

THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV

CO. APPL.(CAA) 108/ND/2020

IN THE MATTER OF:

Dinero Propbuild Private Limited	Transferor Company No.1
AND	
Eden Realty Private Limited	Transferor Company No.2
AND	
Ellis Equity Advisors Private Limited	Transferor Company No.3
AND	
Epsilon Enterprises Private Limited	Transferor Company No.4
AND	
Ivy Infrastructure Private Limited	Transferor Company No.5
AND	
Spot Light Securities Private Limited	Transferor Company No.6
WITH	
Him Realty Private Limited	Transferee Company

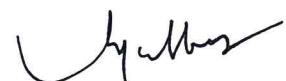
CORAM:

MR. P.S.N PRASAD, MEMBER (JUDICIAL)
DR.V.K SUBBURAJ, MEMBER (TECHNICAL)

PRESENT- Mr. Mukesh Sukhija, Advocate

Order Delivered on-11.11.2020

Page | 1



ORDER

PER DR. V.K SUBBURAJ, MEMBER (T)

This petition is filed by way of a 1st Motion under Sections 230-232, Section 234 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by the Applicant/Transferor Companies Nos.1 to 6 in connection with the Scheme of Merger (hereinafter referred to as 'the Scheme') for merging its business with M/ s Him Realty Private Limited (Transferee Company).

2. It is represented that the registered office of all the applicant companies is situated in New Delhi and therefore the subject matter of this joint application falls within the Jurisdiction of this Bench.

3. The Applicant No. 1/ Transferor no. 1 Company was incorporated under the Act on 26.06.2006 having CIN U710109DL2006PTC150280. Its authorized, share capital is Rs. 5,00,000/- while issued, subscribed and paid up share capital is Rs.3,00,000 /- divided into 30,000 equity shares of Rs. 10/- each. The main object is to carry on the business as owners, builders, colonizers, developers, promoters etc to deal in all kinds of immovable properties whether belonging to the company or not.

4. The Applicant No.2 /Transferor Company was incorporated under the Act on 19.03.2004 having CIN U70101 DL2004 PTC125309. Its present authorized share capital Rs. 2,00,00,000/- divided into 20,00,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up capital is 1,40,60,000/- divided into 1,40,6000 equity shares of Rs. 10/- each. The Applicant No.2/ Transferor Company is engaged in the business of providing consultancy services and making investment of ideal funds.




5. The Applicant No.3 /Transferor Company was incorporated under the Act on 01.02.2006 having CIN U74920 D12006 PTC145685. Its present authorized share capital Rs. 15,00,000/- divided into 1,50,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up capital is 10,50,000/- divided into 1,05,000 equity shares of Rs. 10/- each. The Applicant No.3/ Transferor Company is engaged in the business of providing consultancy services.

6. The Applicant No.4/Transferor Company was incorporated under the Act on 30.04.1998 having CIN U29120DL1998 PTC093536. Its present authorized share capital Rs. 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up capital is 10,00,000/- divided into 1,00,000 equity shares of Rs. 10/- each. The Applicant No.4/ Transferor Company is engaged in the business of providing consultancy services.

7. The Applicant No.5/Transferor Company was incorporated under the Act on 01.05.2006 having CIN U70101DL2006PTC148525. Its present authorized share capital Rs. 5,00,000/- divided into 50,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up capital is 2,75,000/- divided into 27,500 equity shares of Rs. 10/- each. The Applicant No.5/ Transferor Company is engaged in the business of providing consultancy services.

8. The Applicant No.6/Transferor Company was incorporated under the Act on 05.10.2005 having CIN U67120DL2005PTC334657. Its present authorized share capital Rs. 75,00,000/- divided into 7,50,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up capital is 58,70,000/- divided into 5,87,000 equity shares of Rs. 10/- each. The Applicant No.5/ Transferor Company is engaged in the business of providing consultancy services and investment of ideal funds.

