redsea Realty Private Limited was incorporated under the provisions of the Companies Act, 1956 on 15th June 2007, having CIN No. U45400DL2007PTC164822 and registered office is at H-65, Connaught Circus, New Delhi-110001. The Share Capital

structure of the Transferor Company on the date of filing of this Application is as follows:

Particulars	Amount in INR
Authorised Share Capital	
50,000 Equity shares of Rs.10/-each	5,00,000
Total	5,00,000
Issued, Subscribed and Paid-up Share Capital	
50,000 Equity Shares of Rs.100/- each	5,00,000
Total	5,00,000

3. The Transferee Company namely Aakashganga Realty Private Limited was incorporated as a private limited company under the provisions of the Companies Act, 1956 on 15th June, 2007, having CIN no. U45400DL2007PTC164815 and registered office is at H-65, Connaught Circus, New Delhi-110001. The Share Capital structure of the Transferee Company on the date of filing of this Application is as follows:

Particulars	Amount in INR
Authorised Share Capital	
50,000 Equity shares of Rs.10/-each	5,00,000
Total	5,00,000
Issued, Subscribed and Paid-up Share Capital	
50,000 Equity Shares of Rs.10/- each	5,00,000
Total	5,00,000

4. From the records, it is seen that the First Motion was jointly filed by the said petitioner companies praying and seeking directions for dispensing the meetings of Equity Shareholders and Unsecured Creditors of the Transferor and Transferee companies as there being no secured creditors of both the companies. In the First Motion bearing no. CA(CAA)/13(PB)/2019, vide its order dated

18.02.2019, this tribunal was pleased to dispense with the requirement of convening the meetings of the equity shareholders and unsecured creditors of the Transferor and Transferee Companies in view of the consent affidavits of all shareholders and unsecured creditors being filed by both the companies. There being none secured creditors which obviated the necessity of convening the meeting.

5. Subsequent to the order dated 18.02.2019 of dispensation of the meetings, in relation to both the Transferor Company and Transferee Company, the Second Motion petition was moved by the Petitioner Companies in connection with the scheme of arrangement, for issuance of notices to the Central Government, Registrar of Companies, NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator, and to such other Objector(s), if any and also for publication of the said scheme. The directions were issued vide order dated 08.03.2019 requiring both the companies

to serve notices to the Central Government, Registrar of Companies, NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator and also to carry out publication in the newspapers "Business Standard" (English, Delhi Edition) and "Jansatta" (Hindi, Delhi Edition) with respect to the said scheme.

6. In view of the above, the petition of Second Motion filed by the petitioners is taken up for final consideration by us. The Petitioner Companies, it is seen from the records, have filed an affidavit dated 23.04.2019 in relation to the compliance of the order dated 08.03.2019 passed by this Tribunal and a perusal of the same discloses that the petitioners have effected the paper publication as directed by this Tribunal in 'Business Standard' in English edition and in 'Jansatta' in Hindi edition on 21.04.2019. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the Regional Director on

25.03.2019 by hand, to the Registrar of Companies on
25.03.2019 by hand, to the Income Tax Department on
25.03.2019 by hand, to the Official Liquidator on
25.03.2019 by hand and proof of the same
acknowledgements made by the respective offices have also
been enclosed.

7. The Regional Director, Northern Region, MCA has filed an Affidavit on 16.04.2019 stated that it has no objection thereby giving permission for the above proposed merger of Redsea Realty Private Limited with Aakashganga Realty Private Limited.
8. The Regional Director has also relied on the report of the Registrar of Companies in terms of which the Petitioner Companies have filed their statutory returns upto 31.03.2018, no prosecution has been filed and no inspection or investigation has been conducted in respect of the Petitioner Companies.

9. It is further seen that the Income Tax Department has filed its report dated 13.05.2019 and has made following observations with respect to this arrangement in the said report:

“3. It is submitted that this office does not have any objections to the scheme of amalgamation as far as the company M/s Redsea Realty Pvt. Ltd., having PAN (AADCR6815Q), assessed in this charge is concerned as long as the scheme operates in accordance with the provisions of Income Tax Act, 1961. However, if at a later stage it is found that some statutory demand is outstanding against the transferor companies, the same shall be borne by the transferee companies in accordance with the provisions of the Income Tax Act.”

In addition, it is clarified that there shall be no limitation on the power of the Income tax Department for recovery of pending Income Tax dues, including imposition of penalties etc. as provided in law.



