

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT III

C.A.(CAA)/21/MB/C-III/2024

In the matter of the Companies Act, 2013
(18 of 2013);

AND

In the matter of Sections 230 to 232 and
other applicable provisions of the
Companies Act, 2013 and Rules framed
thereunder;

AND

In the matter of Scheme of Amalgamation
of One Place Commercials Private Limited
(First Transferor Company / First
Applicant Company) and Palava City
Management Private Limited (Second
Transferor Company/ Second Applicant
Company) with Macrotech Developers
Limited (Transferee Company/ Third
Applicant Company) and their respective
Shareholders (Scheme)

One Place Commercials Private)

Limited)

CIN: U70100MH2016PTC273057)

a company incorporated under the)

Companies Act, 2013 having its)

registered office at 412, Floor – 4,)

17G Vardhaman Chamber, Cawasji)

Patel Road, Horniman Circle, Fort,)

Mumbai – 400001, Maharashtra,)

India)

... First Applicant Company/ First

Transferor Company

Palava City Management Private)

Limited)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT III C.A.(CAA)/21/MB/C-III/2024

CIN: U40100MH2008PTC177500)
a company incorporated under the)
Companies Act, 1956 having its)
registered office at 412, Floor – 4,)
17G Vardhaman Chamber, Cawasji)
Patel Road, Horniman Circle, Fort,) ... *Second Applicant Company/*
Mumbai – 400001, Maharashtra,) *Second Transferor Company*
India

Macrotech Developers Limited)
CIN: L45200MH1995PLC093041)
a company incorporated under the)
Companies Act, 1956 having its)
registered office at 412, Floor – 4,)
17G Vardhaman Chamber, Cawasji)
Patel Road, Horniman Circle, Fort,) ... *Third Applicant Company/*
Mumbai – 400001, Maharashtra,) *Transferee Company*
India

(Hereinafter First Applicant Company, Second Applicant Company and Third Applicant Company shall be collectively known as Applicant Companies)

Order pronounced on: 17.04.2024

Coram:

Hon'ble Ms. Lakshmi Gurung, Member (Judicial)

Hon'ble Sh. Charanjeet Singh Gulati, Member (Technical)

Appearances:

For the Applicant Companies: CA Harsh C Ruparelia i/b. Arch and Associates

Per: Ms. Lakshmi Gurung, Member (Judicial)

ORDER

1. The present Scheme is a Scheme of Amalgamation of One Place Commercials Private Limited (**First Transferor Company / First Applicant Company**) and Palava City Management Private Limited (**Second Transferor Company/ Second Applicant Company**) with Macrotech Developers Limited (**Transferee Company/ Third Applicant Company**) and their respective Shareholders (**Scheme**) under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 and Rules framed thereunder.
2. The Boards of the Applicant Companies approved the said Scheme of Amalgamation by passing their respective Resolutions on **27th January 2024** which are annexed to the Company Scheme Application.
3. The Appointed Date of the Scheme is **01.04.2024**.
4. **The Applicant Companies**
 - 4.1 The First Transferor Company which was incorporated on 11.02.2016 having registered office at Mumbai, Maharashtra is engaged in the business of construction and real estate development and allied activities.
 - 4.2 The Second Transferor Company which was incorporated on 07.01.2008 having registered office at Mumbai, Maharashtra is engaged in the business of providing facility management and allied services.
 - 4.3 The Transferee Company was incorporated on 25.09.1995 having registered office at Mumbai and is engaged in the business of construction and real estate development and allied activities.

4.4 As all the Applicant Companies have registered offices at Mumbai, Maharashtra, this Bench has jurisdiction to entertain the present application.

5. **Rationale of the Scheme:**

The Learned Counsel submits the introduction and rationale for the Scheme: -

- *The merger of Transferor Companies into the Transferee Company will result in operational synergies resulting in cost optimization;*
- *The Scheme will also achieve rationalization of costs by simplification of management structure leading to better administration and cost savings;*
- *Rationalization of the group holding structure by way of reduction in the number of entities and streamline the structure of Transferee Company;*
- *Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Transferee Companies, and greater financial strength and flexibility for the Transferee Company, which would result in maximizing overall shareholder value.”*

6. It is submitted that the Transferor Companies are wholly-owned subsidiaries of the Transferee Company and the entire issued, subscribed, paid-up share capital of the Transferor Companies is directly held by the Transferee Company and in lieu of that no shares would be issued as consideration to the shareholders of the Transferor Companies by the Transferee Company.

