IN THE HIGH COURT OF DELHI

COMPANY PETITION NO. 364/2014

Reserved on 2nd March, 2015
Date of pronouncement:26th March, 2015

In the matter of
The Companies Act, 1956 & the Companies Act, 2013 (to the extent applicable):

And

Petition under Sections 391 to 394 read with Section 100 of the Companies Act, 1956

Scheme of Arrangement between:

PSB Realtors Private Limited
Petitioner/Transferor Company

WITH

Land Rush Estate India Private Limited
Petitioner/Transferee Company

AND

Goodland India Infracon Private Limited
Petitioner/Resulting Company

Through Mr. Ashish Middha, Advocate for the petitioners
Ms. Aparna Mudiam, Assistant Registrar of Companies for the Regional Director

<u>SUDERSHAN KUMAR MISRA, J.</u>

1. This joint petition has been filed under Sections 391 to 394 read with Section 100 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Arrangement between PSB Realtors Private Limited (hereinafter referred to as the transferor company) with Land Rush Estate India Private Limited (hereinafter referred to as the transferee company) and Goodland India Infracon Private Limited (hereinafter referred to as the resulting company).

2. The registered offices of the transferor company, the transferee company and the resulting company are situated at New Delhi, within the jurisdiction of this court.

3. The transferor company was incorporated under the Companies Act, 1956 on 28th November, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferee company was incorporated under the Companies Act, 1956 on 28th February, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

5. The resulting company was incorporated under the Companies Act, 1956 on 24th March, 2014 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The present authorized share capital of the transferor company is Rs.2,10,00,000/- divided into 21,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.2,04,60,000/- divided into 20,46,000 equity shares of Rs.10/- each fully paid-up.

7. The present authorized share capital of the transferee company is Rs.60,00,000/- divided into 6,00,000 equity shares of Rs.10/- each. The

issued, subscribed and paid-up share capital of the company is Rs.59,80,680/- divided into 5,98,068 equity shares of Rs.10/- each fully paid-up.

8. The present authorized share capital of the resulting company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each fully paid-up.

9. Copies of the Memorandum and Articles of Association of the transferor, transferee and resulting companies have been filed on record with the joint application, being CA(M) 88/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2014, of the transferor and transferee companies, along with the report of the auditors, had also been filed. It is submitted by the petitioners that since the resulting company has been recently incorporated, no accounts of the resulting company have been prepared and audited for any of the financial year.

10. A copy of the Scheme of Arrangement has been placed on record and the salient features of the Scheme have been incorporated and detailed in the petition and the accompanying affidavit. It is submitted that the scheme, *inter alia,* provides for: (a) amalgamation of the transferor

company with the transferee; (b) demerger of Plot measuring 4691 sq. yards in Khasra No. 1889 in Village Kantha, Distt. Baghpat, Delhi Saharanpur High at Village Kantha, Khekra Distt. Baghpat, U.P. i.e. the demerged undertaking of the transferee company into the resulting company; and (c) reduction of share capital of the transferee company, post merger and demerger. It is further submitted by the petitioners that the transferor, transferee and resulting companies are in the business of real estate and allied activities and are under the same management and control. It is claimed that the proposed amalgamation will result in reduction in overheads and other expenses, reduction in administrative and procedural work, eliminate duplication of work, better and more productive utilization of various resources and will enable the undertakings concerned to effect internal economies and optimize productivity. It is further claimed that the Scheme will contribute in furthering and fulfilling the objects of the companies concerned and enabling the optimum growth and development of their combined business and separate entity.

11. The petitioners have also moved an application being CA 2127/2014 seeking amendment of the Scheme limited to Clause 3.3.1 of the Scheme, regarding issue and allotment of equity shares to the shareholders of the transferee/demerged company. After issuance of notice to this application, Regional Director as well as the Official Liquidator had filed their respective replies. They did not raise any

objection to the proposed amendment. It was also noticed that along with the proposed amendment, as claimed, the applicant had filed fresh consents of the shareholders and unsecured creditors. It is also stated that there are no secured creditors of the applicant company. Under the circumstances, the application was allowed and the amended Scheme was taken on record.

12. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, the transferee company shall issue and allot equity shares to the shareholders of the transferor company in the following ratio:

> "01 equity share of Rs.10/- each of the transferee company, credited as fully paid up, for every 17.41 equity shares of Rs.10/- each held by the shareholders in the transferor company."

It is further provided that upon demerger of the demerged business of the transferee company into the resulting company, the resulting company shall issue and allot equity shares to the shareholders of the transferee/demerged company equivalent to the amount of Rs.1,14,415.69/- which shall be rounded off to Rs.1,14,420/- being difference in the value of assets and liabilities of demerged business which are proposed to be transferred at book value. The shares shall be allotted on pro-rata basis to the shareholders of the transferee company.

