

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgement reserved on: 04.04.2016

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Judgement delivered on: 06.04.2016

+ **CO.PET. 611/2015**

**IN THE MATTER OF ACCORD DEVELOPMENT
PRIVATE LIMITED**

.... Petitioner no. 1/ Transferor Company No.1

AND

**AMBROSE REAL ESTATE
PRIVATE LIMITED**

...Petitioner no. 2/ Transferor Company No.2

AND

**ELEGANT REAL TECH
PRIVATE LIMITED**

...Petitioner no. 3/ Transferor Company No.3

AND

**AXCELO DEVELOPMENT
PRIVATE LIMITED**

...Petitioner no. 4/ Transferor Company No.4

AND

**EPITOME REAL TECH
PRIVATE LIMITED**

...Petitioner no. 5/ Transferor Company No.5

AND

**ESPRIT DEVELOPMENT
PRIVATE LIMITED**

...Petitioner no. 6/ Transferor Company No.6

AND

HABITAT BUILDCON
PRIVATE LIMITED

...Petitioner no. 7/ Transferor Company No.7

AND

OPAL DEVELOPMENT
PRIVATE LIMITED

...Petitioner no. 8/ Transferor Company No.8

AND

PENGUIN BUILDTECH
PRIVATE LIMITED

...Petitioner no. 9/ Transferor Company No.9

AND

PICCADILLY REAL ESTATES
PRIVATE LIMITED

...Petitioner no. 10/ Transferor Company No.10

AND

SEVEN SEAS REAL ESTATES
PRIVATE LIMITED

...Petitioner no. 11/ Transferor Company No.11

AND

SEVEN WONDERS REAL ESTATES
PRIVATE LIMITED

...Petitioner no. 12/ Transferor Company No.12

AND

STYLUS DEVELOPMENT

PRIVATE LIMITED

...Petitioner no. 13/ Transferor Company No.13

AND

TOWN HALL REAL ESTATES

PRIVATE LIMITED

...Petitioner no. 14/ Transferor Company No.14

AND

VENTURE REAL TECH

PRIVATE LIMITED

...Petitioner no. 15/ Transferor Company No.15

AND

FORTUNE BUILDTECH

PRIVATE LIMITED

...Petitioner no. 16/ Transferor Company No.16

WITH

ALPHA G:CORP DEVELOPMENT

PRIVATE LIMITED

...Petitioner no. 17/ Transferee Company

Through : Mr P.V. Kapoor, Sr. Adv. with Mr
Chandra Shekhar Yadav, Adv.

Ms. Aparna Mudiam, Asstt. ROC.

Mr. Rajiv Behl, Adv. for the OL.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. This is a second motion petition filed jointly by Accord Development Private Limited (i.e. petitioner no.1/transferor company no.1), Ambrose Real

Estate Private Limited (i.e. petitioner no.2/transferor company no.2), Elegant Real Tech Private Limited (i.e. petitioner no.3/transferor company no.3), Axcelo Development Private Limited (i.e. petitioner no.4/transferor company no.4), Epitome Real Tech Private Limited (i.e. petitioner no.5/transferor company no.5), Esprit Development Private Limited (i.e. petitioner no. 6/ transferor company no. 6), Habitat Buildcon Private Limited (i.e. petitioner no.7/transferor company no.7), Opal Development Private Limited (i.e. petitioner no.8/transferor company no.8), Penguin Buildtech Private Limited (i.e. petitioner no.9/transferor company no.9), Piccadilly Real Estates Private Limited (i.e. petitioner no.10/transferor company no.10), Seven Seas Real Estates Private Limited (i.e. petitioner no.11/transferor company no.11), Seven Wonders Real Estates Private Limited (i.e. petitioner no. 12/ transferor company no. 12), Stylus Development Private Limited (i.e. petitioner no.13/transferor company no.13), Town Hall Real Estates Private Limited (i.e. petitioner no.14/transferor company no.14), Venture Real Tech Private Limited (i.e. petitioner no.15/transferor company no.15) and Fortune Buildtech Private Limited (i.e. petitioner no.16/transferor company no.16) with Alpha G:Corp Development Private Limited (i.e. petitioner no.17/transferee company) under Section 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).

1.1 The transferor companies and transferee company, as referred to above, will hereafter be collectively referred to as the petitioners. Furthermore, transferor company nos. 1 to 16 will hereafter be conjointly referred to as transferor companies.

1.2 The transferor company no. 5 was originally incorporated on 14.02.2006 under the name and style: Epitome Technopark Private Limited, in consonance with the provisions of the Act. Thereafter, with effect from 04.06.2008, the name of the transferor company no. 5 was changed to its present name, viz., Epitome Real Tech Private Limited.

1.3 The transferee company was incorporated on 19.11.2003 under the name and style: Alpha Buildtech Private Limited, under the provisions of the Act. Thereafter, with effect from 07.07.2005, the name of the transferee company was changed to its present name, viz., Alpha G:Corp Development Private Limited.

1.4 The details qua incorporation and the petitioners' authorized, issued, subscribed and paid-up capital are set out in part-I of the scheme.

2. The copies of Memorandum and Articles of Association as well as the profit and loss account and the balance sheet as on 31.03.2014 have been filed by the petitioners.

3. The Board of Directors (BOD) of the transferor company nos 1 to 16 and the transferee company in their separate meetings held on 04.02.2015, and 16.12.2014 respectively have unanimously approved the scheme. Copies of the BOD resolutions whereby, the scheme has been approved are filed with the petition.

