

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 28.09.2016

CO.PET. 368/2016

Jones Lang LaSalle Meghraj Building Operations (NCR) Private Limited

Transferor Company-I/ Petitioner Company-I

AND

Homebay Residential Private Limited

Transferor Company-II/ Petitioner Company-II

AND

Workplace Projects Private Limited

Transferor Company-III/ Petitioner Company-III

AND

Jones Lang LaSalle Building Operations Private Limited

Transferee Company/ Petitioner Company-IV

Through: Mr. Satwinder Singh, Advocate for
the petitioners

Ms. Aparna Mudiam, Assistant
Registrar of Companies for the
Regional Director

Mr. Rajiv Bahl, Advocate for the
Official Liquidator

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J

1. The present is a Second Motion Petition filed jointly by Jones Lang LaSalle Meghraj Building Operations (NCR) Private Limited (Transferor Company-I/NCR), Homebay Residential Private Limited (Transferor Company-II/HRPL), Workplace Projects Private Limited (Transferor Company-III/WPPL) with Jones Lang LaSalle Building Operations Private Limited (Transferee Company/JLLBO) under Sections 391 and 394 of the Companies Act, 1956 (hereafter referred to as “the Act”) for approval of the Scheme of Amalgamation (hereafter referred to as “the Scheme”).
2. The Transferor Companies Nos. I-III, have been hereinafter, jointly referred to as “Transferor Companies”. The Transferor Companies and the Transferee Company, have been hereinafter, jointly referred to as “the Petitioners”.
3. The registered offices of the Petitioners are situated in the National Capital Territory of Delhi, and therefore, this Court has the necessary jurisdiction to adjudicate the present petition.
4. The details of the date of incorporation of the Petitioners, authorized share capital, issued, subscribed and paid up capital of the Petitioners, have

been set out in paragraphs 1-3 of the Scheme. The same is enumerated in the following paragraphs:

- i. Transferor Company-I/NCR was incorporated on 29th March, 2000 under the provisions of the Act.

The authorized share capital of Transferor Company-I/NCR is Rs.30,00,000/- (Rupees Thirty Lakhs only), divided into 3,00,000 (Three Lakh) equity shares of the face value of Rs.10/- each. While the issued, subscribed and paid-up share capital of Transferor Company-I/NCR is Rs.25,00,000/- (Rupees Twenty Five Lakhs Only), divided in to 2,50,000 (Two Lakh Fifty Thousand) equity shares of Rs.10/-each.

- ii. Transferor Company-II/HRPL was incorporated on 9th August, 2006 under the provisions of the Act.

The authorized share capital of Transferor Company-II/HRPL is Rs.10,00,000/- (Rupees Ten Lakhs only), divided in to 1,00,000 (One Lakh) equity shares of Rs. 10/- each. While the issued, subscribed and paid-up share capital of Transferor Company-II/HRPL is Rs.10,00,000/- (Rupees Ten Lakhs only), divided into 1,00,000 (One Lakh) equity shares of Rs. 10/- each.

- iii. Transferor Company-III/WPPL was incorporated on 18th April 2005 under the provisions of the Act.

The authorized share capital of Transferor Company-III/ WPPL is Rs.10,00,000/- (Rupees Ten Lakhs only), divided in to 1,00,000 (One Lakh) equity shares of Rs. 10/- each. While the issued, subscribed and paid-up share capital of Transferor Company-III/WPPL is Rs. 1,00,000/- (Rupees One Lakh only), divided into 10,000 (Ten Thousand) equity shares of Rs. 10/- each.

- iv. The Transferee Company (JLLBO) was incorporated on 1st November, 2002 under the provisions of the Act.

The authorized share capital of the Transferee Company (JLLBO) is Rs.50,00,000/- (Rupees Fifty Lakhs Only), divided into 5,00,000 (Five lakh) equity shares of Rs.10/- each. While the issued, subscribed and paid-up share capital of the Transferee Company (JLLBO) is Rs.5,00,000/- (Rupees Five Lakhs Only), divided in to 50,000 (Fifty Thousand) equity shares of Rs.10/-each.

5. It has been averred on behalf of the Petitioners that there are no proceedings pending against them, under Sections 235 to 251 of the Act (including their corresponding sections of the Companies Act, 2013).

6. It has been further submitted on behalf of the Petitioners that the Scheme has been approved by the respective Board of Directors (BOD) of the Petitioners. The copies of the BOD resolutions dated 12.08.2015, 27.08.2015, 25.08.2015 and 17.08.2015 with respect to Petitioner No.1, 2, 3 and 4, respectively, have been filed and the same are on record.

7. The Copies of the Memorandum of Association and Articles of Association, of each of the Petitioners, have been duly filed as Annexures to Company Application (M) No. 20 of 2016 (Application for First Motion), which earlier came to be filed by the Petitioners. The same are on record. The audited financial statements, as on March 31, 2015, pertaining to each of the Petitioners, have also been duly filed by all the Petitioners and the same are on record.

