

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

NEW DELHI BENCH-VI

CAA No. 40/PB/2021

IN THE MATTER OF SECTION 230-232 OF THE COMPANIES ACT, 2013

(Under Section 230 & 232 of the Companies Act, 2013 read with other applicable provisions of the Companies Act, read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

IN THE MATTER OF SCHEME OF AMALGAMATION

1. M/s LENA BUILDCON PRIVATE LIMITED

REGISTERED OFFICE:

3rd Floor, 14, Rani Jhansi Road, New Delhi - 110055

CIN: U70100DL2012PTC242390

PAN: AACCL3509Q

**PETITIONER COMPANY NO. 1
(TRANSFEROR COMPANY)**

2. M/s PADDOCK PROPBUILD PRIVATE LIMITED

REGISTERED OFFICE:

C-4, First Floor, Malviya Nagar, New Delhi - 110017

CIN: U45400DL2007PTC165845

PAN: AAACP4895K

**PETITIONER COMPANY NO. 2
(TRANSFeree COMPANY)**

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Appearance:

For the Petitioner/Applicant: Mr. Kartikeya Goyal, Advocate

For The Official Liquidator: Ms. Hemlata Rawat and Mr. Rahul Bhatt, Advocates

For the RD: Ms. Niharika Tanwar and Ms. Shankari Mishra, Advs

For the Income Tax Department: Mr. Ruchir Bhatia, Sr. Standing Counsel along with
Mr. Pratyaksh Gupta, Junior Standing Counsel and
Adv. Ashish Kumar

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER(JUDICIAL)

Pronounced on 22.04.2024

1. This joint petition has been filed by the Petitioner Companies under Sections 230 to 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and the National Company Law Tribunal Rules, 2016, for the purpose of the approval of the Scheme of Amalgamation of the Transferor Company into the Transferee Company. The copy of the Scheme of Amalgamation (hereinafter referred as the "Scheme"), has been placed on record.
2. The Petitioner Company No.1 i.e., M/s Lena Buildcon Private Limited was incorporated under the provisions of the Companies Act, 1956, as a private limited company on 17.09.2012 having its registered office at 3rd Floor, 14, Rani Jhansi Road, New Delhi – 110055. The authorized capital of the transferor company is Rs. 1,00,000/- and the paid-up capital of the transferor company is also Rs. 1,00,000/-.
3. The Petitioner Company No.2, i.e., M/s Paddock PROPBUILD Private Limited was incorporated under the provisions of the Companies Act, 1956, as a private limited company on 13.07.2007 having its registered office at: -C-4, First Floor, Malviya Nagar, New Delhi – 110017. The authorized capital of the transferee company is Rs. 21,00,00,000 and its paid up capital is Rs. 14,01,00,000.
4. A perusal of the petition discloses that the first motion application bearing **CA (CAA)-115/PB/2020** was jointly filed by the Petitioner Companies. Based on the averments made in the said application this Tribunal vide order dated 17.12.2020 dispensed with the requirement of convening of meetings of unsecured creditors of both the transferor

company and the transferee company. However, further directions were issued by this Tribunal vide the aforesaid order directing the petitioner companies to convene separate meetings of the shareholders of the transferor company and the transferee company, through video conferencing to consider, and if thought fit, to pass the proposed scheme of amalgamation.

5. This Tribunal vide the aforesaid order had appointed Mr. Ajay Garg, Advocate as the common chairperson ; Mr. Naresh Kumar, Advocate as the common alternate chairperson ; and Ms Mallika Tayal, Company Secretary in practice as the common scrutinizer for the aforesaid meetings. The chairperson was directed to report the result of the said meetings to this Tribunal.
6. It is averred that in compliance of the said order, separate meetings of the shareholders of the transferor company and of the transferee company were convened and held through video conferencing under supervision of the aforesaid Tribunal appointed officials/executives as per the following schedule: -

Saturday, 6th February, 2021

Meetings of	Time
Shareholders of Lena Buildcon Pvt Ltd (the Transferor Company)	2:30 P.M.
Shareholders of Paddock Propbuild Pvt Ltd (the Transferee Company)	3:30 P.M.

