

**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH, COURT-II**

**COMPANY PETITION NO. (CAA)-51(ND)/2021**  
**CONNECTED WITH**  
**COMPANY APPLICATION NO. CA (CAA)-16(ND)/2021**

**IN THE MATTER OF SCHEME OF AMALGAMATION:**

**AMONGST**

**APTITUDE TRADEX PRIVATE LIMITED**

**... Applicant No. 1 /Transferor Company**

**WITH**

**5 STAR REAL ESTATE PRIVATE LIMITED**

**... Applicant No. 2 /Transferee Company**

**AND**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

**Order Delivered on: 21.09.2022**

**Section: 230 and 232 of the Companies Act, 2013**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the OL** : Ms. Hemlata Rawat

**For the RD** : Adv. Shankari Mishra



## ORDER

### PER SHRI L.N. GUPTA, MEMBER (T)

This Petition is preferred by the Transferor Company under Section 230 to 232 of Companies Act, 2013 read with the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 for approval of the Scheme of Amalgamation (hereinafter referred to as '**Scheme**' for brevity), as contemplated between the Companies, its Shareholders and Creditors. The copy of the Scheme has been placed on record. The details of the Companies proposed to be amalgamated, as placed on record, are given in the following paragraphs.

2. That Aptitude Tradex Private Limited (hereinafter referred as the "Transferor Company") having CIN U74999DL2012PTC291514 is a private limited company incorporated under the erstwhile Companies Act, 1956, on 30.08.2012. The registered office of the Transferor Company is situated at 503, PP Towers, Netaji Subhash Place, Pitampura, New Delhi-110034.

3. That 5 Star Real Estate Private Limited (hereinafter referred as the "Transferee Company") having CIN U70102DL2014PTC265568 is a company incorporated under the Companies Act, 2013, on 28.02.2014. The registered office of the Transferee Company is situated at 503, PP Towers, Netaji Subhash Place, Pitampura, New Delhi-110034.

4. That the present Petition has been filed jointly by both the Transferor Company and Transferee Company. Both the 'Transferor and Transferee'



Companies together are called 'Petitioner Companies' hereinafter. That the Registered offices of both the Companies being in Delhi, the territorial jurisdiction lies with this Bench.

5. From the records, it is seen that the First Motion petition was filed by the Applicant Companies for seeking directions for dispensing with the meeting of Equity Shareholders, Secured Creditors and Unsecured Creditors of both the Company. That this Tribunal in the First Motion Application bearing No. CO. APPL. (CAA) 16/ND/2021 vide Order dated 12.03.2021 had dispensed with the requirement of convening the meetings of shareholders and creditors of the Applicant Companies.

6. The Appointed date as per clause 1.1(b) of the Proposed Scheme of Amalgamation is 01.04.2020.

7. Subsequently, the Second Motion petition was moved by the Applicant Companies in connection with the scheme of Amalgamation for issuance of notices to the Central Government, Registrar of Company NCT of Delhi & Haryana, Regional Director (Northern Region) MCA, Income Tax Authorities, Official Liquidator and to such other Objector(s), if any, and also for publication of the said Scheme. Directions were issued, vide Order dated 12.04.2021 of this Tribunal, requiring the Applicant Company to carry out necessary publication with regard to the said Scheme in "Business Standard" (English) and (Hindi) Delhi Edition newspapers.

8. It is submitted by the Applicant Companies that in compliance of the above stated directions, the Applicant Companies have duly filed an Affidavit of Service confirming that the aforesaid Notices of the present



Company Petition were published on 29.04.2021 in the "Business Standard" (English) and (Hindi), Delhi Edition newspapers.

9. That accordingly, the RD has filed its report dated 31.08.2022 and has not raised any objection. The scanned copy of the RD report is reproduced below:

**REPRESENTATION / AFFIDAVIT OF REGIONAL DIRECTOR  
NORTHERN REGION, MINISTRY OF CORPORATE AFFAIRS, NEW  
DELHI.**

**I, Dr. Raj Singh, Regional Director (NR), having my office at B-2 Wing, 2<sup>nd</sup> Floor, Pt. Deendayal Antyodaya Bhawan, CGO Complex, New Delhi- 110003, do hereby solemnly affirm and sincerely state as follows:-**

1. I am the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and in pursuance of the notification of the Ministry of Corporate Affairs Dated 19.12.2016 in S.O. 4090 (E) I am authorized to swear this Affidavit for & on behalf of the Central Government.
2. The Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi, has been served with the copy of petition/application filed by the Petitioner/Applicant Companies pursuant to orders by Hon'ble Tribunal passed in Company Petition No. CP(CAA)-51(ND)/2021 connected with Company Application No. CA(CAA)-16(ND)/2021 filed under Sections 230 to 232 of the Companies Act, 2013 before Hon'ble National Company Law Tribunal Bench at New Delhi which has been examined.
3. That all the Transferor Companies and the Transferee Company are having their registered office in Delhi and within the jurisdiction of this Hon'ble National Company Law Tribunal Bench at New Delhi.
4. That the office of Deponent received the reply of the Petitioner Company on 22.07.2021. The report of the Registrar of Companies, NCT of Delhi & Haryana,

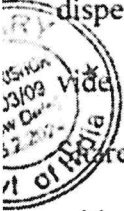


has been received vide letter dated 02.08.2021 and is marked as Annexure -A for kind perusal of the Hon'ble Tribunal.

