

THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

C.P.(CAA)/31/MB-I/2024

Connected with

C.A.(CAA)/260/MB-I/2023

In the matter of

The Companies Act, 2013 (18 of 2013)

And

In the matter of

Sections 232 r/w Section 230 and other applicable provisions of the Companies Act, 2013 and Rules framed there under as in force from time to time; read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of the

Composite Scheme of Merger between

Gold Soil Realty Private Limited

CIN: U45100MH2007PTC172513

...Petitioner Company 1/

Transferor Company

Govardhan Realty Private Limited

CIN: U45100MH2007PTC174342

... Petitioner Company 2/

Transferor Company

Welsmelt Realty Private Limited

CIN: U45100MH2007PTC172650

... Petitioner Company 3/

Transferor Company

Yavatmal Realty Private Limited

CIN: U45100MH2007PTC172886

... Petitioner Company 4/

Transferor Company

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Lok8 Infra Private Limited

CIN: U45100MH2007PTC174078

... Petitioner Company 5/

Transferee Company

Order delivered on 14.05.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances:

For the Applicant

: Mr. Ahmed Chunawala i/b

Rajesh Shah Co. & Advocates

ORDER

1. Heard the Learned Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the said Scheme.
2. The sanction of the Tribunal is sought under Sections 232 r/w Section 230 of the Companies Act, 2013 and other relevant

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provisions of the Companies Act, 2013 and the rules framed there under for the Composite Scheme of Merger between **Gold Soil Realty Private Limited**, the First Transferor Company and **Govardhan Realty Private Limited**, the Second Transferor Company and **Welsmelt Realty Private Limited**, the Third Transferor Company and **Yavatmal Realty Private Limited**, the Fourth Transferor Company with **Lok8 Infra Private Limited**, the Transferee Company and their respective shareholders.

3. The Petitioner Companies have approved the said Composite Scheme of Merger by passing the Board Resolutions dated 09th October, 2023 respectively, which are annexed to the Joint Company Scheme Petition.
4. The Petition have been filed in consonance with the Order passed in the Joint Company Scheme Application No. 260 of 2023 vide order dated 04.01.2024 by this Hon'ble Tribunal and the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal.
5. The Petitioner Company 1, Petitioner Company 2, and Petitioner Company 3 is presently carrying on business of Builders, General Construction and Contractors and to carry on

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the business of the proprietors of lands, flats, maisonetes, dwelling houses, shops, offices, industrial estates, lessees of lands, flats and other immoveable properties and for these purposes to purchase, take on lease or enter into joint ventures and co-development agreements any lands or buildings of any tenure or description wherever situated, or rights or interests therein or connected therewith and that the Petitioner Company 4 is presently carrying on business of construction, developers, builders, contractors, designers, architects, decorators, engineer, civil engineer, architectural engineer, interior decorator, consultant, contractor, sub-contractor, turnkey contractor and brokers of all types of construction and development work and that the Petitioner Company 5 is presently carrying on business of construction, developers, builders, contractors, designers, architects, decorators, engineer, civil engineer, architectural engineer, interior decorator, consultant, contractor, sub-contractor, turnkey contractor, and brokers of all types of construction and development work.

6. The rationale for the Composite Scheme of Merger of the Petitioner Companies is in the interest of the stakeholders of the Petitioner companies and shall result in the following benefits:

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- (a) Reduction in overheads including administrative, managerial overlaps and other expenditure, and optimal utilization of resources by elimination of duplication of activities and related costs.
- (b) The Transferor Companies and the Transferee Company carry on similar businesses and hence, the business of the Transferor Companies and the Transferee Company can be conveniently, advantageously, and economically carried on by a single entity.
- (c) Reduction in multiplicity of legal and regulatory compliance at present carried out separately by the Transferor Companies and the Transferee Company and promote organizational efficiencies with achievement of greater economies of scale.
- (d) Leverage combined assets and build a stronger sustainable business by providing an opportunity to fully leverage assets, capabilities, experience and infrastructure of the Transferor Companies; and
- (e) Streamlining, rationalizing and simplification of the group holding structure by way of reduction in number of entities, resulting in ease of management of Transferee Company.