7. It is further contended that none of the petitioner companies had any secured creditor, however the scheme of amalgamation was considered in the aforesaid meeting and as an outcome/result, the scheme was unanimously approved in both the separate meetings respectively as follows: -

(A) Meeting of shareholders of the Transferor Company

	No. of Ballot Papers	Value of Votes
Shareholders present in the meeting through video conferencing	2	1,00,000
Total Votes Cast	2	1,00,000
Invalid Votes	Nil	Nil
Valid Votes	2	1,00,000
Votes Against	Nil	Nil
Votes Against as % of total valid votes cast	Nil	Nil
Votes in Favour	2	1,00,000
Votes in Favour as % of total valid votes cast	100%	100%
Result of Voting	The Scheme of Amalgamation was approved unanimously by the Shareholders of the Transferor Company	

(B) Meeting of shareholders of the transferee company

	No. of Ballot Papers	Value of Votes
Shareholders present in the meeting through video conferencing	2	14,01,00,000
Total Votes Cast	2	14,01,00,000
Invalid Votes	Nil	Nil
Valid Votes	2	14,01,00,000
Votes Against	Nil	Nil
Votes Against as % of total valid votes cast	Nil	Nil
Votes in Favour	2	14,01,00,000
Votes in Favour as % of total valid votes cast	100%	100%
Result of Voting	The Scheme of Amalgamation was approved unanimously by the Shareholders of the Transferee Company	

8. This Tribunal vide order dated 04.03.2021 directed the petitioner companies to issue publication regarding filing of main petition in Business Standard (English Newspaper Delhi Edition) and Jansatta (Hindi Newspaper Delhi Edition).
9. In compliance of aforesaid directions, the director of transferee company, Mr. Satyendra Nath Agnihotri (DIN: 07508608) has filed an affidavit dated 18.06.2021 stating that they have carried out the publication in the following newspapers: -
- i. “**Business Standard**” (English, Delhi Edition) Newspaper in its issue dated 05/05/2021.
 - ii. “**Jansatta**” (Hindi, Delhi Edition) Newspaper in its issue dated 05/05/2021.
10. Proof of service has also been filed regarding service of notice of petition to the following statutory authorities along with the scheme of amalgamation: -
- i. The Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs, B-2 Wing, 2nd Floor, Pt. Deen Dayal Antyodaya Bhawan, CGO Complex, New Delhi – 110003, on 12/04/2021 by hand.
 - ii. The Registrar of Companies, Delhi and Haryana, Ministry of Corporate Affairs, 4th Floor, IFCI Tower, 61, Nehru Place, New Delhi – 110019, on 12/04/2021, by hand.
 - iii. The Official Liquidator, Ministry of Corporate Affairs, 8th Floor, Lok Nayak Bhawan, Khan Market, New Delhi – 110003, on 12/04/2021, by hand.
 - iv. The Income Tax Department, through the Nodal Officer -DCIT (High Court Cell), Room No. 428 and 429, Lawyer’s Chambers, Block No. 1, Delhi High Court, New Delhi, on 13/04/2021, through email. Detail of PAN and the respective circle/ward of the Income Tax Office having jurisdiction over the Petitioner Companies, as shown on the web-site of the IT Department were also attached with notice of the company petition as averred by the applicant.

