

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT III**

**C.A.(CAA)/ 225 /MB/2022**

*Under Section 230 to 232 and other applicable provisions of the Companies Act, 2013*

*And*

*In the matter of Scheme of Amalgamation of Oberoi Constructions Limited (“OCL” or “Transferor Company 1”) and Oberoi Mall Limited (“OML” or “Transferor Company 2”) and Evenstar Hotels Private Limited (“EHPL” or “Transferor Company 3”) and Incline Realty Private Limited (“IRPL” or “Transferor Company 4”) with Oberoi Realty Limited (“ORL” or “Transferee Company”) and their respective shareholders (“Scheme”)*

**Oberoi Constructions Limited**

Registered office at: Commerz,  
3rd Floor, International Business Park,  
Oberoi Garden City,  
Off Western Express Highway,  
Goregaon (East), Mumbai – 400 063  
CIN: U45202MH1993PLC074836

*..... The Transferor Company 1 / First Applicant Company*

**Oberoi Mall Limited**

Registered office at: Commerz,  
3rd Floor, International Business Park,  
Oberoi Garden City,

Off Western Express Highway,  
Goregaon (East), Mumbai – 400 063  
CIN: U45202MH2001PLC132119

..... *The Transferor Company 2 / Second Applicant Company*

**Evenstar Hotels Private Limited**

Registered office at: Commerz,  
3rd Floor, International Business Park,  
Oberoi Garden City,  
Off Western Express Highway,  
Goregaon (East), Mumbai – 400 063  
CIN: U55205MH2019PTC324929

..... *The Transferor Company 3 / Third Applicant Company*

**Incline Realty Private Limited**

Registered office at: Commerz,  
3rd Floor, International Business Park,  
Oberoi Garden City,  
Off Western Express Highway,  
Goregaon (East), Mumbai – 400 063  
CIN: U45400MH2014PTC255010

..... *The Transferor Company 4 / Fourth Applicant Company*

**Oberoi Realty Limited**

Registered office at: Commerz,  
3rd Floor, International Business Park,  
Oberoi Garden City,  
Off Western Express Highway,  
Goregaon (East), Mumbai – 400 063  
CIN: L45200MH1998PLC114818

..... *The Transferee Company / Fifth Applicant Company*

(Together referred to as '**Applicant Companies**')

Order delivered on: 01.12.2022

Coram:

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via Physical hearing):

For the Applicants: Mr. Gaurav Joshi, Mr. Hemant Sethi, Ms. Devanshi Sethi,  
Ms. Vidisha Poonja i/b Hemant Sethi & Co., Advocates

### **ORDER**

1. The Court convened via Video Conferencing today.
2. The Learned Counsel for the Applicant Companies states that the present Scheme is Scheme of Amalgamation of wholly owned subsidiaries namely, Oberoi Constructions Limited ('Transferor Company 1') and Oberoi Mall Limited ('Transferor Company 2') and Evenstar Hotels Private Limited ('Transferor Company 3') and Incline Realty Private Limited ('Transferor Company 4'), with their holding company namely Oberoi Realty Limited ('the Transferee Company') and their respective shareholders ('Scheme'), under the provisions of Sections 230 to 232 of the Companies Act, 2013.
3. The Learned Counsel for the Applicant Companies states that the resolutions passed by the Board of Directors of the Applicant Companies in their respective meetings conducted on 9<sup>th</sup> August 2022 approved the Scheme. The Appointed Date fixed under the Scheme is 1<sup>st</sup> April 2022.

4. The Learned Counsel for the Applicant Companies further submits the introduction and rationale for the Scheme of Amalgamation: -

The Transferee Company, through itself and its subsidiaries, is primarily engaged in the business of real estate development and hospitality in India. Within the real estate sphere, the Transferee Company and its subsidiaries develop residential, commercial, retail and social infrastructure assets. The real estate projects though housed in various entities has similar industry risks, business cycles, growth potential, profitability and ability to attract investors.

Owing to the similar nature of business involved, it has become imperative for the Transferee Company to reorganize itself so as to enable simplified structure and greater management focus on the business.

Therefore, the Board of Directors of the companies involved in the Scheme have proposed Amalgamation of OCL, OML, EHPL, and IRPL with ORL and their respective shareholders under the provisions of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013.

