

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

**CP (CAA) No. 24/Chd/Hry/2023
(2nd Motion)**

**Under Sections 230 to 232 of the
Companies Act, 2013**

IN THE MATTER OF SCHEME OF AMALGAMATION BETWEEN:

ALANKRIT ESTATES LIMITED

with its registered office at:
SHOPPING MALL, DLF QUTAB ENCLAVE, PHASE-I
GURUGRAM-122002, HARYANA
CIN: U45202HR1984PLC018955
PAN: AAECA0350J

... PETITIONER COMPANY NO. 1 / TRANSFEROR COMPANY NO. 1

AND

DLF ESTATE DEVELOPERS LIMITED

with its registered office at:
2nd FLOOR, DLF GATEWAY TOWER, R- BLOCK, DLF CITY, PHASE-III,
GURUGRAM - 122 002, HARYANA
CIN: U74999HR1989PLC107716
PAN: AACCD0038J

... PETITIONER COMPANY NO. 2 / TRANSFEROR COMPANY NO. 2

AND

KIRTIMAAN BUILDERS LIMITED

with its registered office at:
SHOPPING MALL, 3rd FLOOR, ARJUN MARG, DLF CITY, PHASE-I, GURUGRAM -
122 002, HARYANA
CIN: U45201HR1991PLC034887
PAN: AAACK0167D

... PETITIONER COMPANY NO. 3 / TRANSFEROR COMPANY NO. 3

AND

TIBERIAS DEVELOPERS LIMITED

with its registered office at:
SHOPPING MALL, 1st FLOOR, ARJUN MARG, DIF CITY, PHASE - I, GURUGRAM-
122 002, HARYANA
CIN: U70100HR2005PLC082942
PAN: AACCD2389J

... PETITIONER COMPANY NO. 4 / TRANSFEROR COMPANY NO. 4

AND

UJAGAR ESTATES LIMITED

with its registered office at:

SHOPPING MALL, 3rd FLOOR, ARJUN MARG, DLF CITY, PHASE - I,
GURUGRAM-122 002, HARYANA
CIN: U45201HR1991PLC034886
PAN: AAACU0404D

... PETITIONER COMPANY NO. 5 /TRANSFEROR COMPANY NO. 5

AND

DLF UTILITIES LIMITED

with its registered office at:

SHOPPING MALL, 3rd FLOOR, ARJUN MARG, DLF CITY, PHASE - I,
GURUGRAM-122 002, HARYANA
CIN: U01300HR1989PLC030646
PAN: AAACN3199A

... PETITIONER COMPANY NO. 6/ TRANSFEREE COMPANY

Order delivered on: 16.04.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**