7. The **Authorized, Issued, Subscribed and Paid Up Capital** of the Applicant Companies are as under: -

- 7.1 The Authorized, Issued, Subscribed and Paid Up Capital of the **First Transferor Company “One Place Commercials Private Limited”** as on 31.03.2023 is as under:

Particulars	Amount (in Lakhs)
Authorised Capital	
1000 Equity Shares of Rs. 100/- each	1,00,000
10,000 Preference Shares of Rs. 10/- each	1,00,000
TOTAL	2,00,000
Issued Subscribed and Paid-up Capital	
500 Equity Shares of Rs. 100/- each	50,000
TOTAL	50,000

- 7.2 The Authorized, Issued, Subscribed and Paid Up Capital of the **Second Transferor Company “Palava City Management Private Limited”** as on 31.03.2023 is as under:

Particulars	Amount (in Rs.)
Authorised Capital	
50,000 Equity Shares of Rs. 10/- each	5,00,000
TOTAL	5,00,000
Issued Subscribed and Paid-up Capital	
50,000 Equity Shares of Rs. 10/- each	5,00,000
TOTAL	5,00,000

- 7.3 The Authorized, Issued, Subscribed and Paid Up Capital of the **Transferee Company “Macrotech Developers Limited”** as on 31.03.2023 is as under:

Particulars	Amount (in Rs.)
Authorised Capital	
129,50,75,750 Equity Shares of Rs. 10/- each	1295,07,57,500
1,26,96,250 Preference Shares of Rs. 10/- each	12,69,62,500
TOTAL	1307,77,20,000
Issued Subscribed and Paid-up Capital	
96,45,08,249 Equity Shares of Rs. 10/- each	964,50,82,490
TOTAL	964,50,82,490

8. The equity shares of the Transferee Company are listed with the Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). As per the requirement of SEBI Master Circular No. SEBI/HO/CFD/POD-2/P/CIR/2023/93 dated 20.06.2023, the Transferee Company has sent letters dated 08.02.2024 to the BSE and NSE respectively. The intimation letters are annexed to the Application.

9. **Meetings of Shareholders of Transferor Companies**

- 9.1 There are **2** (two) Equity Shareholders in the **First Transferor Company**. All Equity Shareholders have given their consent for approval of the Scheme by way of affidavits which are annexed to the Application. In view of the consent affidavits given by all Equity shareholders of the First Applicant Company, the meeting of the Equity shareholders of the First Applicant Company for approving the Scheme is hereby **dispensed with**.

9.2 There are **2 (Two) Equity Shareholders** in the **Second Transferor Company**. All Equity Shareholders have given their consent for approval of the Scheme by way of affidavits which are annexed to the Application. In view of the consent affidavits given by all Equity shareholders of the Second Applicant Company, the meeting of the Equity shareholders of the Second Applicant Company for approving the Scheme is hereby **dispensed with**.

10. **Meetings of Creditors of Transferor Companies**

10.1 As regards the meetings of the Secured and Unsecured Creditors of the Applicant Companies, it is submitted that the proposed Scheme of Amalgamation has no arrangement with the creditors under section 230(1)(a) of the Companies Act, 2013, and post the sanction of the Scheme, the assets of the Transferee Company will be more than sufficient to discharge the secured creditors and unsecured creditors of the Transferor Companies. The net-worth of the Transferee Company is significantly positive and there would not be any material adverse impact on the financial position, post amalgamation of the Transferor Companies. It is further submitted that no reconstruction or arrangement is proposed by the Applicant Companies either with its shareholders or with its Secured Creditors or Unsecured creditors, as the case may be. Further, the Scheme involves amalgamation of wholly-owned subsidiaries with its Holding Company and is not required to hold meetings of Secured Creditors and Unsecured creditors for approval of the proposed Scheme. Reliance is placed on **DLF Limited [Company Appeal (AT) No. 180/2019]** passed by Hon'ble NCLAT on **19.08.2019**.

10.2 There are **2 Secured creditors** aggregating to Rs. 1,026.20 crores and **115 Unsecured creditors** aggregating to Rs. 120.75 crores in the **First Transferor Company**. The First Transferor Company is directed to send

notices to its Secured Creditors and its Unsecured Creditors having outstanding balance of Rs. 50,000 and above, by courier/ registered post/ speed post/ hand delivery/ email, at their last known address or email address registered with the Company, with a clear direction that they may submit their representations, if any, within a period of 30 days from the date of receipt of such intimation to the Tribunal with a copy of such representations to be simultaneously served upon the First Transferor Company. Subject to compliance of the above directions, the meetings of the secured and unsecured creditors of the First Transferor Company are **dispensed with**.