4. The petitioners have averred that the amalgamation of the transferor companies with the transferee company will provide for a simple and transparent ownership structure and will enable the elimination of areas of potential conflict of interests. It has been further claimed that the amalgamation will also result in reduction in administrative costs and overhead expenses, optimum utilization of resources and economies of scale.

4.1 Furthermore, the petitioners have claimed that there are no proceedings pending against them, under Sections 235 to 251 of the Act or the corresponding provisions of the Companies Act, 2013, to the extent notified.

5. To recapitulate, the petitioners had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No. 118/2015, whereby, a prayer had been made for dispensing with, the requirement of convening meetings of the shareholders and creditors (secured and unsecured) of the petitioners. This court vide order dated 13.08.2015, having regard to the fact that all the shareholders of the petitioners and all the secured creditors of the transferor company no 5. and the transferee company had given their consent to the scheme, dispensed with the requirement of convening meetings, as prayed.

5.1 Further, the court, having regard to the fact, that all the unsecured creditors of transferor company nos 4 to 10 and 13 to 16 and, unsecured creditors, being 99.81% in value (though 80% in number), belonging to the transferor company no.2 had given their consent to the scheme, dispensed with the requirement of convening meetings of this class of persons/entities, as well.

5.2 In addition to the above, the court, given the fact, that unsecured creditors, being 98% in value, to whom transferee company owed monies, had given their consent to the scheme, dispensed with the requirement of convening meeting of the said class of persons/ entities, as well.

6. The petitioners, thereafter, filed the instant petition (i.e. the second motion). Notice in this petition was issued on 24.08.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

6.1 Accordingly, citations were published on 13.10.2015, in the Delhi Editions of Business Standard (English) and Jansatta (Hindi).

6.2 An affidavit dated 06.01.2016 establishing publication of notice of hearing alongwith the newspaper extracts, was filed by the petitioners.

6.3 Further, in the aforementioned affidavit, it is averred that subsequent to publication of notice, the petitioners, have not received any objections/complaints from any third party qua the scheme.

7. Pursuant thereto, the RD filed its affidavit/report under Section 394 A of the Act. In the affidavit/report, the RD relied upon the general circular bearing no. 53/2011, dated 26.07.2011 and the circular bearing no. 1/2014, dated 15.01.2014. Based on the directions contained in the said circulars, the RD, sent communications to the ROC and the Income Tax Department (I.T. Department) seeking their response to the scheme. However, no comment/response of the I.T. Department has, apparently, been received in the matter.

7.1 The RD, evidently, has received information from the ROC vide communication dated 01.01.2016 which is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

7.2 Therefore, in so far as the RD is concerned, there are no objections taken by him to the scheme.

7.3 In so far as the OL is concerned, he has inter alia, stated in his report, that no complaint qua the scheme has been received by him from any interested person or party. The OL has also averred in his report that on the basis of information supplied by the petitioners, it appears, 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. In other words, affairs of the transferor companies, according to the OL, do not fall foul of the provisions of the second proviso to Section 394(1) of the Act.

7.4 Thus, the OL, in effect, has conveyed that he has no objections to the scheme being sanctioned.

8. To be noted, the scheme in clause 2.6 (vi) provides that all permanent employees of the transferor companies in service on the effective date, shall become the employees of the transferee company on such date without any break or interruption in service, and on terms and conditions as to employment, not less favourable than those on which they are currently engaged by the respective transferor companies.

9. As per clause 3.2. of the scheme, as all the transferor companies are the wholly owned subsidiaries of the transferee company, no consideration shall be payable by the transferee company pursuant to the amalgamation and the investments in all the transferor companies held by the transferee company would stand cancelled in entirety.

10. Furthermore, as per clause 2.11 of the scheme, the transferor companies shall stand dissolved without being wound up.

11. In addition to the above, in terms of clause 3.3.2 of the scheme, the transferee company is obliged to follow the pooling of interest method as prescribed in Accounting Standard 14, as notified under Companies (Accounting Standards) Rules 2006.

12. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 2 of the scheme, the entire business, properties, assets, rights, title and interests of the transferor companies will stand transferred to and / or vest in the transferee company without any further act

or deed. Similarly, in terms of the scheme, all debts, liabilities, duties and obligations of the transferor companies shall stand transferred to the transferee company without any further act or deed.

13. Accordingly, in view of the approval accorded to the scheme by the shareholders and creditors (i.e. secured and unsecured) of the petitioners and, given the fact, that the RD and the OL, have not articulated any objections to the scheme, as indicated above, in my opinion, there appears to be no impediment in the grant of sanction to the scheme. Consequently, sanction is granted to the scheme in terms of Section 391 and 394 of the Act. The petitioners will, however, comply with all statutory requirements, as mandated in law.

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

14. It is further directed that the petitioners will comply with all the provisions of the scheme and, in particular, those which are referred to hereinabove.

15. In any event, notwithstanding what is stated by the petitioners, the transferee company 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 companies. 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 on to the transferor companies for the relevant period, and that, which may arise on account of the scheme being sanctioned.

15.1 Notwithstanding the above, if there is any deficiency found or, any violation committed of any enactment, statutory rule or regulation, the

sanction granted by this court to the scheme will not come in the way of any action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

15.2 It is made clear, that this order will not be construed as an order granting exemption from: payment of stamp duty or, taxes or, other penalties / charges, if any, payable, as per the relevant provisions of law.

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

APRIL 06, 2016

RAJIV SHAKDHER, J