Present :-

For the petitioner : Mr. U. K. Chaudhary, Senior Advocate

Mr. Pulkit Goyal, Advocate

Ms. Manisha Chaudhary, Advocate

Mr. Mansuymmer Singh, Advocate

Ms. Manisha Sharma, Advocate

For the RD : Mr. Vineet Khatri, Company Prosecutor

For the OL : Mr. Edward Augustine George, Advocate

For the Income Tax Dept. : Mr. Yogesh Putney Senior Standing Counsel

**Per: Mr. Harnam Singh Thakur, Member (Judicial)
Mr. L.N. Gupta, Member (Technical)**

ORDER

1. This is a joint Second Motion Company Petition filed by Petitioner Companies namely, Alankrit Estates Limited (“Petitioner Company No. 1/Transferor Company No. 1”), DLF Estate Developers Limited (“Petitioner Company No. 2/Transferor Company No. 2”), Kirtimaan Builders Limited (“Petitioner Company No. 3/Transferor Company No. 3”), Tiberias Developers Limited (“Petitioner Company No. 4/Transferor Company No. 4”) and Ujagar Estates Limited (“Petitioner Company No. 5/Transferor Company No. 5”) with DLF Utilities Limited (“Petitioner Company No. 6/Transferee Company”) under Sections 230-232 of the Companies Act, 2013 (**‘the Act’**) and the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (**‘the Rules’**) in relation to the Scheme of Amalgamation between the Petitioner Companies.
2. The Petitioner Companies have prayed for sanctioning of the Scheme of Amalgamation between the Petitioner Companies. The said Scheme is attached as **Annexure A-19** of the application.
3. The Petitioner Companies filed First Motion Application bearing CA (CAA) 12/Chd/Hry/2023 before this Tribunal for seeking directions for dispensing the meetings of the Equity Shareholders, Debenture holders, Secured and Unsecured Creditors of Petitioner Companies. The First Motion Application was disposed off vide Order dated 08.06.2023, dispensing with the meetings of Equity Shareholders, Debenture holders, Secured and Unsecured Creditors of the Petitioner Companies.
4. All the relevant details/documents as submitted by the Petitioner Companies at the time of filing of the First Motion Application have been taken on record and

details of which are mentioned in the First Motion Application Order dated 08.06.2023.

5. In the Second Motion Proceedings, certain directions were issued by this Tribunal vide Order dated 21.07.2023 and the same were complied with and the Petitioner Companies by filing an Affidavit of Compliance vide Diary No.02017/3 dated 04.10.2023 wherein it is deposed that the notice of hearing was published in “Financial Express” (English) and “Jansatta” (Hindi) both in Delhi-NCR Edition on 15.09.2023. The original copies of the newspapers are attached as **Annexure A-1** of the aforesaid affidavit. It is also stated in the Affidavit that copies of notices were served upon the i) Central Government through Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi; ii) concerned Registrar of Companies, NCT of Delhi and Haryana; iii) Official Liquidator (attached to Punjab & Haryana High Court; iv) Income Tax Department through the Nodal Officer-Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector-17-E, Chandigarh by mentioning the PAN of the Company along with copy of the Petition by speed post. Original speed post receipts are attached as **Annexure A-2** of the aforesaid affidavit.
6. It is deposed by Counsel of the Petitioner Companies that after publication of notice of hearing in the newspapers, neither the Petitioner Companies nor their Counsel have received any objection relating to the present Scheme from any of the stakeholders or general public at large till date. The aforesaid Affidavit has been filed vide Diary No. 02017/3 dated 4.10.2023.
7. In response to the abovementioned notices, the statutory authorities have furnished their replies, which are detailed below:-

7.1 Registrar of Companies (RoC)/Regional Director (RD)

7.1.1. Ld. Regional Director vide Diary No. 02017/4 dated 17.10.2023 has filed its report bearing No. 6/691/T-3/2023/5607 dated 09.10.2023 along with the report of the Registrar of Companies which following observations:-

- 1) *There are significant cross holding of investment between the Transferor Companies and Transferee Company.*
- 2) *As per audited financial statement of the Transferor Companies except Transferor Company no. 02 for the F.Y.2021-22, it is seen that the companies have nil revenue from its operation since last two years. Hence, these companies appears to be dormant u/s 455 of the Companies Act, 2013.*
- 3) *As per audited financial statement of the Transferor Companies for the F.Y.2021-22, it is seen that the companies have given loans. Hence, companies may asked to ensure the compliances of provision of section 185 and 186 of the Companies Act, 2013.*
- 4) *In the case of Transferor Company no. 02 and Transferee Company, auditor has stated in the audit report for the F.Y.2021-22, that the companies have not paid certain statutory dues on account of dispute and the case for the same are being pending before their respective authority.*
- 5) *In the scheme at clause no. 4.4, it has been stated that share exchange ratio w.r.t. the share to be issue by the transferee company as per the report of the register value. It is seen that even in the valuation report share exchange ratio vis-à-vis each Transferor Company has not been stated. Further, it is also seen that CCD holders of the Transferor Company no.01, 03 and 05 have not received any consideration in the scheme as CCD have been cancelled.*
- 6) *Transferee company may kindly be directed to comply with the provision of section 232(3) (i) of the Companies Act, 2013 in regard to fee payable on its revised authorized share capital, if applicable.*