- 10.3 There are **no Secured Creditor** and **217 Unsecured Creditors** aggregating to Rs. 11.32 Crores in the **Second Transferor Company**. Since the Second Transferor Company has no secured creditors, the question of convening the meeting of secured creditors of the Second Transferor Company does not arise. The Second Transferor Company is directed to send notices to its Unsecured Creditors having outstanding balance of Rs. 50,000 and above, by courier/ registered post/ speed post/ hand delivery/ email, at their last known address or email address registered with the Company where the Company has been corresponding to the creditors, with a clear direction that they may submit their representations, if any, within a period of 30 days from the date of receipt of such intimation to the Tribunal with a copy of such representations to be simultaneously served upon the Second Applicant Company. Subject to compliance of the above directions, the meeting of the unsecured creditors of the Second Transferor Company is **dispensed with**.

11. **Meetings of Equity Shareholders and Creditors of Transferee Company**

- 11.1 There are **52805 Equity Shareholders** in the Transferee Company. Further, there are **47 Secured Creditors** aggregating to Rs. 70,113.60

Million and **7280 Unsecured Creditors** aggregating to Rs. 53,600 Million in the **Transferee Company**.

11.2 As regards the Transferee Company, it is noted that the Transferee Company is seeking dispensation of meetings of its shareholders and creditors for the following reasons:

- (a) The Transferor Companies are wholly-owned subsidiaries of the Transferee Company, thus, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Transferee Company are not affected since there will be no issue of shares pursuant to the Scheme and there would be absolutely no change in the equity share capital of the Transferee Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Transferee Company.
- (b) The book net-worth of the First Transferor Company, Second Transferor Company and Transferor Company as on 31.12.2023 is Rs. 2,265.65 Million, Rs. 22.851 Million and Rs. 1,31,633 Million, respectively. Hence, upon coming into effect of the Scheme, the consolidated book net-worth of the Transferee Company shall be Rs.1,33,801 Million.
- (c) The rights of the creditors of the Transferee Company are not affected since there will be no reduction in their claims and the assets of the Transferee Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Transferee Company is and will continue to remain highly positive post-merger.
- (d) The existence of the Transferee Company will remain as before without any change either in its shareholding pattern or debt position pursuant to the sanctioning of the Scheme.

- (e) No undertaking of the Applicant Companies is being parted away or being disposed of and hence, provisions of Section 180 of the Companies Act, 2013 are also not applicable.
- (f) Reliance is placed on the judgment of Hon'ble Bombay High Court passed in **Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases.**

11.3 The Net-worth Certificate dated 19.02.2024 certified by the statutory auditors is placed on record which is reproduced below:

(As on 31.12.2023)
Amount in Millions

Particulars	Pre-amalgamation (Transferor 1) (In Millions)	Pre-amalgamation (Transferor 2) (In Millions)	Pre-amalgamation (Transferee) (In Millions)	Post amalgamation (In Millions)
Share Capital	0.05	0.50	9,645	9,645
Other Equity	2265.60	22.351	1,21,988	1,24,156
Net Worth	2265.65	22.851	1,31,633	1,33,801

11.4 Considering the submissions made above and the Net Worth Certificate dated 19.02.2024, convening of the meetings of the shareholders and secured creditors and unsecured creditors of the Transferee Company are **dispensed with**. However, the Transferee Company shall issue notice to all its secured and unsecured creditors.

12. The Applicant Companies are directed to serve notices along with copy of the Scheme upon: -

- (i) the Central Government through the office of Regional Director, Western Region, Mumbai;
- (ii) Registrar of Companies, Mumbai;
- (iii) Official Liquidator, High Court, Bombay (For Transferor Companies);
- (iv) Securities and Exchange Board of India;

- (v) Bombay Stock Exchange Limited;
- (vi) National Stock Exchange Limited;
- (vii) Concerned Income Tax Authorities within whose jurisdiction the Applicant Companies' assessments are made, and also to the Nodal Officer at Pr. CCIT Mumbai, 3rd floor, Aayakar Bhavan, Maharashi Karve Road, Mumbai 400020;
- (viii) Concerned Goods and Service Tax Authorities within whose jurisdiction the Applicant Companies' assessments are made;
- (ix) MahaRERA (As First Transferor Company and Transferee Company are engaged in real estate business);

with a direction that they may submit their representations, if any, within a period of 30 (thirty) days from the date of receipt of such notice to the Tribunal and a copy of such representations shall simultaneously be served upon the respective Applicant Companies.

13. The Applicant Companies to file affidavit of compliance with proof along with the Second Motion Petition.
14. Ordered accordingly.

Sd/-
Sh. Charanjeet Singh Gulati
Member (Technical)

Sd/-
Ms. Lakshmi Gurung
Member (Judicial)