9. The Transferee Company was incorporated under the Act on 03.03.2004



having CIN U70101 DL2004 PTC124970. Its present authorized share capital Rs. 2,50,00,000/- divided into 25,00,000 equity shares of Rs. 10/- each while its issued, subscribed and paid up capital is 2,09,20,000/- divided into 20,90,000 equity shares of Rs. 10/- each. The Transferee Company is engaged in the business of providing consultancy services and investment of ideal funds.

10. Copies of the Memorandum of Association and Articles of Association of each company provides for such amalgamation. All the Applicant Companies have filed their latest audited Annual Accounts as on 31.03.2020.

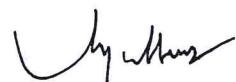
Reports of the Statutory Auditors of both the Applicant Companies have been filed on record, along with the certificate that the Accounting Standards, as per Sec 133 of the Companies Act 2013 have been adhered to.

11. So far as the Share Exchange Ratio is concerned, in terms of the scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio issued by Mr. Swati Chaturvedi, Registered Valuer as per the settled principles of valuation. The ratio is as follows:

A. 1 Equity shares of Rs. 10 each of the Transferee Company for entire shareholding held by the respective shareholder in the Transferor Company No.1 i.e Dinero Propbuild Private Limited;

B. 1 Equity shares of Rs. 10 each of the Transferee Company for every 1 Equity share of Rs. 10/- each held in the Transferor Company No.2 i.e Eden Realty Private Limited;

C. 1 Equity shares of Rs. 10 each of the Transferee Company for entire shareholding held by the respective shareholder in the Transferor Company No.3 i.e Ellis Equity Advisors Private Limited;



D. 8 Equity shares of Rs. 10 each of the Transferee Company for every 1 Equity share of Rs. 10/- each held in the Transferor Company No.4 i.e Epslon Enterprises Private Limited;

E. 11 Equity shares of Rs. 10 each of the Transferee Company for every 2 Equity shares of Rs. 10/- each held in the Transferor Company No.5 i.e Ivy Infrastructure Private Limited;

F. 7 Equity shares of Rs. 10 each of the Transferee Company for every 3 Equity shares of Rs. 10/- each held in the Transferor Company No.6 i.e Spot Light Securities Private Limited;

The Appointed Date of the Scheme is 1st April, 2020.

12. The Board of Directors of each of the applicant companies vide their respective meetings held on 10.09.2020 have unanimously approved the proposed Scheme of Amalgamation. Copy of the board resolutions passed have been filed.

13. Vide the present application, a prayer is made for dispensation/convening meetings in view of the following facts:-

A. In respect of the Transferor Company No.1 / Applicant Company No.1:-

- It has 4 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured Creditor as certified by the Chartered Accountant.



- It has 3 Unsecured Creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 4 Shareholders and 3 Unsecured creditors vide affidavits, the requirement of convening the meeting of the shareholders and Unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

B. In respect of the Transferor Company No.2 / Applicant Company No.2:-

- It has 4 Equity Shareholders out of which 3 equity shareholders valuing 95.52% have accorded their consent vide affidavits placed on record.
- It has no Secured Creditor as certified by the Chartered Accountant.
- It has 5 Unsecured Creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 3 valuing 95.52% Shareholders and 5 Unsecured creditors vide affidavits, the requirement of convening the meeting of the shareholders and Unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

C. In respect of the Transferor Company No.3 / Applicant Company No.3:-

- Consent of only 2 equity shareholders valuing 66.66% having been placed on record. Therefore, the necessity for convening the meeting of the equity shareholders has arisen.



- It has no Secured Creditor as certified by the Chartered Accountant.
- It has 7 Unsecured Creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 2 equity shareholders valuing 66.66% and 7 Unsecured creditors vide affidavits, the requirement of convening the meeting of the shareholders is required and the meeting for the Unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

D. In respect of the Transferor Company No.4 / Applicant Company No.4:-

- It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured Creditor as certified by the Chartered Accountant.
- It has 3 Unsecured Creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 2 Shareholders and 3 Unsecured creditors vide affidavits, the requirement of convening the meeting of the shareholders and Unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