10. Further, the report of the Official Liquidator filed on 09.05.2019 observes that Official Liquidator has not received any complaint against the proposed Scheme of Amalgamation from any person/ party interested in the Scheme in any manner till the date of filing of this Report.
11. Thus, it is seen that there are no other objections made by the authorities to whom notices have been issued in terms of the order dated 08.03.2019 of this Tribunal.
12. Further, the Petitioner Companies have complied with proviso to Section 230 (7)/ Section 232 (3) by filing the certificates issued by the Statutory Auditors of the Transferor Company and Transferee Company with respect to the accounting treatment as proposed in the Scheme.
13. In view of absence of any other objections having been placed on record before this Tribunal from any other party and all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as



“Annexure – P2” with the Company Petition along with the prayers made therein.

14. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, in accordance with law, against the concerned persons, directors and officials of the Petitioner Companies.

15. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

(1) Upon this Scheme becoming effective, the Transferor Company shall stand dissolved without being wound up;

(2) Upon this Scheme becoming effective, on and from the Appointed Date in the Scheme, the transferred undertaking of the Transferor Company shall, together with all its Assets, Rights, Benefits, interest, licenses, contracts, investments, intellectual property, liabilities, proceedings, and obligations with and without any further deed or act in accordance with Section 230 to 232 of the Companies Act, 2013 and all other applicable provisions of law, be stand transferred to and vested in and be deemed to have been transferred to and vested in the Transferee Company, as a going concern so as to become on and from the Appointed Date the estates, assets, rights, claims, title, investment, intellectual property, liabilities, interest and authorities of the Transferee Company;

(3) All licenses sanctions, permissions and approvals relating to the Transferor Company stand transferred to and vested in the Transferee Company, without any further act or deed done by the Transferor Company or the Transferee Company and be in full force and effect in favour of the Transferee Company, as if the same were originally given to, issued to or executed in favour of the Transferee Company and the

Transferee Company shall be bound by the terms of thereof, the obligations and duties thereunder, and the rights and benefits under the same shall be available to the Transferee Company.

(4) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company is entitled to, including under customs, excise, service tax, VAT, sales tax, GST and entry tax and income tax laws, subsidy receivables from Government, grant from any governmental authorities, direct tax benefit/exemptions/deductions, shall, to the extent statutorily available and along with associated obligations, stand transferred to and be available to the Transferee Company as if the Transferee Company was originally entitled to all such benefits, entitlements, incentives and concessions;

(5) All contracts of the Transferor Company which are subsisting or having effect immediately before the Effective Date, shall stand transferred to and vested in the Transferee Company and be in full force and effect in favor of the

Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;

(6) All staff and employees of the Transferor Company shall be deemed to have become the employees and the staff of the Transferee Company with effect from the Appointed Date, and shall stand transferred in employment of the Transferee Company without any interruption of service and on term and conditions no less favorable than those on which they are engaged by the Transferor Company, as on the Effective Date, including in relation to the level of remuneration and contractual and statutory benefits, incentive plans, terminal benefits, gratuity plans, provident plans and any other retirement benefits;

(7) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Companies Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed

to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.

(8) The Transferee Company shall, subject to the provisions of the Scheme, follow the method of accounting as prescribed for the “pooling of interest method” under Accounting Standard 14 ‘Accounting of Amalgamation’ or as per IND AS 103 ‘Business Combination’ method under section 133 of the Companies Act, 2013.

(9) Loans, advances or payables or receivables of any kind, held inter-se, if any between the Transferee Company and Transferor Company as appearing in their respective books of account shall stand cancelled as on the Appointed Date;

(10) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company;

(11) Upon the Scheme becoming effective, the authorized share capital of the Transferor Company shall get clubbed with the authorized share capital of the Transferee Company and

pursuant to this clubbing the Clause V of the Memorandum of Association of the Transferee Company shall stand altered to give effect to the same with effect from the Effective date.

(12) Upon coming into effect of this Scheme, the shares or the share certificates of the Transferor Company in relation to the shares held by the Transferee Company, as the case may be shall, without any further application, act, instrument or deed, be deemed to have been automatically cancelled and be of no effect without any necessity of them being surrendered.

(13) That Transferor Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee

company and the files relating to the said companies shall be consolidated accordingly;

- (14) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.



(SH. S.K. MOHAPATRA)
MEMBER (TECHNICAL)



(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)