The proposed amalgamation would achieve the following benefits:

- a. Simplification of overall group structure and creating efficiencies through amalgamation;
- b. Create enhanced value for the stakeholders of the Transferee Company and a clear strategic road map towards improved performance outlook and increased investor confidence;
- c. Optimal utilization of existing resources through consolidation of operations into a single legal entity;
- d. Provide an opportunity to leverage and pool manpower of the respective companies;
- e. Derive operational and financial synergies through prudent financial management and cost reduction; and

- f. Better administration, reduction / rationalization in costs, focused operational efforts and elimination of duplication.
5. The Learned Counsel for the Applicant Companies further submit that the Transferor Company 1, Transferor Company 2, Transferor Company 3 and Transferor Company 4 (together referred to as 'Transferor Companies') are wholly owned subsidiaries of the Transferee Company and entire share capital of Transferor Companies is owned and controlled by the Transferee Company. There will not be any issue and allotment of any shares by the Transferee Company as consideration pursuant to the merger.
6. The Learned Counsel for the Applicant Companies further submits that there are 8 (eight) Equity Shareholders in the First Applicant Company and the consent affidavits of all the Equity Shareholders of the First Applicant Company have been annexed to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the First Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.
7. The Learned Counsel for the Applicant Companies further submits that there are 7 (seven) Equity Shareholders in the Second Applicant Company and the consent affidavits of all the Equity Shareholders of the Second Applicant Company have been annexed to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the Second Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Second Applicant Company is hereby dispensed with.
8. The Learned Counsel for the Applicant Companies further submits that there are 2 (two) Equity Shareholders in the Third Applicant Company and the consent affidavits of both the Equity Shareholders of the Third Applicant Company have been annexed to the Company Scheme Application. In view of the fact that both

the Equity Shareholders of the Third Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Third Applicant Company is hereby dispensed with.

9. The Learned Counsel for the Applicant Companies further submits that there are Three (3) Equity Shareholders in the Fourth Applicant Company and the consent affidavits of all the Equity Shareholders of the Fourth Applicant Company have been annexed to the Company Scheme Application. In view of the fact that all the Equity Shareholders of the Fourth Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Fourth Applicant Company is hereby dispensed with.
10. The Learned Counsel for the Applicant Companies further submits that there are no Secured Creditors in the Second Applicant Company and therefore the question of issuing notices to the Secured Creditors of the Second Applicant Company does not arise.
11. The Learned Counsel for the Applicant Companies further submits that there is 1 Secured Creditor of value INR 36,342.79 lakhs in the First Applicant Company, 1 Secured Creditor of value INR 25,902.20 lakhs in the Third Applicant Company and 1 Secured Creditor of value INR 43,400.91 lakhs in the Fourth Applicant Company. Further, Learned Counsel for the Applicant Companies submits that the consent affidavits of all the Secured Creditors of the First Applicant Company, Third Applicant Company and Fourth Applicant Company have been annexed to the Additional Affidavit filed with the NCLT on 9<sup>th</sup> November, 2022. In view of the fact that all the Secured Creditors of the First Applicant Company, Third Applicant Company and Fourth Applicant Company have given their consent to the Scheme, the meeting of the Secured Creditors of the First Applicant Company, Third Applicant Company and Fourth Applicant Company is hereby dispensed with.