5. That as per the Scheme of Amalgamation, the appointed date is 01.04.2020.
6. That as per Clause-7 of Part-II of the proposed Scheme of the Petitioner Companies provides for the protection of the interest of the employees and employee benefits of the Transferor Companies.
7. That as per Clause-9 of the Scheme, the share exchange ratio is as follows:

*"The Transferee Company will issue equity share to the shareholders of Transferor Company, in the ratio of 0.19 equity shares of Rs. 10/- each of Transferee Company for every 1 (One) equity share of Rs. 10/- each of the Transferor Company held by the shareholders of Transferor Company".*

In this regard, Valuation Report dated 10.01.2021 was prepared by Shri Rajiv Sharma, stated to be Registered Valuer (RV, IP, FCS, ACMA, M.COM) under signature of the same has been submitted. The Registration No. of the Valuer is IBBI/RV/03/2020/13688 as mentioned in the valuation report.

8. That meetings of equity shareholders of all the Petitioner Companies have been dispensed with by the Hon'ble National Company Law Tribunal, New Delhi Bench  its order dated 12.03.2021. The requirement of convening the Meetings of shareholders in respect of all the Applicant Companies is allowed to be dispensed with. The requirement of convening the Meeting of Unsecured Creditors in respect of the Transferee Company is also permitted to be dispensed with. Further, there are no unsecured creditors in Transferor company, the question on convening their

meeting does not arise. Since there are no secured creditors in any of the Applicants companies, the requirement of convening their meetings do not arise.

9. That as per the report of Registrar of Companies, both the Transferor Companies and the Transferee Companies have filed the Balance Sheet and Annual Return up to 2019-20. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Companies.

The above submissions are made in para 1 to 9 above after having examined the Scheme, reply of the Petitioner Companies and report of Registrar of Companies for kind consideration of the Hon'ble Tribunal for passing of orders for approval of the Scheme or such orders as may be deemed fit and proper in the facts and circumstances of the case.

*[Signature]*  
DEPONENT

**VERIFICATION**

I, **Dr. Raj Singh, Regional Director (NR)**, the Deponent above do solemnly verify and affirm that the contents of Affidavit in para 1 to 9 are true to the best of my knowledge and belief and have been made believing it to be true.



Verified this on

31 AUG 2021

day of August, 2021 at New Delhi.

Identified By:

*[Signature]*  
(V. G. Sathya Moorthy)

CERTIFIED THAT THE CONTENTS EXPLAINED TO THE  
DEPONENT/EXECUTANT WHO IS SEEMED PERFECTLY TO  
UNDERSTAND AFFIRMED & DEPOSED BEFORE ME AT NEW DELHI  
ON 31 AUG 2021  
I IDENTIFY THE EXECUTANT/DEPONENT WHO IS  
SIGNING IN MY PRESENCE  
NOTARY PUBLIC (NEW DELHI)  
V. G. SATHYA MOORTHY

*[Signature]*  
DEPONENT

10. That during the course of hearing on 16.09.2022, Ld. Counsel appearing for the RD stated that RD has no objection towards approval the of Scheme.

11. That the OL has filed its report on 29.06.2021 and has not raised any objection towards the approval of Scheme. That the relevant extracts from the OL report are reproduced overleaf :

*“That the Official Liquidator on the basis of information submitted by the Petitioner Companies is of the view that the affairs of the aforesaid Transferor Company do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/ the Companies Act, 2013 whichever is applicable....”*

12. The Income Tax Department has filed its report on 23.03.2022 and has not raised any objection towards the approval of Scheme, the scanned copy of the Income Tax Department report is reproduced below:



**कार्यालय आयकर अधिकारी, वार्ड - 2(1), कोलकाता**  
**Office of the Income Tax Officer, Ward - 2(1), Kolkata**

**आयकर भवन, पी - 7, चौरंगी स्क्वायर, 7वीं मंजिल, कक्ष संख्या - 22, कोलकाता - 700 069**  
**Aayakar Bhawan, P - 7, Chowringhee Square, 7th Floor, Room No - 22, Kolkata - 700 069**

No.ITO/W-2(1)/Kol/AMALGATION/2020-21/

Dated: 21/03/2022

To  
The National Company Law Tribunal  
Block No. 3, Gr. Flr, 6<sup>th</sup>, 7<sup>th</sup> & 8<sup>th</sup> Floor,  
CGO Complex, Lodhi Road  
New Delhi - 110003

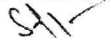
Respected Sir/Madam

Sub : Comments/Views on the draft scheme of Amalgamation u/s 233 of the companies Act, 2013 in the case of M/S Aptitude Tradex Pvt. Ltd. (PAN - AAKCA9405E) -Matter reg

Kindly refer to above.

