THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH

CA (CAA) No. 7/Chd/Pb/2023
(First Motion)

Under Sections 230-232 & 66 of the Companies Act, 2013 read with Companies (Compromise, Arrangement and Amalgamation), 2016.

IN THE MATTER OF SCHEME OF AMALGAMATION OF:

AKM Real Estate Developers Private Limited
with its registered office at
SCO 140-141, Sector 34 A, Chandigarh-160022.
PAN:AAHCA0057B
CIN: U45200CH2007PTC030991
…Applicant Company No. 1/Transferor Company No. 1

AND

Lord Properties Private Limited
with its registered office at
Khasa Distillery Company, Village Khasa,
Amritsar, Punjab-143107
PAN:AAACL3052G
CIN: U70101PB1981PTC004581
…Applicant Company No. 2/Transferor Company No. 2

AND

Digvijay Chemicals Limited
with its registered office at
Khasa Distillery Company, Village Khasa,
Amritsar, Punjab-143107
PAN:AAACD4965G
CIN: U24119PB1987PLC051877
…Applicant Company No. 3/Transferee Company

Order delivered on: 21.03.2023

Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

Present : -

For the Applicant Companies :
1. Mr. Aksh Basra, Advocate
2. Ms. Deepali Garg, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

ORDER

This is a joint first motion application filed by Applicant Companies namely; **AKM Real Estate Developers Private Limited** (Applicant Company No. 1/Transferor Company No. 1); **Lord Properties Private Limited** (Applicant Company No. 2/Transferor Company No. 2) and **Digvijay Chemicals Limited** (Applicant Company No. 3/Transferee Company) under Sections 230-232 and Section 66 of Companies Act, 2013 (the Act) and other applicable provisions of the Act read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (the Rules) in relation to the Scheme of Amalgamation between the Applicant Companies. The said Scheme is attached as Annexure- 1 of the Application.

2. The Applicant Companies have prayed for dispensing with the requirement of the convening of the meetings of the Equity Shareholders, Preference Shareholders, Debenture-holders, Secured Creditors and Unsecured Creditors of the Applicant Companies.

3. The Applicant Company No. 1 is presently engaged in the business to carry on the business of construction, builders, colonizers, infrastructure facilities, real estate and properties including purchase of real estate and development of land/ premises/ building, creation of plots for the purpose of sale, lease and to carry on the business of colonizers and developers, construction of commercial/ residential buildings and purchase of

properties on commercial basis and to carry on the business of purchasing selling and developing any type of land or plot whether residential, commercial, industrial etc.

4. The Applicant Company No. 2 is presently engaged in the business to acquire, buy, purchase, lease, exchange, hire or otherwise, land, plots, property, building and flats of any tenure or interest in the same and to erect and construct houses, buildings of every descriptions or any land of the company, sell, lease, let, mortgage or otherwise dispose off the lands, houses, flats, buildings and other property of the Company or others.

5. The Applicant Company No. 3 is presently engaged in the business of leasing and hire purchase company and to acquire to provide on lease or to provide on hire purchase basis all types of industrial and office plant, equipment, vehicles, buildings and real estate, required for manufacturing, processing, transportation and trading business and other commercial and service business.

6. It is submitted that the registered offices of Applicant Companies are situated in Punjab and Chandigarh, therefore, the territorial jurisdiction of Applicant Companies fall with this Bench.

7. The rationale of the Scheme is given below:-

a. Greater integration and greater financial strength and flexibility for the amalgamated entity, which would result in maximizing overall shareholder value and will improve the competitive position of the combined entity.

b. The existence of independent companies at times result in duplication of efforts and the integration and combination of such businesses will lead to greater and optimal utilization of resources. The amalgamation would, therefore, enable the Transferee Company to increase operations and

confer a competitive advantage on the entire business. With integrated processes, the Transferee Company can achieve higher scales of operation.

c. The amalgamation of the operations of the Transferor Companies into the Transferee Company will assist the Transferee Company and its management in meeting the funding through a common funding mechanism. This will result in effective management and utilization of funds for capital expenditure and working capital. The efficiencies generated through cash management of the merged entity and access to cash flow generated by the combined business can be deployed more efficiently to fund organic and inorganic growth opportunities and to maximize shareholders value.

d. The amalgamated company will have the benefit of synergy, optimum use of human relations, expertise, and stability of operations and would help to achieve economies of scale through efficient utilization of resources and facilities.

e. Strengthened leadership in the Industry, in terms of the asset base, revenues, product range, production volumes and market share of the combined entity. The amalgamated entity will have the ability to leverage on its large asset base and vast pool of intellectual capital, to enhance shareholder value.

f. The integration of the Companies will save them from many unnecessary but mandatory periodic compliances and will eventually save huge cost.