7.1.2 The reply has been given by the Trasferee Company to the above observations-

7.1.2.1 *“In reply to the First Observation, it is submitted that since DIF Limited is directly or indirectly the beneficial holder of the entire share capital of Alankrit Estates Limited, DLF Estate Developers Limited, Kirtimaan Builders Limited, Tiberias Developers Limited and Ujagar Estates Limited (Transferor Companies), ultimately DLF Limited would be issued equity shares of transferee company i.e. DLF Utilities Limited in lieu of assets and liabilities of the Transferor Companies transferred to and vested in and be available to DLF Utilities Limited. Further, the cross-holdings between the Transferor Companies amalgamating into and with DLF Utilities Limited will be cancelled pursuant to the Proposed Scheme and the Transferee Company shall issue and allot equity shares to the shareholder of DLF Utilities Limited.*
Further, we would like to mention here that in order to facilitate focused management and efficient utilisation of assets and resources of the

Transferor Companies, it had been decided by the Board of Directors of the Transferor Companies and the Transferee Company that it would be in the interest of each of the Transferor Companies, Transferee Company and their respective stakeholders to take appropriate steps to effect amalgamation of the Transferor Company Nos. 1 to 5 into and with the Transferee Company. The amalgamation of the Transferor Companies with the Transferee Company would, inter alia, have the following benefits:

i) The Amalgamation will result into consolidation of the business of the Transferor Companies with the Transferee Company with greater integration and greater financial strength and flexibility for the amalgamated entity and will improve the competitive position of the combined entity.

ii) The Amalgamation will result in better, efficient and economical management, cost savings, pooling of resources, reduction of corporate tiers, creating better synergy, optimum utilization of resources, rationalization of administrative expenses/services, control and running of businesses and further development and growth of the business of all the Companies.

iii) The Amalgamation will enable the Companies to pool their financial, commercial and other resources and considerable synergy of operations would be achieved from business and administrative point of view and conserve administrative resources and cost overheads.

iv. The Transferee Company will have better financial and business prospects. The Scheme would be beneficial to and in the best interest of the shareholders, creditors and all other concerned stakeholders of the Transferor Companies and the Transferee Company.

V. With the enhanced capabilities and resources at its disposal, the Transferee Company will have greater flexibility and strength and will be able to compete more effectively as a combined entity.

vi. The amalgamation will enable the companies to achieve optimal capital structure and achieve efficiency in terms of operations of the merged entity under the combined entity.

7.1.2.2 In reply to the Second Observation, the concerned Transferor Companies submit that the provisions of Section 455 of the Companies Act are not attracted as the Companies are engaged in active business operations. However, there are no revenue from operations from the FY 2021-22. It is worth mentioning that all the Transferor Companies have filed its Annual Returns and Financial Statements till the financial year ended on 31.03.2023 and there is no default in this regard.

7.1.2.3 In reply to the Third Observation, It is submitted that inter-corporate loans are given from time to time in the normal course of business and on arm's length basis in compliance with the provisions of the Companies Act, 2013. All necessary compliances as required under the provisions of the Companies Act, 2013 have been complied with, wherever applicable. Also, all necessary approvals have been taken from the Members and the Board while granting loans under Section 186 of the Companies Act, 2013 and the requisite forms have been filed.

7.1.2.4 In reply to the Fourth Observation, Please note that certain matters are pending and under challenge before the respective authority(ies) and the same will be dealt with in accordance with law. Please note that the Transferee Company shall continue to exist, and all legal proceedings of

the Transferor Company (ies) may be continued/dealt with by the Transferee Company accordingly.

7.1.2.5 In reply to the Fifth Observation, It submitted that upon the Scheme becoming effective and with effect from the Appointed Date, the entire cross holding of paid-up share capital inter-se between Transferor Companies shall be extinguished and stand cancelled and no shares shall be issued by the Transferee Company or any other consideration be paid in respect of such cancelled shares in accordance with law.