8. A copy of the Scheme has been duly placed on record and the salient features of the Scheme have been incorporated and detailed in the present petition and the accompanying affidavit. It has been urged on behalf of the Petitioners that the proposed amalgamation of the Transferor Companies, with and into the Transferee Company would, *inter alia*, entail the following benefits:

- (i) A simplified corporate structure;

- (ii) Rationalisation of administrative and operative costs;
- (iii) Financial resources, managerial, technical and marketing expertise of the Transferor Companies and the Transferee Company shall be available to the amalgamated company; and
- (iv) The amalgamation would provide synergistic linkages besides economies in costs and other benefits resulting from the economies of scale, by combining the businesses and operations of the Transferor Companies and the Transferee Company.

9. The Share Exchange Ratio for the Amalgamation has been provided for in the Scheme. The relevant terms of Clause 4.13 of the Scheme, providing for the same, are summarized hereinbelow:

- (i) Transferor Company-I/NCR is a wholly owned subsidiary of the Transferee Company (JLLBO). Therefore, the Transferee Company (JLLBO) shall not issue any shares to the shareholders of Transferor Company-I/NCR upon coming into effect of the Scheme, and in consideration of the amalgamation of Transferor Company-I/NCR into the Transferee Company (JLLBO).
- (ii) Upon the Scheme becoming effective and in consideration of and subsequent to the amalgamation of Transferor Company-II/HRPL with and into Transferee Company (JLLBO) in terms of Part – III of the Scheme, the Transferee Company (JLLBO) shall issue and allot,

in respect of all the equity shares of face value of Rs.10 each, fully paid up, 100 (Hundred) equity shares of Rs.10 each, fully paid up. The shares are to be issued to the shareholders of Transferor Company-II/HRPL whose name is recorded in the register of members of Transferor Company-II/HRPL on Record Date. The consideration issued by Transferee Company (JLLBO) to the shareholders of Transferor Company-II/HRPL is approved by the Board of Directors of Transferee Company (JLLBO) and Transferor Company-II/HRPL, based on their independent judgment and after taking into consideration the opinion dated 01 August 2015 on share swap ratio as provided by M/s Aayush Garg & Associates.

- (iii) Upon the Scheme becoming effective and in consideration of and subsequent to the amalgamation of Transferor Company-III/WPPL with and into the Transferee Company (JLLBO) in terms of Part – III of the Scheme, the Transferee Company (JLLBO) shall issue and allot, in respect of all the equity shares of face value of Rs.10 each, fully paid up, 100 (Hundred) equity shares of Rs.10 each, fully paid up. The shares are to be issued to the shareholders of Transferor Company-III/WPPL whose name is recorded in the register of members of Transferor Company-III/WPPL on Record Date. The consideration issued by Transferee Company (JLLBO) to the shareholders of Transferor Company-III/WPPL is approved by the Board of Directors of Transferee Company (JLLBO) and Transferor Company-III/WPPL, based on their independent judgment and after taking into consideration the opinion dated 1st August, 2015 on share swap ratio as provided by M/s Aayush Garg & Associates.

10. To recapitulate, the Petitioners had, in the earlier round, filed an application (i.e. application for the First Motion), being Company

Application (M) No. 20 of 2016, whereby a prayer was sought, seeking directions for dispensing with the requirement of convening meetings of the equity shareholders and secured creditors of the Petitioners and unsecured creditors of the Transferor Companies in lieu of consents obtained from all the equity shareholders of the Petitioners and the consents obtained from the secured creditors of the Transferee Company. This Court vide order dated 8th February, 2016 was pleased to allow the application and dispensed with the requirement of convening meetings of the equity shareholders and secured creditors of each of the Petitioner Companies. The meetings of the unsecured creditors of Transferor Company-II/HRPL and Transferor Company-III/WPPL were also dispensed with. It has been stated that the Transferor Companies have no secured creditors.

11. Further, this Court, by way of its order dated 8th February, 2016, directed the convening of the meetings of the unsecured creditors of the Transferor Company-I/NCR and the Transferee Company (JLLBO) to consider and, if thought fit, approve with or without modification, the proposed Scheme.

12. The meetings of the unsecured creditors of Transferor Company-I/NCR and the Transferee Company (JLLBO) were duly convened and the Scheme was approved without any modification by the requisite majority of

unsecured creditors present and voting at the said meetings, in terms of Section 391(2) of the Companies Act, 1956. The Chairpersons of the said meetings have duly filed their reports dated 18.04.2016, which reflect the results of the said meetings on 18th April, 2016 and the same are on record.

13. Pursuant to the same, the Petitioners, have filed the instant petition (i.e. Second Motion). Notice in this petition was issued by this Court, by way of the order dated 04.05.2016. Notice was accepted on behalf of the Official Liquidator (OL) and the Regional Director (RD), Northern Region.