8. It is stated that the Board of Directors of the Applicant Company No. 1, Applicant Company No. 2 and Applicant Company No. 3 in their respective meetings held on 30.12.2022, 29.12.2022 and 02.01.2023 have considered and

unanimously approved the Scheme subject to sanctioning of the same by this Tribunal. The copy of the board resolutions of the Applicant Companies are part of Annexure-11, 12 and 13, respectively of the application.

9. The appointed date of the Scheme is 01.04.2022 as mentioned in the Part I Clause 1.1.3 of Amalgamation which is attached as Annexure A-1 of the application.

10. It is stated that the Applicant Companies have filed the audited financial statements as on 31.03.2022 as Annexure 3, 6 and 9, respectively, of the application. The Applicant Companies have also filed provisional financial statements as on 30.11.2022 as Annexure 4, 7 and 10, respectively, of the application.

11. It is submitted that in pursuance of the proviso to Sec. 230 (7) and Section 232 (3) of the Act, the Applicant Companies have filed certificates, dated 03.02.2023 issued by Statutory Auditors of Applicant Companies certifying that the Scheme is in compliance with the Accounting Standards under Section 133 of the Act and the same are attached as Annexure 30, 31 and 32, respectively, of the application.

12. It is further submitted by the counsel for applicant companies that the valuation report has been submitted by Mr. Subodh Kumar, Registered Valuer, having Regn. No. IBBI/RV/05/2019/11705) which is attached as Annexure- 14 of the application. As per valuation report, dated 21.12.2022, the following share exchange ratio has been proposed:-

> *"a) The Equity Shareholders of the Transferor Company No. 1, would be issued and allotted 19.19 Equity Shares of Rs. 10/-(Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 1 equity share of Rs. 10/- each held by them in the Transferor Company No. 1 on a fully diluted basis;*
> *b) The Equity Shareholders of the Transferor Company No. 1, would be issued and allotted 191.90 Equity Shares of Rs. 10/-(Rupees Ten only) each*

credited as fully paid up by the Transferee Company, for every 1 equity share of Rs. 100/- each held by them in the Transferor Company No. 1 on a fully diluted basis;

c) The Equity Shareholders of the Transferor Company No. 2, would be issued and allotted 9.81 equity shares of Rs. 10/- (Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 1 equity share of Rs. 10/- held by them in the Transferor Company No. 2 on a fully diluted basis, and

d) The Equity Shareholders of the Transferor Company No. 2, would be issued and allotted 98.10 equity shares of Rs. 10/- (Rupees Ten only) each credited as fully paid up by the Transferee Company, for every 1 equity share of Rs. 100/- held by them in the Transferor Company No. 2 on a fully diluted basis."

13. It is submitted that Part III Clause 4.2.5 of the Scheme [Annexure-1 of the application] also takes care of the interests of the staff/workers and employees of the Applicant Companies.

14. It is further deposed by the authorized representatives of Applicant Companies that the Applicant Companies are not regulated or governed by the Securities and Exchange Board of India (SEBI), Reserved Bank of India, Competition Commission of India (CCI) or any other Sectorial Regulator except that the Applicant Company No 3 is regulated by Excise & Taxation Department, Government of Punjab. Thus, there are no other Sectoral Regulators to the Applicant Companies other than Ministry of Corporate Affairs, Income Tax Department and Excise & Taxation Department, Government of Punjab. The proposed transaction of amalgamation does not meet the threshold limits as specified under section 5 of the Competition Act, the same does not qualify as 'Combination' under the Competition Act and will not require any filing of the notice or obtaining approval from CCI. The aforesaid affidavits duly signed by the authorised representatives of applicant companies have been appended as Annexure-33, 34 and 35 of the application.

15. It is also deposed by way of affidavit by authorised representatives of the applicant companies that as per the provisions of Section 230 (2) (a) of the

Companies Act, 2013, all the material facts relating to the companies are place on record and no investigation and proceedings legal proceedings are pending against the applicant companies. The aforesaid affidavits are attached as Annexure A-38 and A-39 respectively of the application.

16. It is further stated that the Scheme does not envisage any buy back of shares. However, the Scheme includes reduction of share capital of the Transferee Company/ Applicant Company No. 3 to the extent of cancellation of cross shareholding between the Transferor Companies and the Transferee Company and cancellation of shares held by public shareholders of the Transferee Company by returning their capital. None of the Applicant Companies has accepted any public deposit, as on the date of the Application.

17. It is deposed by the authorized representatives of Applicant Companies that there is no enquiry, inspection, investigation or prosecution, pending against the Applicant companies before any Court or any Judicial/Quasi-Judicial Authority under any law for the time being in force against the Applicant Companies. The aforesaid affidavits duly signed by the authorised representatives of applicant companies have been attached as Annexure-33, 34 and 35 of the application.

18. The applicant companies have furnished the following documents:-

(i) Proposed Scheme (Annexure - 1 of the application)

(ii) The Certificate of Incorporation along with Memorandum and Articles of Association of applicant companies. (Annexure- 2, 5 & 8, respectively of the Application)

(iii) List of Equity Shareholders and Preference Shareholders of the Applicant Company No.1 as on 30.11.2022 duly certified by S. Tandon &

Associates, Chartered Accountants along with consent furnished by way of affidavits (Annexure-15 to 17 of the application).