11. It is further averred that there is no sectoral regulator who may have no significant bearing on the operations of the petitioner companies, accordingly notice of the company petition is not required to be served upon any sectoral regulator.
12. Further, Mr. Satyendra Nath Agnihotri, Director of transferee company (DIN: 07508608) via affidavit dated 18.06.2021 along with Mr. Bhupesh Bansal, authorized signatory of the transferor company who via affidavit dated 08.09.2020 have respectively confirmed that in response to the aforementioned newspaper publications, neither the petitioner companies nor their legal counsel have received any objection/representation from any person against the petition or the proposed scheme of amalgamation till the date of filing of their respective affidavits and accordingly have made prayer before this Tribunal for sanctioning of the proposed scheme of amalgamation.
13. The Income Tax Department vide Demand Analysis and Recoverability Status Report dated 02/08/2022 had raised an observation in respect of transferee company pertaining to Assessment Year 2016-17 that vide department's order dated 02/11/2017; an amount of Rs. 11,58,600/- is outstanding u/s 154 of the Income Tax Act, 1961.
14. In response, petitioners submitted that despite repeated opportunities, no comments were received from the IT Department with respect to the transferor company. It is contended by the petitioners that in terms of Section 230(5) of the Companies Act, 2013 on expiry of 30 days from the date of notice, it is presumed that the IT Department does not have any comments to make on the proposed scheme of amalgamation.
15. Further, petitioners have placed on record a certificate from their Chartered Accountants (M/s Vijay Raj & Co.) highlighting the dispute concerning disallowing of credit of TAX Deduction at Source amounting to Rs. 10,13,721/- rightly claimed by the company thereby certifying no

outstanding demand which remains to be contested with the concerned department.

16. Be that as it may, it is undertaken by the transferee company that any liability which may arise in future against the transferor company will be paid by transferee company in accordance with law. The scheme would not adversely affect any right of recovery of IT Department nor jeopardize any enquiry or investigation proceedings etc. On 17.08.2023, the Ld. Counsels appearing for Income Tax Department submitted that they have filed their report with respect to transferor company and have no objection to the proposed scheme of amalgamation.
17. The Official Liquidator has filed its report dated 08.04.2022, wherein they have stated that none of the petitioner companies have submitted their latest financial statement as on 31.03.2021 neither corresponding annual returns have been filed by them on MCA21 Portal in terms of the provisions of Section 92 and Section 137 of the Companies Act, 2013.
18. Further, the OL in its report has made the observation that the transferor company has not done any business activity during 2019 and 2020 and had reported nil revenue. Moreover, against the paid-up share capital of Rs. 1 Lakh, it has other current liabilities (advance received for purchase of land) of Rs. 14 crores to which the corresponding assets are mainly non-current investment worth Rs. 14 crores prima-facie indicating that presently company does not have sufficient liquid assets to meet the liabilities of advance received for purchase of land.
19. Regarding the transferee company, the OL has stated that since the transferee company is not going to be dissolved, no further comments were offered on financial viability, however the onus lies on the company to prove itself as wholly owned subsidiary of the transferor company.

20. With respect to the aforesaid observations made by the OL, the director of transferee company, Mr. Satyendra Nath Agnihotri (DIN: 07508608) has filed an affidavit dated 04.05.2023 making following submissions –

- (i) With regard to the filing of audited financial statements and annual returns for the Financial Year 31/03/2021, the appointed date fixed for the present scheme of amalgamation is 01/04/2020 and accordingly audited financial statements and annual return upto 31/03/2020 have been filed but not for subsequent years in lieu of the appointed date in the proposed scheme of amalgamation.
- (ii) With regard to the current liabilities in the transferor company, it is clarified that subsequent to the amalgamation of the transferor company with the transferee company, advances given by transferee company to Draco Realtors Private Limited and advances given by Draco Realtors Private Limited to the transferor company will square off with each other and would be rendered nil.
- (iii) Regarding substantiating the contention that the transferee company is a wholly owned subsidiary of the transferor company, it is clarified that the Transferee company has already filed the requisite e-form MGT-6 with the Registrar of Companies in this regard, copy of which has been attached as annexure 2 to the response affidavit.

21. On 13.03.2023, the counsel for official liquidator, Adv. Hemlata Rawat appeared before this Tribunal and submitted that do not have any objection to the proposed scheme of amalgamation.

22. The Valuation Report dated 01.09.2020 for the proposed swap ratio has been prepared by Mr. Sandeep Kumar Aggarwal, Registered

Valuer [IBBI/RV/06/2019/10705] mentioning that the transferor company is a closely held private company and the transferee company is a wholly owned subsidiary of the transferor company, therefore general public is not affected by the proposed exchange ratio (Transferee Company will issue one equity share of Rs. 10/- each credited as fully paid up, for every one equity share of Rs. 10/- each held in the transferor company). Thus, upon amalgamation the shares held by the transferor company in the transferee company shall be cancelled as crossholding as they are in the same proportion and ratio as pre-scheme.