E. In respect of the Transferor Company No.5 / Applicant Company No.5:-

- It has 2 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured Creditor as certified by the Chartered Accountant.
- It has 4 Unsecured Creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 2 Shareholders and 4 Unsecured creditors vide affidavits, the requirement of convening the meeting of the shareholders and Unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

F. In respect of the Transferor Company No.6/ Applicant Company No.6:-

- It has 6 Equity Shareholders who have accorded their consent vide affidavits placed on record.
- It has no Secured Creditor as certified by the Chartered Accountant.
- It has 5 Unsecured Creditors who have accorded their consent vide affidavits placed on record

In view of the consent accorded by its 6 Shareholders and 5 Unsecured creditors vide affidavits, the requirement of convening the meeting of the shareholders and Unsecured creditors is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.



G. In respect of the Transferee Company

- It has 5 Equity Shareholders out of which 4 valuing 94.50% have accorded their consent vide affidavits placed on record.
- It has no Secured creditors as certified by the Chartered Accountant.
- It has 5 Unsecured Creditors who had accorded their consent vide affidavits placed on record.

In view of the consent accorded by its 4 Shareholders and 5 Unsecured Creditors vide affidavits, the requirement of convening the meeting of the shareholders and unsecured creditor is dispensed with. Further, as there is no secured creditor, the question of convening their meeting does not arise.

14. The proposed Scheme of Amalgamation is annexed along with the present application.

15. Taking into consideration the application and the documents filed herewith, we propose to issue the following directions with respect to calling, convening and holding the meeting of Equity Shareholders, secured and unsecured creditors or dispensing the same which are as follows:

- i. **With respect to the equity shareholders Of Applicant/ Transferor Company No.3 :**

As only 66.66% of the equity shareholders have given their

consent in the favor of the scheme, the meeting of the Equity shareholders of the Applicant/ Transferor Company No.3 is directed to be held at Registered Office of the applicant companies/online/as decided by the parties on 19th December, 2020 at 1:00 pm. The quorum of the meeting shall be 2 in number or 75% in value.

16. Mr. Himanshu Vij (Mob-9910600266) is appointed as the Chairperson and Ms. Swaralipi Roy (Mob-8510094876) is appointed as Alternate Chairperson and Mr. S. Babbar (Mob-9149079551) is appointed as the Scrutinizer for the meeting of the applicant company no.3 as has been directed to be convened by this Tribunal.

17. The Fee for the Chairperson for the aforesaid meeting shall be Rs. 1,50,000/- and the fee of the Alternate Chairperson and Scrutinizer shall be Rs. 1,25,000/- each in addition to meeting their incidental expenses. The Chairperson will file their reports within 2 weeks from the closing of the e-voting and/ or postal ballot.

18. The individual notices of the said meetings shall be sent as required and prescribed by the Companies Act, 2013 through registered post or speed post or through courier or through e-mail, 30 days in advance before the scheduled date of the meeting, indicating the day, date, place and time as aforesaid, together with a copy of scheme of arrangement, a copy of explanatory statement. The prescribed form of proxy shall be sent along with and in addition to the above

documents, any other documents as may be prescribed under the Act may also be duly sent with the notice.

19. That the applicant companies shall publish advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, place and time as aforesaid, to be published in the English Daily 'Business Standard' (Delhi Edition) and Hindi Daily 'Jansatta' (Delhi Edition) stating the copies of Scheme, the Explanatory Statement required to be furnished pursuant to Section 230 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Applicant Companies.

20. Voting will be made through remote e-voting process in compliance with the guidelines issued by the Ministry of Corporate Affairs in this regard.

21. The Companies shall individually send notice to the Central Government, the Income Tax Authorities, concerned Registrar of Companies, NCT of Delhi & Haryana, Official Liquidator, Income Tax Department and any sectoral regulators who may have significant bearing on the operation of the applicant companies along with copy of required documents and disclosures required under the provisions of Companies Act, 2013 read with Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016.

22. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the Companies



(Compromises, Arrangements, Amalgamations) Rules, 2016 as well as the provisions of the Companies Act, 2013 by the Applicants. The application stands allowed in the aforesaid terms.

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V.K Subburaj
Member(T)

-sd-

P.S.N Prasad
Member(J)