(iv) List of Secured and Unsecured Creditors of the Applicant Company No. 1 duly certified by S. Tandon & Associates, Chartered Accountants(Annexure- 18 & 19 of the application).

(v) List of Debenture-holders of the Applicant Company No. 1 duly certified by S. Tandon & Associates, Chartered Accountants along with consent furnished by way of affidavits (Annexure-20 & 21 of the application).

(vi) List of Equity Shareholders of the Applicant Company No. 2 and 3 as on 30.11.2022 duly certified by A. K. Kalia & Associates, Chartered Accountants along with consent furnished by way of affidavits (Annexure-22, 23 & 27 respectively of the application).

(vii) List of Secured and Unsecured Creditors and debenture-holders of the Applicant Company No. 2 and 3 duly certified by A. K. Kalia & Associates, Chartered Accountants along with consent furnished by way of affidavits (Annexure- 24 to 26, 28 & 29, respectively of the application).

(viii) Certificates of Statutory Auditors to the effect that accounting treatment proposed in the Scheme is inconformity with Section 133 of Act (Annexure- 30, 31 & 32 of the application).

(ix) Proposed Share Exchange Ratio (Annexure- 14 of the application).

(x) Audited Financial Statement as on 31.03.2022 of the applicant companies (Annexure- 3, 6 & 9 of the application).

(xi) Provisional Financial Statement as on 30.11.2022 of the applicant companies (Annexure- 4, 7 and 10 of the application).

(xii) Affidavit with regard to the Sectoral Regulator of the applicant companies (Annexure- 33, 34 & 35 of the application).

19. The Applicant Companies have furnished the details of the Equity Shareholders, Secured Creditors and Unsecured Creditors is as follow:

Name of the Applicant Companies	Shareholders along with their consent				Creditors along with their consent.					
	Equity Shareholder	Consent with calculations	Preference Shareholders	Consent Given	Debenture Holders	Consent with calculations	Secured Creditors	Consent with calculations	Unsecured Creditors	Consent with calculations
Applicant Company No.1	2	100% in Value	1	100%	1	100%	NIL	NA	NIL	NA
Applicant Company No.2	2	100% in Value	NIL	NA	1	100%	NIL	NA	NIL	NA
Applicant Company No.3	1460	15 in number 93.82% in value	NIL	NA	NIL	NA	NIL	NA	153	26 in numbers 92% in value

20. Accordingly, the directions of this Bench in the present case are as under:-

I. In relation to the Transferor Company No. 1/Applicant Company No. 1:

a) The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b) The meeting of the Preference Shareholders is dispensed with as consent affidavits of all the Preference Shareholders have been obtained and placed on record.

c) The meeting of the Debenture-holders is dispensed with as consent affidavits of all the Debenture-Holders have been obtained and placed on record.

d) Since, there are Nil Secured Creditors and NIL Unsecured Creditors in the Transferor Company/Applicant Company No. 1. Therefore, there is no scope for any meeting.

II. In relation to the Transferor Company No. 2/Applicant Company No. 2:

a) The meetings of the Equity Shareholders are dispensed with keeping in view the shareholding pattern, financial structure of the company and the fact that the consent of all the Equity Shareholders has been received by way of affidavits.

b) The meeting of the Debenture-holders is dispensed with as consent affidavits of all the Debenture-Holders have been obtained and placed on record.

c) Since, there are Nil Secured Creditors and NIL Unsecured Creditors in the Transferor Company No. 2/Applicant Company No. 2. Therefore, there is no scope for any meeting.

III. In relation to the Transferee Company/Applicant Company No. 3:

a) The meetings of the Equity Shareholders are dispensed with as consents of equity shareholders holding 93.82% of the paid up equity share capital of the Transferee Company/ Applicant Company No. 3 has been received by way of affidavits.

b) Since, there are Nil Secured Creditors in the Transferee Company/Applicant Company No. 3. Therefore, there is no scope for any meeting.

c) The meetings of Unsecured Creditors are dispensed with as consent of unsecured creditors holding 92.70% (in value) has been received by way of affidavits.

21. In view of the above, the First Motion Application stands allowed by giving liberty to the Applicant Companies to file Second Motion Petition with a direction that the Applicant Companies shall make specific prayer for sending

notices to the (a) Central Government through Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, (b) concerned Registrar of Companies, (c) Official Liquidator (d) concerned Real Estate Regulatory Authority (RERA) (e) Income Tax Authorities by disclosing the PAN numbers of all the Applicant Companies in the title of the Second Motion Petition.

-sd-

(Subrata Kumar Dash)
Member (Technical)

-sd-

(Harnam Singh Thakur)
Member (Judicial)

March 21, 2023
SM/SA