23. The Petitioner companies submitted that the amalgamation of both the petitioner companies (Transferor Company with the Transferee Company) would, inter alia, entail the following benefits:

- a) Both the Transferor Company and the Transferee Company are holding and wholly owned subsidiary companies and by pooling of their resources into a single entity would generate synergy in operations thereby building strong capability to effectively meet future challenges in competitive business environment.
- b) It is proposed that since both the Petitioner Companies are engaged in the business of broad range of real estate activity, their business is ancillary to each other, the amalgamation would result in economies of scale by elimination of duplicate work in regard to regulatory compliances which at present are being undertaken by both the petitioner companies separately.
- c) The proposed Amalgamation would result in significant reduction in multiplicity of legal and regulatory compliances, multiple record keeping and cost saving by reduction in overheads, administrative and managerial expenses etc in addition to enhancing strategic leadership and supervision.

- d) It is stated that the proposed scheme of amalgamation does not provide any tax benefit to any of the petitioner companies. It is contended that such tax benefit, if any is purely incidental.

24. The Regional Director has filed its report dated 11.07.2022. The major observations as well as reply of the Petitioner Companies are as under:-

Query No	Observations in the RD Report	Response of the Petitioner Companies
1.	Transferor company has nil revenue from its operation since F.Y 2012-13 and has continuously posted losses indicating that the company does not have any significant business activity for several years. Hence, the company appears to be dormant u/s 455 of The Companies Act, 2013.	It is submitted that the company has entered into Joint Ventures with other land owning and project companies. Moreover in the business of real estate, revenue inflow comes after cumbersome process of land aggregation and post obtaining various approvals/licenses. In lieu of these submissions, it is contended that the company is not a dormant company which is also evident from observation noted by RoC in para 8 of RoC's report dated 02.05.2022.
2.	As per notes to Financial Statements of the transferee company for the year ended 31.03.2020, the company had owed Rs. 51,88,35,000/- as interest free refundable business advance from IREO Grace Realtech Private Limited for which the status has been same	The said amount was received by transferee company as advance to assign development rights over their 16.33 acres land parcels situated at Gurgaon, Haryana of Rs. 50,41,78,491 to IREO Grace Realtech Private Limited.

	since F.Y 2012-13 under the head “current liabilities”. Parties have further agreed that the entire cost of implementation and development of the project will be borne by the developer.	It would be adjusted against the cost of inventory once transferee company obtains requisite approvals and subsequently grants development rights thereof to M/s IREO Grace Realtech Private Limited.
3.	Transferee company has certain litigations pending in civil courts over dispute of 7.45 acres of land for which financial impact has not been shown in Financial Statements.	These litigations are suit for declaration with consequential relief of permanent injunction. No contingent liability is expected in this regard which has been clarified vide Note No. 16 in audited Financial Statements of transferee company of 31/03/2020.
4.	Transferor Company has transferee company as its subsidiary since F.Y 2012-13. CFS filed only for F.Y 2014-15 and 2016-17. No MGT-6 filed till date.	MGT-6 filed vide SRN F06355572.
5.	Clause 5(b) of the scheme states that though this scheme shall become effective from the “effective date” , the provisions of this scheme shall be applicable and come into operation from the appointed date.	The scheme is effective only after it gets approved from competent authority (NCLT) and approval order is filed with RoC along with e-form 28. It is clarified that schemes adheres to compliance with Section 232(6) of The Companies Act, 2013.