It is further submitted that as per Clause 4.10 of the Scheme, since the Transferor Companies shall stand dissolved without the process of winding up pursuant to the Scheme, post approval of the Scheme by the NCLT and with effect from the Appointed Date, all the Compulsorily Convertible Debentures (CCDs) held by the Transferor Company No. 4 in Transferor Company Nos. 1, 3 and 5 involved in the present Scheme shall stand cancelled and extinguished automatically and no new CCDs shall be required to be issued by the Transferee Company. Please note that the Transferor Company No. 4 is the CCD holder of Transferor Company No. 1, 3 and 5 and since Transferor Company No. 4 is itself a part of the present scheme of amalgamation, which upon the Scheme becoming effective shall stand dissolved and hence, no CCDs are required to be issued to the Transferor Company No. 4 as per the Fair Share Exchange Ratio Report dated 16.02.2023.

Further, all the shares, securities, debentures, units of mutual funds, investments, etc. whether listed or unlisted in demat or physical form held by and appearing in the, books of the Transferor Companies will be recorded as Investments by the Transferee Company, in accordance with the Fair Share Exchange Ratio Report dated 1.02,2023 issued by Samarth Valuation Advisory LLP, Registered valuer, the Transferee Company shall issue and allot 10,68, 1 3,032 equity shares of Rs. 10/- each to the shareholders of Transferor Companies.

7.1.2.6 In reply to the Sixth Observation, It is submitted that upon the Scheme coming into effect, the authorised share capital of the Transferee Company shall automatically stand increased by merging the authorised share capital of the Transferor Companies with the Transferee Company without any further act or deed on the part of the Transferee Company and the provisions of Sections 4, 5, 13, 14, 61, 62 and other applicable provisions, if any, of the Act read with Rules made thereunder or any other applicable provision of Act in relation to increase in authorised share capital of the Transferee Company shall be deemed to have been complied with and the Transferee Company is not required to do any further acts, deeds or things in this regard.

It is further submitted that filing fees and stamp duty already paid by the Transferor Companies on the authorized share capital shall be utilized and applied for the increased share capital of the Transferee Company, and shall be deemed to have been so paid by the Transferee Company on such combined authorized share capital and accordingly, the Transferee Company shall not be required to pay any fees/ stamp duty on the authorized share capital so increased. Though the Transferor Companies and Transferee Company respectively have already paid requisite fee for the authorised share capital existing in the companies, however, the Transferee Company would pay additional requisite fee and stamp duty, if

any, required to be paid on the increase of authorised share capital, post the Scheme coming into effect, in accordance with the Applicable Laws. The Transferee Company hereby undertakes to comply with the provisions of section 232(3) (1) of the Companies Act, 2013”.

7.1.3. During the course of hearing, Ld. Company Prosecutor appearing for the RD has raised no further observation or objection on the reply submitted on behalf of companies and was satisfied with the reply.

7.1.4. Thus, no adverse observations have been inferred from the reports of the Ld. Registrar of Companies and Ld. Regional Director.

7.2. OFFICIAL LIQUIDATOR

7.2.1 The Ld. Official Liquidator has filed his report vide Diary No. 02017/2 dated 15.09.2023. The Official Liquidator in its report has only reproduced the information on the incorporation of the Petitioner Companies, their capital structure, financial highlights, shareholding, etc. The Official Liquidator has also reproduced the extracts of Reports of the Statutory Auditors of the Petitioner Companies on the Financial Statements.

7.2.2. Thus, there are no adverse observations in the report of the Official Liquidator.

7.3. Income Tax Department

7.3.1 The Senior Standing Counsel for the Income Tax Department filed its report vide Diary No. 02017/5 dated 20.11.2023, in respect of the Petitioner Companies wherein no demand is shown to be pending in case of M/s Alankrit Estates Limited, M/s Kritiman Builders Limited. However, it has been stated that the demands of Rs. 1,69,40,420/- for the year 2017-18 and Rs. 42,30,740/- are pending for the year 2018-19 in respect of the M/s DLF Estate Developers Ltd. The Income Tax demand of Rs. 130/- is also pending in case of the M/s Ujagar Estates Limited.

The carried forward loss of Rs.45,02,048/- for A.Y 2017-18 is bound to impact the revenue (quantified tax effect: Rs. 13,91,132/-) in case of the M/s Kritiman Builders Limited.