12. The Learned Counsel for the Applicant Companies further submits that there are 393 Unsecured Creditors of value INR 1,34,850.17 lakhs in the First Applicant Company, 141 Unsecured Creditors of value INR 11,894.38 lakhs in the Second Applicant Company, 7 Unsecured Creditors of value INR 85,084.36 lakhs in the Third Applicant Company and 341 Unsecured Creditors of value INR 1,02,301.17 lakhs in the Fourth Applicant Company. Further, Learned Counsel for the Applicant Companies submits that the consent affidavit from Fifth Applicant Company constituting 94.65% of the total outstanding value of unsecured creditors in the First Applicant Company, 99.98% of the total outstanding value of unsecured creditors in the Third Applicant Company and 94.14% of the total outstanding value of unsecured creditors in the Fourth Applicant Company has been annexed to the Additional Affidavit filed with the NCLT on 9<sup>th</sup> November, 2022. Further, Learned Counsel for the Applicant Companies submits that the outstanding value of unsecured creditors of the Second Applicant Company constitutes 1.11% of the combined net-worth. Further, Learned Counsel for the Applicant Companies submits that since the present Scheme is an arrangement between the Applicant Companies and its shareholders as contemplated in Section 230(1)(b) and not under the provisions of Section 230(1)(a) of the Companies Act, 2013 as there is no compromise or arrangement with creditors as it does not adversely affect the rights and interests of the Unsecured Creditors of the First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company. Further there is no diminution of liability of any of the Unsecured Creditors of the First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company, who will be paid off in the ordinary course of business. In view of above, the meetings of the Unsecured Creditors of the First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company are hereby dispensed with. The First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company are hereby directed to issue notice to all its Creditors by Courier/Registered Post/Speed Post/Hand Delivery / Email, at their last known address or email addresses as per the records

of the respective Applicant Companies with a direction that they may submit their representations, if any, to the Tribunal within 30 (thirty) days from the date of service of said notice and copy of such representations shall simultaneously be served upon the respective Applicant Companies, failing which it shall be presumed that the Creditors of the First, Second, Third and Fourth Applicant Companies have no representations to make on the Scheme.

13. The Applicant Companies respectfully submits that:
  - a. Being a merger of wholly owned subsidiary companies into its holding company, no shares would be issued or allotted as consideration pursuant to the merger. Accordingly, the rights of members of the Fifth Applicant 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 paid up equity share capital of the Fifth Applicant Company. Also, the present Scheme will not result in any dilution in shareholding of the shareholders of the Fifth Applicant Company;
  - b. The rights of the creditors of the Fifth Applicant Company are not affected since there will be no reduction in their claims and the assets of the Fifth Applicant Company, post amalgamation, will be more than sufficient to discharge their claims. Also, the net worth of the Fifth Applicant Company is and will continue to remain highly positive immediately post-merger; and
  - c. The existence of the Fifth Applicant Company will remain as before without any change to its shareholding pattern pursuant to the Scheme.
  
14. The Learned Counsel for the Fifth Applicant Company submits that in view of above, no reorganizing or arrangement is proposed by the Fifth Applicant Company either with its shareholders or with its creditors, and thus, it does not require to hold either shareholders meeting or creditors meeting for approval of the proposed Scheme.



15. It is respectfully submitted that the Hon'ble High Court of Judicature at Bombay in the case of Mahaamba Investments Limited V/s. IDI Limited (2001) 105 Company Cases page 16 to 18 inter alia observed and held that if the Scheme of Amalgamation provides for no issue of equity shares to the members of the transferor company (being a wholly owned subsidiary of the transferee company), and the creditors of the transferee company, are not likely to be affected by the scheme, a separate Petition by the transferee company was not necessary. The Hon'ble National Company Law Appellate Tribunal in the case of DLF Phase-IV Commercial Developers Limited & Ors, in Company Appeal (AT) No. 180 of 2019, Ambuja Cements Limited, in Company Appeal (AT) No. 19 of 2021, and Patel Engineering Limited, in Company Appeal (AT) No. 137 of 2021, Company Scheme Application No. 911 of 2014 in case of a Eurokids India Private Limited passed by SJ Kathawalla, (J) of Bombay High Court in the similar facts have taken similar view.
16. The facts in the present case are similar to the facts of the above cases, therefore, it is prayed that the meeting of shareholders and creditors of the Fifth Applicant Company be dispensed with. The rights of creditors of the Fifth Applicant Company are not adversely affected as there is no compromise or arrangement with them. The present Scheme is an arrangement between the Fifth Applicant Company and its equity shareholders as contemplated under Section 230(1)(b) of the Companies Act 2013.
17. Based on the above, this Bench is of the view that the meeting of the equity shareholders and creditors of the Fifth Applicant Company is hereby dispensed with since the First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company are wholly owned subsidiaries of the Fifth Applicant Company.
18. The Applicant Companies are accordingly directed to serve notices along with copy of scheme upon-