6.	<p>Current liabilities for Rs. 14 Crore being shown since F.Y 2012-13 as “advance for purchase of land” was used for non-current/equity investments by transferor company into transferee company. Source of funds has never been disclosed as per Schedule-III.</p>	<p>Since transferee company owned valuable land parcels in Gurugram and had applied for licenses also, it was mutually agreed between the transferee company and M/s Draco Realtors Private Limited that transferor company can utilize these advances in order to make investment in the equity of the land holding entity (transferee company).</p> <p>Thus, the amount of 14 crores has been utilized by transferor company as investment in equity shares of transferee company thereby making transferee company (M/s Paddock PROPBUILD Private Limited) as subsidiary of transferor company (M/s Lena Buildcon Private Limited).</p>
7.	<p>In the valuation report, Valuer has stated that no formal share valuation is required. He arrived at share exchange ratio based solely on discussions with the company’s management and suggestions made by them.</p>	<p>Rightly, fair value of shares has to be calculated for all companies in a scheme.</p> <p>However, since in the present case, entire shareholding of wholly owned subsidiary gets cancelled and only the shareholders of holding company hold shares in merged entity, no valuation exercise is necessary in this case.</p>

25. We have gone through the observations made by the RD and the Reply filed by the petitioner company. On 27.03.2023, Ld. Counsel for RD, Adv. Shankari Mishra appeared before this Tribunal and stated that they have filed their report and do not have any objections to the proposed scheme of amalgamation. We are satisfied with the response given by the petitioner company w.r.t observation made by the RD.

26. Certificate from the following statutory auditors have been placed on record affirming that the proposed accounting treatment is in conformity with applicable provisions and accounting standards under The Companies Act, 2013 and also the Generally Accepted Accounting Principles in India (Indian GAAP) :-

(i) M/s Jain Jindal & Co. (Statutory Auditor for Transferor Company)

(ii) M/s Vijay Raj & Co. (Statutory Auditor for Transferee Company)

27. The shareholders of the petitioner companies are the best judges of their interest, fully conversant with market trends, and therefore, their decision should not be interfered with by the Tribunal for the reason that it is not a part of the judicial function to examine entrepreneurial activities and their commercial decisions. It is well settled that the Tribunal evaluating the Scheme, of which sanction is sought under Section 230-232 of the Companies Act of 2013, will not ordinarily interfere with the corporate decisions of companies approved by shareholders and creditors.

28. It has also been affirmed in the petition that the Scheme is in the interest of all the transferor companies and the transferee company, including their shareholders, creditors, employees and all concerned. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioner companies to the

proposed Scheme, there appears to be no impediment in sanctioning the present Scheme.

29. Consequently, sanction is hereby granted to the Scheme under Section 230 to 232 of the Companies Act, 2013 with the following conditions.

- I. *The Petitioners shall however remain bound to comply with the statutory requirements in accordance with the law.*
- II. *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 to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors and officials of the petitioners.*
- III. *While approving the Scheme as above, it is further 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, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.*
- IV. *The Petitioner Companies have proposed 01.04.2020 as appointed date. **However, This Tribunal confirms and approves 01.04.2023 as appointed date.***

30. This Tribunal hereby further order

- (i) *That the Transferor Companies shall stand dissolved without following the process of winding-up; and*

- (ii) *That all the property, rights and powers of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Companies Act, 2013, be transferred to and vest in the transferee company; and*
- (iii) *That all the liabilities and duties of all the Transferor Companies, be transferred without further act or deed, to the transferee company and accordingly the same shall, pursuant to Section 232 of the Act, be transferred to and become the liabilities and duties of the transferee company; and*
- (iv) *That all proceedings now pending by or against the Transferor Companies, be continued by or against the transferee company; and*
- (v) *That all the employees of the Transferor Companies in service, on the date immediately preceding the date on which the scheme takes effect, i.e. the effective date, shall become the employees of the transferee company on such date, without any break or interruption in service and upon terms and condition not less favorable than those subsisting in the concerned Transferor Companies on the said date; and*
- (vi) *That Petitioner companies 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 all the Transferor Companies shall be dissolved and the Registrar of Companies shall place all documents relating to all the Transferor Companies registered with him on the file, kept by him in relation to the transferee company and the files relating to all the petitioner companies shall be consolidated accordingly; and*

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

31. The petition stands disposed of on the above terms. Let copy of the order be served to the parties.

-SD/-
(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)