- 7.3.2 During the course of hearing, Ld. Sr. Counsel appearing for the Income Tax Department stated that they are satisfied with the reply advanced by the petitioner companies. Moreover, claims if any, pending before the Income Tax Authorities will be dealt in accordance with law and carried forward & set off of accumulated losses shall be subject to treatment as per provisions of Section 72A and Section 79 of Income Tax Act, 1961. Thus, no adverse observations have been inferred by them from the reports of the Income Tax Department.
8. The certificate of the Statutory Auditors with respect to the Scheme between Petitioner Companies to the effect that the accounting treatment proposed in the Scheme is in compliance with applicable Indian Accounting Standards (Ind AS) as specified in Section 133 of the Act, read with rules thereunder and other Generally Accepted Accounting Principles was filed as **Annexures A-58** of the Application.
9. We have heard the learned counsel for Petitioner Companies and respondents and perused the record carefully.
10. In the context of the above said discussion, the Scheme contemplated between the Petitioner Companies, appears to be prima facie in compliance with all the requirements stipulated under the relevant Sections of the Companies Act, 2013. As the objections from the Statutory Authorities have been duly addressed by the Petitioner Companies and since all the requisite statutory compliances have been fulfilled, this Tribunal sanctions the Scheme of Amalgamation appended as **Annexure**

A-19 with the Application subject to the directions in the following paragraphs.

11. Notwithstanding the submission that no investigation is pending against the Petitioner Companies, if there is any deficiency found or, the violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal vide this order will not come in the way of action being taken, albeit, in accordance with the law, against the concerned persons, directors and officials of the petitioners.
12. 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, if any, payment is due or required in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

- i. That all the property, rights and powers of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly, the same shall pursuant to Sections 230 & 232 of the Act, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Companies;
- ii. That all the liabilities and duties of the Transferor Companies be transferred, without further act or deed, to the Transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company;

- iii. All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Companies are entitled to including these 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;
- iv. All contracts of the Transferor Companies 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 favour of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Companies, the Transferee Company had been a party or beneficiary or obliged thereto;
- v. All the employees of the Transferor Companies 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 to the Transferee Company without any interruption of service and on the terms and conditions no less favourable than those on which they are engaged by the Transferor Companies, 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;

- vi. That the Appointed Date for the Scheme shall be 01.01.2023 as specified in the Scheme;
- vii. That the proceedings, if any, now pending by or against the Transferor Companies shall be continued by or against the Transferee Company;
- viii. That the Transferee Company shall, without further application, allot to the existing members of the Transferor Companies shares of Transferee Company to which they are entitled under the said Scheme;
- ix. That the fee, if any, paid by the Transferor Companies on their authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme';
- x. That the carry forward and set off of accumulated losses in the Petitioner Company, if any, shall be subject to applicable provisions of Income Tax Department including Section 72A and Section 79 of the Income Tax Act, 1961;
- xi. That the assessment under the Income Tax Act will be in accordance with the provisions of Section 170 (2A) of the Income Tax Act, 1961;
- xii. That the Transferee Company shall file the revised memorandum and articles of association with the concerned Registrar of Companies and further make the requisite payments of the differential fee (if any) for the enhancement of authorized capital of the Transferee Company; after setting off the fees paid by the Transferor Companies;
- xiii. That the Petitioner Companies shall, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the concerned Registrar of Companies for registration; and

- xiv. That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.
13. As per the aforesaid directions, formal orders in Form No. CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 be issued after the filing of the Schedule of Properties within three weeks from the date of receiving a certified copy of this order by the petitioners.
14. All the concerned Regulatory Authorities to act on a copy of this order annexed with the Scheme duly authenticated by the Registrar of this Bench.
15. The certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.
16. The Company Petition CP (CAA) No. 24/Chd/Hry/2023 is allowed and disposed of accordingly.

Sd/-
(L.N. Gupta)
Member (Technical)

April 16 , 2024

TBG

Sd/-
(Harnam Singh Thakur)
Member (Judicial)