

IN THE HIGH COURT OF DELHI
COMPANY PETITION NO. 788/2014

Reserved on 22nd April, 2015
Date of pronouncement: 18th May, 2015

In the matter of

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

And

**Petition under Sections 391(1) to 394 read
with Section 100 of the Companies Act, 1956**

Scheme of Amalgamation of:

Paramount Residency Private Limited	Petitioner/Transferor Company No. 1
Wiseman Estates Private Limited	Petitioner/Transferor Company No. 2
Paramount Towers Private Limited	Petitioner/Transferor Company No. 3
Maxwell Developers Private Limited	Petitioner/Transferor Company No. 4
Flora Realtech Private Limited	Petitioner/Transferor Company No. 5
Parkway Infrastructure Private Limited	Petitioner/Transferor Company No. 6
North Delhi Realcon Private Limited	Petitioner/Transferor Company No. 7
Noida Realcon Private Limited	Petitioner/Transferor Company No. 8
Paramount Villas Private Limited	Petitioner/Transferor Company No. 9
Amazon Conbuild Private Limited	Petitioner/Transferor Company No. 10
Cosmic Constech Private Limited	Petitioner/Transferor Company No. 11

Prestige Conbuild Private Limited
Petitioner/Transferor Company No. 12

Blissful Constech Private Limited
Petitioner/Transferor Company No. 13

Aakriti Town Planners Private Limited
Petitioner/Transferor Company No. 14

Dorset Linkers Builders Private Limited
Petitioner/Transferor Company No. 15

Paramount Homeland Private Limited
Petitioner/Transferor Company No. 16

Master Constech Private Limited
Petitioner/Transferor Company No. 17

WITH

Paramount Propbuild Private Limited
Petitioner/Transferee Company

**Through Mr. Ashish Middha, Advocate
for the petitioners
Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director
Mr. Manish K. Bishnoi, Advocate for
the Official Liquidator**

SUDERSHAN KUMAR MISRA, J.

1. This joint petition has been filed under Sections 391(1) to 394 read with Section 100 of the Companies Act, 1956 by the petitioner companies seeking sanction of the Scheme of Amalgamation of Paramount Residency Private Limited (hereinafter referred to as the transferor company no. 1); Wiseman Estates Private Limited (hereinafter referred to as the transferor company no. 2); Paramount Towers Private Limited (hereinafter referred to as the transferor company no. 3); Maxwell

Developers Private Limited (hereinafter referred to as the transferor company no. 4); Flora Realtech Private Limited (hereinafter referred to as the transferor company no. 5); Parkway Infrastructure Private Limited (hereinafter referred to as the transferor company no. 6); North Delhi Realcon Private Limited (hereinafter referred to as the transferor company no. 7); Noida Realcon Private Limited (hereinafter referred to as the transferor company no. 8); Paramount Villas Private Limited (hereinafter referred to as the transferor company no. 9); Amazon Conbuild Private Limited (hereinafter referred to as the transferor company no. 10); Cosmic Constech Private Limited (hereinafter referred to as the transferor company no. 11); Prestige Conbuild Private Limited (hereinafter referred to as the transferor company no. 12); Blissful Constech Private Limited (hereinafter referred to as the transferor company no. 13); Aakriti Town Planners Private Limited (hereinafter referred to as the transferor company no. 14); Dorset Linkers Builders Private Limited (hereinafter referred to as the transferor company no. 15); Paramount Homeland Private Limited (hereinafter referred to as the transferor company no. 16); and Master Constech Private Limited (hereinafter referred to as the transferor company no. 17) with Paramount Propbuild Private Limited (hereinafter referred to as the transferee company).

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

3. The transferor company no. 1 was incorporated under the Companies Act, 1956 on 13th February, 2003 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

4. The transferor company no. 2 was originally incorporated under the Companies Act, 1956 on 12th May, 2008 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Wiseman Software Private Limited. The company changed its name to Wiseman Estates Private Limited and obtained the fresh certificate of incorporation on 21st June, 2010.

