

IN THE HIGH COURT OF DELHI AT NEW DELHI
CO.APPL. (M) 155/2016

IN THE MATTER OF:

SU ESTATES PVT LTD

.....APPLICANT/TRANSFEROR COMPANY
AND

Ireo PVT LTD

.....APPLICANT/TRANSFeree COMPANY

AND

SUNSINE REALBUILD PVT LTD

.....APPLICANT/RESULTING COMPANY

Through: Mr Rajeev K Goel Advocate
for the Applicants.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

ORDER
26.10.2016

1. The present is a first motion application filed jointly, under Sections 391 & 394, 100 to 104 of the Companies Act, 1956, in connection with the Composite Scheme of Arrangement for (a) Amalgamation of Su Estates Pvt Ltd (hereinafter referred to as 'Transferor Company') with Ireo Pvt Ltd (hereinafter referred to as 'Transferee Company'); and (b) De-merger of Demerged Undertaking of Ireo Pvt Ltd into, Sunsine Realbuild Pvt Ltd (hereinafter

referred to as 'Resulting Company').

2. The Transferor Company, Transferee Company and Resulting Company are hereinafter collectively referred to as 'Applicant Companies'.

3. The registered offices of the Applicant Companies are situated at New Delhi, within the jurisdiction of this Court.

4. The Transferor Company was incorporated on 13.02.2006 under the Companies Act, 1956, with the ROC, Delhi and Haryana.

5. The Transferee Company was incorporated on 15.03.2004, under the Companies Act, 1956 with the ROC, Delhi and Haryana.

6. The Resulting Company was incorporated on 27.04.2009, under the Companies Act, 1956 with the ROC, Delhi and Haryana.

7. The authorized share capital of the Transferor Company, as on 31.03.2016, is Rs.1,00,000/-, divided into 10,000 Equity Shares of Rs.10/- each and the Issued, Subscribed and Paid-Up Share Capital of the Transferor Company as on 31.03.2016, is Rs.1,00,00/-, divided into 10,000 Equity Shares of Rs.10/- each.

8. The Authorized Share Capital of the Transferee Company as on 31.03.2016, is Rs.23,75,00,00,000/- divided into 1,12,50,00,000 equity shares of Rs.10/- each and 1,25,00,00,000 1% non-cumulative redeemable preference shares of Rs.10/- each and the Issued, Subscribed and Paid-Up Share Capital of

the Transferee Company as on 31.03.2016 is Rs.11,46,62,27,740/- divided into 35,32,51,524 equity shares of Rs.10/- each and 79,33,71,250 1% non-cumulative redeemable preference shares of Rs.10/- each.

9. The Authorized Share Capital of the Resulting Company as on 31.03.2016, is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each and the Issued, Subscribed and Paid-Up Share Capital of the Transferee Company as on 31.03.2016 is Rs. 1,00,000/- divided into 10,000 equity shares of Rs.10/- each.

10. Copies of the Memorandum of Association and Articles of Association of the Applicant Companies have been filed and the same are on record. The audited balance sheets, as at 31st March, 2016 of the Applicant Companies, along with the report of the auditors and report of directors have also been filed and the same are on record.

11. It has been submitted on behalf of the Applicant Companies that no proceedings under Sections 235 to 251 of the Act or under corresponding provisions of the Companies Act, 2013 are pending against the Applicant Companies as on the date of filing of the present application.

12. A copy of the proposed Scheme has been filed on record and the salient features of the Scheme have been incorporated and detailed in the application and the accompanying affidavits.

13. The proposed Scheme has been approved by the Board of Directors (hereinafter referred to as ‘BOD’) of the Applicant Companies in their separate meetings held on 12.09.2016. Copies of the Resolutions passed at the meetings of the Board of Directors of the Applicant Companies have been placed on record.

14. It has been submitted that the Applicant Companies are closely held private limited companies. Status of Equity Shareholders, Preference Shareholders, Debenture Holders, Secured Creditors and Un-secured Creditors of the Applicant Companies and written consents/NOC obtained for the proposed Scheme is summarized in following table:

15.

Company	No. of Share holders/ Debenture holders	Consent Given	No. of Secured Creditors	Consent Given	No. of Un-secured Creditors¹	Consent Given
Transferor Company	2 Equity Shareholders	<i>All</i>	Nil	<i>N.A.</i>	4	<i>All</i>
Transferee Company	3 Equity Shareholders	<i>All</i>	8	<i>All</i>	231	<i>All</i>
	2 Preference Shareholders	<i>All</i>				
	2 Debenture holders	<i>All</i>				

Resulting Company	2 Equity shareholders	<i>All</i>	Nil	<i>N.A.</i>	1	<i>All</i>
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16. It has been submitted that in addition to the aforesaid Unsecured Creditors (Trade Creditors), as on 31st August, 2016, the Transferee Company has some ‘statutory dues and other specified liability items’, status of which has been summarized in the following table:

Sl. No.	Particulars	Amount (₹)	Remark
1.	Works Contracts Tax (WCT)	45,78,368	Paid in full
2.	Service tax	16,73,334	Paid in full
3.	Income tax	61,33,159	Paid in full
4.	Payment to be made to Haryana Building and Other Construction Workers’ Welfare Board	61,84,915	Paid in full
5.	Provision for leave encashment/ compensated absences	5,36,25,749	Not due for payment
6.	Provision for gratuity	6,77,29,119	Not due for payment
7.	Advance received from customers against confirmed bookings in various real estate projects of the company, to be adjusted against balance payment to be made by such customers at the time taking possession	532,05,65,771	Not due for payment
8.	Refundable security deposits received from joint development partners, which will be repaid/ refunded and/ or adjusted as per terms of joint development agreement	202,75,00,000	Not due for payment
9.	Retention money of contractors,	25,53,16,325	Not due for

	which will be paid on expiry of agreed period as per the terms of the contracts		payment
10.	Payment to be made to Director General of Town & Country Planning/ Chief Administrator of Haryana Urban Development Authority in future under Deferred Payment Plan	47,38,79,542	Not due for payment
11.	Labour Welfare Fund	13, 362	Not due for payment

The Transferee Company has made full and final payment of these statutory dues (at serial 1, 2, 3 & 4 above) since then.

The Transferee Company has made these provisions (at serial 5 & 6 above) in its books of accounts in terms of the applicable laws and accounting standards. However, the same are not due for payment as on the date of this certificate.

Advances received from customers against confirmed bookings in various real estate projects of the Transferee Company will be adjusted against the final payment to be made by such customers at the time of taking possession. The same are recorded as liabilities as per relevant Accounting Standards and Generally Accepted Accounting Principles. Similarly, the refundable security deposits received from joint development partners for various real estate projects of the Transferee Company will be, refunded or repaid and/ or adjusted as per the terms of the joint development agreements. It is most respectfully submitted that consents from the parties towards these advances and refundable security deposits (at serial 7 & 8 above) are not required in view of the fact that these advances/ refundable security deposits are not due for payment by the Company as on the date of this certificate.

Retention money will be paid on expiry of agreed period as per the terms of the contracts with the respective contractors. It is most respectfully submitted that consents from the parties towards the retention money are not required in view of the fact that these retention money is not due for payment by the Company as on the date of this certificate.

The Transferee Company is required to make these payments in future to the Director General Town & Country Planning/ Chief Administrator, Haryana Urban Development Authority under Deferred Payment Plan, towards internal/external development and other charges, which are currently not due

for payment. It is most respectfully submitted that consents from the parties towards these charges (at serial 10 above) are not required in view of the fact that these charges are not due for payment by the Company as on the date of this certificate.

The Transferee Company is required to make payment of such contributions to the appropriate governmental authority, on a quarterly basis, and the amount outstanding is currently not due for payment. It is most respectfully submitted that consents from the concerned party towards these charges (at serial 11 above) are not required in view of the fact that these charges are not due for payment by the Transferee Company as on the date of this certificate.

17. A prayer has been sought for dispensation of the requirement of convening meetings of Equity Shareholders and Unsecured Creditors of the Transferor Company; of Equity Shareholders and Unsecured Creditors of the Resulting Company; and of Equity Shareholders, Preference Shareholders, Debenture holders, Secured Creditors and Unsecured Creditors of the Transferee Company.

18. The Transferor Company has 02 Equity Shareholders and 04 unsecured creditors. Their written consents/no objections to the proposed Scheme have been obtained and placed on record. The same have been examined and found in order.

19. In view of the foregoing, the requirement of convening the meeting of the equity shareholders and unsecured creditors of the Transferor Company to consider and, if thought fit, approve with or without modification, the proposed Scheme is dispensed with.

20. Since there are no secured creditors of the Transferor Company, therefore the question of dispensing with the requirement of convening a meeting or convening a meeting for the secured creditors does not arise.

21. The Transferee Company has 03 equity shareholders, 02 preference shareholders, 02 Debenture holders, 08 Secured creditors and 231 unsecured creditors. Their consents/no objections in writing to the proposed Scheme have been obtained and placed on record. The same have been examined and found in order.

22. In view the foregoing, the requirement of convening meeting of the equity shareholders, preference shareholders, debenture holders, secured creditors and unsecured creditors of the Transferee Company to consider and, if thought fit, approve, with or without modification the proposed Scheme is dispensed with.

23. The Resulting Company has 02 Equity Shareholders and 01 unsecured creditor. Their written consents/no objections to the proposed Scheme have been obtained and placed on record. The same have been examined and found in order.

24. In view of the foregoing, the requirement of convening the meeting of the equity shareholders and unsecured creditors of the Resulting Company to

consider and, if thought fit, approve with or without modification, the proposed Scheme is dispensed with.

25. Since there are no secured creditors of the Resulting Company, therefore the question of dispensing with the requirement of convening a meeting or convening a meeting for the secured creditors does not arise.

26. The application stands allowed in the aforesaid terms and is disposed of accordingly.

SIDDHARTH MRIDUL, J

OCTOBER 26, 2016

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