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7. The Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, has filed his Report dated 10th April, 2024 making certain observations and the Petitioner Companies have submitted / undertaken that:

7.1.The Petitioner Company 5 undertakes that in addition to compliance of IND AS-103 for accounting treatment, the Petitioner Company 5 shall pass such accounting entries as may be necessary in connection with the composite scheme of merger to comply with other applicable accounting standards such as IND AS-8 as applicable;

7.2.The composite scheme of merger enclosed to Joint Company Scheme Application and Joint Company Scheme Petition, are one and the same and there is no discrepancy / nor any change / changes are made.

7.3.The Appointed Date is 01st April 2023. The Petitioner Companies submits that the office of the Regional Director, Western Region has wrongly mentioned the Appointed date as 1st April, 2021 and it is also passed by this Tribunal that the Appointed Date is 1st April, 2023 by this Hon'ble NCLT vide its order dated 04th January 2024;

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7.4. The Petitioner Companies shall comply with the requirements as to Appointed Date and clarified vide circular no. F. No.7/12/2019/CL-1 dated 21.08.2019 issued by the Ministry of Corporate Affairs;

7.5. The Petitioner Company 5 shall be in compliance with the provisions of Section 2(1B) of the Income Tax Act, 1961 and all other provisions of Income Tax Act and Rules thereunder, if any

7.6. The Petitioner Companies submits that the interest of creditors will be protected on implementation of the scheme.;

7.7. The Petitioner Companies are not developing any residential or any other projects which require the Petitioner Companies to register with RERA.

7.8. The Petitioner Companies have body corporates as its members holding 50% of the share capital however no individual holds majority stake in such body corporates. Therefore, as per Explanation III to Rule 2(1)(h) of the Companies (Significant Beneficial Ownership) Rules, 2018, no individual can be considered to hold a right or entitlement indirectly in the Petitioner Companies and hence the Petitioner Companies are not required to file Form BEN-2

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with the RoC. That if there are any Significant Beneficial Owners in the future, the Petitioner Companies shall comply with Section 90 of the Companies Act, 2013 read with the rules at such time.

7.9. The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.

8. Mr. Bhagwati Prasad, Additional Director for the Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.
9. The Official liquidator has filed his Report dated 20th March, 2024 inter-alia making the following observations in paragraphs 5 which is reproduced hereunder:

5. *With reference to clause No. 18.1 of the scheme it is stated that such clauses override the provision of the Companies Act, 2013 namely Section 232(3)(i) which inter-alia provides that, 'if a companies are dissolved, the fees paid by such company on its Authorised Capital shall be set off*

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against any fees payable by the Transferee Company on its Authorised Capital. Hon'ble Tribunal may be pleased to direct the Transferee Company to pay differential amount, if any, after setting off fees already paid by the Transferor Companies.

- 9.1. So far as the observation in paragraph 5 of the Report of the Official Liquidator is concerned, the Transferee Company undertakes to comply with the provisions of Section 232(3)(i) of the Companies Act, 2013 in respect of fees payable by the Transferee Company for increase of authorized share capital on account of merger.
- 9.2. The observations made by the Official Liquidator have been explained by the Petitioner Companies above. Further, the Official Liquidator in his above mentioned report stated that the affairs of the Petitioner Company 1, Petitioner Company 2, Petitioner Company 3 and Petitioner Company 4 have been conducted in a proper manner.
10. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members

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or any other stakeholders. Since all the requisite statutory compliances have been fulfilled, Joint Company Scheme Petition No. 31 of 2024 is made absolute in terms of clauses 53 (a) to (d) of the said Joint Company Scheme Petition.

11. The First Petitioner Company, Second Petitioner Company, Third Petitioner Company and Fourth Petitioner Company be dissolved without winding up.
12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of the Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
13. The Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.
14. The Petitioner Companies to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Registrar or Assistant Registrar, Tribunal, with the concerned Superintendent of

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Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the Order, if any.

15. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, Hon'ble Tribunal.
16. The Appointed Date is 01st April 2023.
17. Ordered Accordingly. Pronounced in open court today.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Justice V.G. Bisht
Member (Judicial)