5. The transferor company no. 3 was incorporated under the Companies Act, 1956 on 31st December, 2009 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

6. The transferor company no. 4 was incorporated under the Companies Act, 1956 on 8th January, 2007 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

7. The transferor company no. 5 was incorporated under the Companies Act, 1956 on 29th June, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

8. The transferor company no. 6 was incorporated under the Companies Act, 1956 on 13th July, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

9. The transferor company no. 7 was incorporated under the Companies Act, 1956 on 13th July, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

10. The transferor company no. 8 was incorporated under the Companies Act, 1956 on 13th July, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

11. The transferor company no. 9 was originally incorporated under the Companies Act, 1956 on 13th July, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi under the name and style of Mridul Realcon Private Limited. The company changed its name to Paramount Villas Private Limited and obtained the fresh certificate of incorporation on 10th September, 2010.

12. The transferor company no. 10 was incorporated under the Companies Act, 1956 on 10th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

13. The transferor company no. 11 was incorporated under the Companies Act, 1956 on 10th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

14. The transferor company no. 12 was incorporated under the Companies Act, 1956 on 12th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

15. The transferor company no. 13 was incorporated under the Companies Act, 1956 on 12th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

16. The transferor company no. 14 was incorporated under the Companies Act, 1956 on 17th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

17. The transferor company no. 15 was incorporated under the Companies Act, 1956 on 17th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

18. The transferor company no. 16 was incorporated under the Companies Act, 1956 on 17th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

19. The transferor company no. 17 was incorporated under the Companies Act, 1956 on 13th August, 2010 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

20. The transferee company was incorporated under the Companies Act, 1956 on 21st September, 2004 with the Registrar of Companies, NCT of Delhi & Haryana at New Delhi.

21. The present authorized share capital of the transferor company no.1 is Rs.7,50,00,000/- divided into 75,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.5,56,50,000/- divided into 55,65,000 equity shares of Rs.10/- each.

22. The present authorized share capital of the transferor company no.2 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.

23. The present authorized share capital of the transferor company no.3 is Rs.4,20,00,000/- divided into 42,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.4,15,00,000/- divided into 41,50,000 equity shares of Rs.10/- each.

24. The present authorized share capital of the transferor company no.4 is Rs.5,00,000/- divided into 50,000 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.

25. The present authorized share capital of the transferor company no.5 is Rs.1,00,00,000/- divided into 10,00,000 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.

26. The present authorized share capital of the transferor company no.6 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.

27. The present authorized share capital of the transferor company no.7 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.

28. The present authorized share capital of the transferor company no.8 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.

29. The present authorized share capital of the transferor company no.9 is Rs.7,50,00,000/- divided into 75,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.7,43,33,340/- divided into 74,33,334 equity shares of Rs.10/- each.

30. The present authorized share capital of the transferor company no.10 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.

31. The present authorized share capital of the transferor company no.11 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.

32. The present authorized share capital of the transferor company no.12 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.

33. The present authorized share capital of the transferor company no.13 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.

34. The present authorized share capital of the transferor company no.14 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.

35. The present authorized share capital of the transferor company no.15 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.

36. The present authorized share capital of the transferor company no.16 is Rs.1,00,00,000/- divided into 10,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.51,00,000/- divided into 5,10,000 equity shares of Rs.10/- each.

37. The present authorized share capital of the transferor company no.17 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.

38. The present authorized share capital of the transferee company is Rs.27,00,00,000/- divided into 2,70,00,000 equity shares of Rs.10/- each. The issued, subscribed and paid-up share capital of the company is Rs.26,78,04,450/- divided into 2,67,80,445 equity shares of Rs.10/- each.

39. Copies of the Memorandum and Articles of Association of the transferor and transferee companies have been filed on record with the joint application, being CA(M) 76/2014, earlier filed by the petitioners. The audited balance sheets, as on 31st March, 2013, of the transferor and transferee companies, along with the report of the auditors, had also been filed.

40. A copy of the Scheme of Amalgamation 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 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 enable the companies concerned to rationalize and streamline their management, businesses and finances and lead to a better and more economic control, over the running and management of the businesses and undertakings of the said companies.

41. So far as the share exchange ratio is concerned, the Scheme provides that, upon coming into effect of this Scheme, no shares shall be issued to the shareholders of the transferor companies as the entire equity share capital of the transferor companies is held by the transferee company and/or its subsidiaries and/or its nominees. Further, the entire equity share capital of the transferor companies shall stand automatically cancelled and there will not be any issue and allotment of shares or any consideration by the transferee company.

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

43. The Board of Directors of the transferor and transferee companies in their separate meetings held on 7th February, 2014 have unanimously approved the proposed Scheme of Amalgamation. Copies of the Resolutions passed at the meetings of the Board of Directors of the transferor and transferee companies have been placed on record.