13. It has been submitted by the petitioners that no proceedings under Sections 235 to 251 of the Companies Act, 1956 are pending against the petitioner companies.

14. The Board of Directors of the transferor company, the transferee company and the resulting company in their separate meetings held on 28th April, 2014 have unanimously approved the proposed Scheme of Arrangement. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor company, the transferee company and the resulting company had been placed on record in CA(M) 88/2014.

15. The petitioner companies had earlier filed CA (M) No. 88/2014 seeking directions of this court to dispense with the requirement of convening the meetings of their equity shareholders, secured and unsecured creditors, which are statutorily required for sanction of the Scheme of Arrangement. Vide order dated 19th May, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders and unsecured creditors of the petitioner companies, there being no secured creditor of the petitioner companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Arrangement.

16. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Arrangement. Vide order dated 29th

May, 2014, notice in the petition was directed to be issued to the Regional Director, Northern Region, and the Official Liquidator. Citations were also directed to be published in 'Business Standard' (English) and 'Veer Arjun' (Hindi) editions. The petitioners have filed the affidavit showing publication of citations in the aforesaid newspapers on 26th June, 2014. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit.

17. Pursuant to the notices issued, the Official Liquidator sought information from the petitioner companies. Based on the information received, the Official Liquidator has filed a report dated 30th August, 2014 wherein he has stated that he has not received any complaint against the proposed Scheme of Arrangement from any person/party interested in the Scheme in any manner and that the affairs of the transferor company do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

18. In response to the notices issued in the petition, Mr. A. K. Chaturvedi, Regional Director, Northern Region, Ministry of Corporate Affairs has filed his report dated 2nd September, 2014. Relying on Clause 6.2.1 of Part-6 of the Scheme, he has stated that, upon sanction of the Scheme of Arrangement, all the employees of the demerged company engaged in demerged undertaking shall become the employees of the

resulting company and all the employees of the transferor company shall become the employees of the transferee company without any break or interruption in their services.

19. The Regional Director in Para 5 of his report has, however, submitted that para 3.2 of Part-3 of the Scheme provides that demerger shall be in accordance with Section 2(19AA) of the Income Tax Act, 1961, which stipulates several conditions to comply. He, therefore, prays that petitioner/demerged company may be directed to submit an undertaking to comply with those conditions. In para 6 of his report, he submitted that a perusal of the shareholding pattern of the transferor company shows that its 69.50% shares are held by the Non Resident Indian. He, therefore, prays that the transferor company may be directed to give an undertaking for all compliances from Reserve Bank of India as required under FEMA for above transactions involving foreign banks/entities. In reply to the first observation, the petitioner companies in their reply have submitted that the compliance of Section 2(19AA) of the Income Tax Act, 1961 is necessary to enable the petitioners to avail the benefit of Income Tax Act. So far as the second observation of the Regional Director is concerned, the petitioners have submitted that as per RBI's circular for allotting shares to the NRI shareholders, in case of amalgamation, RBI's permission is not required. However, the petitioners have undertaken to comply with the requirements of Section 2(19AA) of the Income Tax Act, 1961 and also to comply with the provisions of

FEMA in allotting shares to the Non Resident Indian, if required. In view of the undertakings given by the petitioners, the observations raised by the Regional Director do not subsist.

20. No objection has been received to the Scheme of Arrangement from any other party. The petitioner companies, in the affidavit dated 11th September, 2014 of Mr. Gurcharan Singh Lau, Director of the resulting company, have submitted that neither the company nor their counsel have received any objection pursuant to the citations published in the newspapers on 26th June, 2014.

21. Considering the approval accorded by the equity shareholders and unsecured creditors of the petitioner companies to the proposed Scheme of Arrangement; the affidavit filed by the Official Liquidator not raising any objection to the proposed Scheme of Arrangement, and there being no surviving objection to the same by the Regional Director, Northern Region, there appears to be no impediment to the grant of sanction to the Amended Scheme of Arrangement. Consequently, sanction is hereby granted to the Amended Scheme of Arrangement under Sections 391 and 394 of the Companies Act, 1956. The petitioner companies will comply with the statutory requirements in accordance with law. Certified copy of this order be filed with the Registrar of Companies within 30 days. It is also clarified that this order will not be construed as an order granting exemption from payment of stamp duty as payable in

accordance with law. Upon the sanction becoming effective from the appointed date of Arrangement, i.e. 1st April, 2014, (i) the transferor company shall stand dissolved without undergoing the process of winding up; and (ii) the demerged undertaking of the transferee company shall stand merged with the resulting company.

22. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

March 26, 2015