- a. Concerned Income Tax Authorities within whose jurisdiction the Applicant Company's assessments are made i.e., for the First Applicant Company, having PAN AAACO1805E and address at Deputy Commissioner of Income Tax- Central Circle 4(1), Room no. 1916 19<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400021, for the Second Applicant Company, having PAN AAACO6944Q and address at Deputy Commissioner of Income Tax- Central Circle 4(1), Room no. 1916 19<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400021, for the Third Applicant Company, having PAN AAFCE4754K and address at Income Tax Officer - Ward 12(2)(1), Room no. 147B, Aayakar Bhavan, Maharshi Karve Road, New Marine Lines, Mumbai 400020, for the Fourth Applicant Company, having PAN AADCI5238A and address at Deputy Commissioner of Income Tax- Central Circle 4(1), Room no. 1916 19<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400021 and for the Fifth Applicant Company, having PAN AABCK0235H and address at Deputy Commissioner of Income Tax- Central Circle 4(1), Room no. 1916 19<sup>th</sup> Floor, Air India Building, Nariman Point, Mumbai 400021;
- b. The Central Government through the office of Regional Director, Western Region, Mumbai;
- c. The Registrar of Companies, Mumbai;
- d. The Goods and Service Tax Authorities. GST registration number of the First Applicant Company – 27AAACO1805E1ZX, for Second Applicant Company – 27AAACO6944Q1ZQ, for Third Applicant Company – 27AAFCE4754K1ZB, for Fourth Applicant Company – 27AADCI5238A1ZX and for Fifth Applicant Company – 27AABCK0235H1ZW;
- e. BSE Limited (only in case of the Fifth Applicant Company);
- f. The National Stock Exchange of India (only in case of the Fifth Applicant Company);
- g. The Securities Exchange Board of India (only in case of the Fifth Applicant Company); and

h. The Official Liquidator, Bombay (only in case of the First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company)

pursuant to sub-section (5) of Section 230 of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, 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 with copy of such representations shall simultaneously be served upon the Applicant Companies, failing which, it shall be presumed that the authorities have no representations to make on the proposals.

19. The First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company is also directed to serve notice upon Official Liquidator, pursuant to section 230(5) of the Companies Act, 2013 and as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, M/S Harsh Ruparelia & Company, Chartered Accountant, having its address at: B/204, Jyoti Tower, Jyoti Park CHS Ltd., S. V. Road, Kandivali (W), Mumbai - 400 067; having contact number: (+91) 9004357775 and having email address: harsh.ruparelia@yahoo.com are appointed to assist the Official Liquidator to scrutinize the books of accounts of the First Applicant Company, Second Applicant Company, Third Applicant Company and Fourth Applicant Company for the last 5 (five) years and submit its representation/ report to the Tribunal. The Applicant Companies to pay fees of INR 2,00,000/- for this purpose. If no representation/ response is received by the Tribunal from Official Liquidator, Bombay within a period of 30 (thirty) days from the date of receipt of such notice, it will be presumed that Official Liquidator has no representation / objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

20. The Applicant Companies to serve notices upon any other sectoral authorities, if applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the concerned sectoral authorities or authorities within 30 (thirty) days of the date of receipt of the notice, it will be presumed that the concerned sectoral regulators or authorities have no objection to the proposed Scheme.
21. The Applicant Companies are directed to host notices along with the copy of the Scheme on their respective websites if any.
22. That the Applicant Companies to file an Affidavit of Service of the directions given by the Tribunal in the Registry for service of notice to the regulatory authorities as stated above and do report to this Tribunal within 10 (ten) days that the directions regarding the issue of notices have been duly complied with. The Applicant Companies are also directed to include in the affidavit of service of proof of dispatch of documents sent to all its creditors, wherever applicable.
23. The Applicant Companies shall file compliance report with the registry in regard to the directions given in this Order in lieu of customary Affidavit of Service proving dispatch of Notices to relevant Creditors of the Applicant Companies and service of Notice to the Regulatory Authorities by the Applicant Companies.
24. Order accordingly. Pronounced in open Court today.

**Sd/-**

**Anuradha Sanjay Bhatia**  
**Member (Technical)**

**Sd/-**

**H.V. Subba Rao**  
**Member (Judicial)**