1. The proposal for "Scheme of Amalgamation" under section 230 to 232 of the company Act 2013 has been received on 16.07.2021 and is the said amalgamation, M/s Aptitude Tradex Pvt. Ltd. which is being amalgamated with M/s 5 Star Real Estate Pvt. Ltd. (AAACZ7510P).
2. As per our records, the amalgamating company i.e, M/S Aptitude Tradex Pvt. Ltd. (PAN- AAKCA9405E) is assessed under this jurisdiction and it is found that there is no scrutiny assessment proceeding is pending.
3. **NO DEMAND** is outstanding in the above case.
4. Therefore, the undersigned has **NO OBJECTION** for the proposed "Scheme of Amalgamation" under section 230 to 232 of the Company ACT, 2013 in the case as mentioned in para 2 above.

Yours sincerely,

  
[Nabajyoti dasgupta]  
ITO, Ward - 2(1), Kolkata


Dated: 21/03/2022

No.ITO/W-2(1)/Kol/AMALGATION/2020-21/250-254


Copy forwarded for necessary information to :

1. Pr. Commissioner of Income Tax - 1/Kol
  2. Addl. Commissioner of Income Tax, Range - 1/Kol
- M/s. Aptitude Tradex Pvt. Ltd.



  
[Nabajyoti dasgupta]  
ITO, Ward - 2(1), Kolkata  
নবজ্যোতি দাসগুপ্তা  
NABAJYOTI DASGUPTA

(CAA)-51 (ND)/2021

Aptitude Tradex Pvt. Ltd. With 5 Star Real Estate Pvt. Ltd. 

13. In view of the foregoing facts and discussion and upon considering the approval accorded by the Members and Creditors of all the Applicant Company to the proposed Scheme and no sustainable objections having been raised by the Office of the Official Liquidator, Regional Director (North), Income Tax Department or any other interested party, there does not appear to be any impediment in granting sanction to the Scheme. **Accordingly, in sequel to the above, sanction is hereby granted to the Scheme of Amalgamation proposed by the Applicant Company under Section 230 to 232 of the Companies Act, 2013.** The sanctioned Scheme of Amalgamation shall be binding on the Transferor Company and Transferee Company (Applicant Companies) and their Shareholders and Creditors. The Applicant Company shall remain bound to comply with the statutory requirements in accordance with law.

14. 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 other statutory dues, 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. Further the approval of the Scheme would in no manner affect the tax treatment of the transactions under the Income Tax Act, 1961 or serve as any exemption or defense for the Applicant Company against tax treatment in accordance with the provisions of Income Tax Act, 1961.



15. **THIS TRIBUNAL FURTHER DIRECTS** with respect to Transferor Company and Transferee Company, that:

- (i) Upon the sanction becoming effective from the appointed date of amalgamation i.e., 01.04.2020, the Transferor Company shall stand dissolved without undergoing the process of winding up.
- (ii) All benefits, entitlements, incentives and concessions under incentive schemes and policies that the Transferor Company are entitled to including 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;
- (iii) All contracts of the Transferor Company, 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 favor of the Transferee Company and may be enforced by or against it as fully and effectually as if, instead of the Transferor Company, the Transferee Company had been a party or beneficiary or obliged thereto;
- (iv) All the employees of the Transferor Company 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 favorable than those on which they are engaged by the

Transferor Company, 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;


- (v) All liabilities of the Transferor Company, shall, pursuant to the provisions of section 232(4) and other applicable provisions of the Company Act, 2013, to the extent they are outstanding as on the Effective Date, without any further act, instrument or deed stand transferred to and be deemed to be the debts, liabilities, contingent liabilities, duties and obligations etc. as the case may be, of the Transferee Company and shall be exercised by or against the Transferee Company, as if it had incurred such liabilities.
- (vi) All proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company.
- (vii) The Income Tax department is permitted to retain its recourse for recovery in respect of demand and any other future liabilities of the transferor Company and the transferee company, in respect of the assets sought to be transferred under the proposed Scheme.
- (viii) That any person interested shall be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary.

16. That the Applicant Companies shall within thirty days of the date of the receipt of this Order or on sanction of the Scheme with respect to Transferee Company, whichever is later, cause a Certified Copy of this Order to be delivered to the Registrar of Company for registration and on such Certified Copy being so delivered, the Transferor Company shall be



dissolved and the Registrar of Company shall place all documents relating to the Transferor Company on the file kept by him in relation to the Transferee Company and the files relating to all the Applicant Company shall be consolidated accordingly.

17. The Company Petition is **ALLOWED** in the aforesaid terms.

  
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(L.N. GUPTA)  
MEMBER (T)

  
(BACHU VENKAT BALARAM DAS)  
MEMBER (J)