13.1 Furthermore, vide order of this Court dated 04.05.2016, citations were directed to be published. It has been noted that Citations were published, on 20.06.2016, in Delhi Editions of the newspapers, namely, 'Financial Express' (English, Delhi Edition) and 'Jansatta' (Hindi, Delhi Edition), in compliance with the order of this Court dated 04.05.2016. An affidavit dated 21.09.2016 demonstrating service of the petition on the Official Liquidator, Registrar of Companies and the Regional Director, Northern Region.

14. Pursuant to the notices issued, report of the Official Liquidator (OL) dated 20.09.16 has been filed, wherein, *inter alia*, it has been stated that the OL has not received any complaint *qua* the Scheme from any interested person or party. Further, it has been stated in the said report dated 20.09.2016, that on the basis of information supplied by the petitioners, it

appears, that the affairs of the transferor companies have been conducted in a manner which could not be construed as being prejudicial to either the interest of their members or the public at large.

15. In other words, it has been stated by the OL in the report dated 20.09.2016 that the affairs of the transferor companies, do not fall foul of the provisions of the Second Proviso to Section 394(1) of the Act. Thus, it has been averred on behalf of the OL, in effect, that he would have no objections, if this Court were to sanction the Scheme.

16. Further, in response to the notices issued in the Petition, Sh. Narender Kumar Bhola, Regional Director, Northern Region, Ministry of Corporate Affairs, filed his affidavit dated 15.09.2016 wherein, *inter alia*, it has been stated that he has no objection to the sanction of the proposed Scheme, except the objections enumerated in para 5 of the said report dated 15.09.2016, stating that there are certain pending (disputed) liabilities against the Petitioners.

17. In response to the aforesaid affidavit filed by RD, the Petitioner Companies have filed a joint reply wherein, it has been stated that in terms of Clauses 4.6.1, 4.6.2 and 4.6.4 of the Scheme, the pending tax liabilities of the Transferor Companies shall be transferred to the Transferee Company (JLLBO) and any income tax proceedings pending by or against the

Transferor Companies, shall be continued and enforced by or against the Transferee Company (JLLBO) upon the Scheme of Amalgamation coming into effect. Further, the Transferee Company (JLLBO) has undertaken that the Transferee Company (JLLBO) will pay the income tax liabilities of the Transferor Companies, as and when such liabilities arise.

18. Ms. Aparna Mudiam, Assistant ROC appearing on behalf of the RD, Northern Region, states that in view of the undertaking made on behalf of the petitioners, that the outstanding liabilities, as enumerated in the report filed by the RD dated 15.9.2016, shall be discharged by the Transferee company, the objection raised vide affidavit of the RD dated 15.09.2016, stands satisfied and that no further objections against the present Scheme remain.

19. It has been noted that no objection has been received to the Scheme from any other party. The Petitioners, vide affidavit dated 21st September, 2016, have submitted that neither the Petitioners nor their counsel have received any objection pursuant to the citations published in the newspapers dated 20th June, 2016.

20. In view of the foregoing, upon considering the approval accorded by the members and creditors of the Petitioners to the proposed Scheme, and the affidavits filed by the Regional Director, Northern Region, Ministry of

Corporate Affairs and the Official Liquidator attached to this High Court, whereby no objections have been raised to the proposed Scheme, there appears to be no impediment to the grant of sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under section 391 and 394 of the Companies Act, 1956. The Petitioners will however, comply with the statutory requirements in accordance with law.

21. A certified copy of the order, sanctioning the scheme, be filed with the ROC, within thirty (30) days of its receipt.

22. Resultantly, it is hereby directed that the petitioners will comply with all provisions of the scheme and, in particular, those which are referred to hereinabove.

23. In any event, notwithstanding what has been stated on behalf of the petitioners hereinabove, the transferee company (JLLBO) will file an undertaking with this court, within two weeks from today, stating therein, that it will take over and defray all liabilities of the transferor company. It is also made clear, that the concerned Statutory Authority will be entitled to proceed against the transferee company qua any liability which it would have fastened onto the transferor companies for the relevant period, and that, which may arise on account of the scheme being sanctioned.

24. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court to the scheme will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

25. The transferor companies shall stand dissolved without being wound up.

26. It is made clear, that this order shall not be construed as an order granting exemption, *inter alia*, from, payment of stamp duty or, taxes or, any other charges, if, payable, as per the relevant provisions of law or, from any applicable permissions that may have to be obtained or, even compliances that may have to be made, as per the mandate of law.

27. Learned counsel appearing on behalf of the Official Liquidator prays that costs of at least Rs.1,00,000/- may be paid by the petitioners, keeping in view the fact, that the matter called for examination of extensive records and prioritised hearings. Learned counsel appearing on behalf of the petitioners states that the same is acceptable to him.

28. In view of the foregoing, the petitioners shall deposit a sum of Rs.1,00,000/- by way of costs, with the Common Pool Fund of the Official Liquidator, Delhi.

29. Consequently, the petition is allowed and disposed of, in the aforesaid terms.

30. A copy of this order be given *dasti* under the signatures of the Court Master.

SIDDHARTH MRIDUL, J

SEPTEMBER 28, 2016
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