44. The petitioner companies had earlier filed CA (M) No. 76/2014 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 Amalgamation. Vide order dated 27th November, 2014, this court allowed the application and dispensed with the requirement of convening and holding the meetings of the equity shareholders, secured and unsecured creditors of the transferor and transferee companies, to consider and, if thought fit, approve, with or without modification, the proposed Scheme of Amalgamation. The Court, however, directed the petitioners to issue specific individual notice to the secured creditors of the transferor companies namely, ICICI Bank, Bank of Baroda, Bank of India, Central Bank of India, and Corporation Bank at the time of moving of the second motion petition calling for their objection, if any, to the Scheme.

45. The petitioner companies have thereafter filed the present petition seeking sanction of the Scheme of Amalgamation. Vide order dated 17th December, 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 (Hindi) editions. The petitioners have filed an affidavit showing compliance regarding publication of citations in the aforesaid newspapers on 23rd January, 2015. Copies of the newspaper clippings containing the publications have been filed along with the said affidavit. The petitioners have also placed on record the factum of service on the secured creditors of the transferor companies, calling their objections, if any, to the Scheme as directed by the court vide order dated 27th November, 2014.

46. 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 4th March, 2015 wherein he has stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person/party interested in the Scheme in any manner and that the affairs of the transferor companies do not appear to have been conducted in a manner prejudicial to the interest of their members, creditors or public interest, as per second proviso of Section 394(1) of the Companies Act, 1956.

47. 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 March, 2015. Relying on Clause 10 of Part-III of the Scheme, he has stated that, upon sanction of the Scheme of Amalgamation, all the employees of the transferor companies shall become the employees of the transferee company without any break or interruption in their services. He has further submitted that in Clause 14.4 of Part-III of the Scheme, it has been stated that amalgamation shall be an 'amalgamation in the nature of merger' as defined in Accounting Standard-14 as prescribed under Companies (Accounting Standards) Rules, 2006 and shall be accounted for under the 'pooling of interest' method in accordance with the said accounting standard. He further submitted that in Clause 23 of Part-III of the

Scheme, it has been stated that upon this scheme becoming effective, the transferor companies no. 1 to 17 shall stand dissolved without the process of winding up.

48. Although no objection has been raised by the Regional Director, Northern Region, but in para 9 of his report, he has submitted that the Scheme has provided the appointed date as 01.04.2013, whereas the petitioner companies have filed the balance sheet for the year 2014 and as such in order to avoid the revision of balance sheet, the petitioner companies may be asked to shift the appointed date as at 01.04.2014. In response to the aforesaid, learned counsel for the petitioners have submitted that without entering into any controversy in this regard, the petitioners are amenable to change the appointed date to 01.04.2014. Consequently, the appointed date in the Scheme shall be as at 01.04.2014. The relevant part of the Scheme shall stand amended accordingly.

49. No objection has been received to the Scheme of Amalgamation from any other party. The petitioner companies, in the affidavit dated 2nd March, 2015 of Mr. Satya Pal Singh, Director of the transferee company, have submitted that neither the petitioner companies nor their counsel have received any objection pursuant to the citations published in the newspapers on 23rd January, 2015.

50. Considering the approval accorded by the equity shareholders and creditors of the petitioner companies to the proposed Scheme of Amalgamation and the affidavits filed by the Regional Director, Northern Region and the Official Liquidator having not raised any objection to the proposed Scheme of Amalgamation, there appears to be no impediment to the grant of sanction to the Scheme of Amalgamation. Consequently, sanction is hereby granted to the Scheme of Amalgamation under Sections 391 and 394 of the Companies Act, 1956, subject to the amendment in the appointed date. 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 Amalgamation, i.e. 1st April, 2014, the transferor companies no. 1 to 17 shall stand dissolved without undergoing the process of winding up.

51. Learned counsel for the Official Liquidator prays that keeping in view the fact that the matter has involved examination of extensive records and also prioritized hearings costs of at least Rs.2.0 lakhs should be paid by the petitioners. Learned counsel for the petitioners submits that they have no objection to the prayer being granted and that they shall pay costs of Rs.2.0 lakhs. Considering the facts and circumstances of the case, petitioner shall deposit a sum of Rs.2.0 lakhs, by way of

costs, with the Common Pool Fund of the Official Liquidator within two weeks from today.

52. The petition is allowed in the above terms.

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SUDERSHAN KUMAR MISRA, J.

May 18, 2015