

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

Judgement reserved on: 17.03.2016

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Judgement delivered on: 21.03.2016

+ **CO.PET. 731/2015**

**IN THE MATTER OF ABBEY DUROBUILD
PRIVATE LIMITED**

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

AND

**ABIGAIL LAND DEVELOPERS
PRIVATE LIMITED**

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

AND

**BLUEJAYS TOWN PLANERS
PRIVATE LIMITED**

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

AND

**CORE LAND TOWN PLANNERS
PRIVATE LIMITED**

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

AND

**DOYEN HOUSING AND LAND DEVELOPERS
PRIVATE LIMITED**

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

AND

**GABLE INFRATECH
PRIVATE LIMITED**

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

AND

GAIETY BUILDHOME
PRIVATE LIMITED

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

AND

HALO REALTECH
PRIVATE LIMITED

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

AND

INGOT PROBUILD
PRIVATE LIMITED

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

AND

JUNKET TOWN DEVELOPERS
PRIVATE LIMITED

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

AND

MADIA PROBUILD
PRIVATE LIMITED

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

AND

NOVEL NESTBUILD
PRIVATE LIMITED

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

AND

NOVEL PROMART

PRIVATE LIMITED

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

AND

NUCLEUS NESTBUILD
PRIVATE LIMITED

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

AND

PIKE BUILDTECH
PRIVATE LIMITED

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

AND

ROUGE TOWN DEVELOPERS
PRIVATE LIMITED

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

AND

STRIVER PROBUILD
PRIVATE LIMITED

...Petitioner no. 17/ Transferor Company No.17

AND

SUPER BUILT REAL ESATES AND LAND
DEVELOPERS PRIVATE LIMITED

...Petitioner no. 18/ Transferor Company No.18

AND

THISTLE TOWN PLANNERS
PRIVATE LIMITED

...Petitioner no. 19/ Transferor Company No.19

AND

TOPPERS REAL ESTATES AND LAND
DEVELOPERS PRIVATE LIMITED

...Petitioner no. 20/ Transferor Company No.20

AND

TZAR PROBUILD
PRIVATE LIMITED

...Petitioner no. 21/ Transferor Company No.21

WITH

SUNCITY HI-TECH INFRASTRUCTURES
PRIVATE LIMITED

.... Petitioner no. 22 / Transferee Company

Through: Mr. Saurabh Kedia and Mr. Gursat
Singh, Advs.

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 Abbey Durobuild Private Limited (i.e. petitioner no.1/transferor company no.1), Abigail Land Developers Private Limited (i.e. petitioner no.2/transferor company no.2), Bluejays Town Planers Private Limited (i.e. petitioner no.3/transferor company no.3), Core Land Town Planners Private Limited (i.e. petitioner no.4/transferor company no.4), Doyen Housing and Land Developers Private Limited (i.e. petitioner no.5/transferor company no.5), Gable Infratech

Private Limited (i.e. petitioner no. 6/ transferor company no. 6), Gaiety Buildhome Private Limited (i.e. petitioner no.7/transferor company no.7), Halo Realtech Private Limited (i.e. petitioner no.8/transferor company no.8), Ingot Probuild Private Limited (i.e. petitioner no.9/transferor company no.9), Junket Town Developers Private Limited (i.e. petitioner no.10/transferor company no.10), Madia Probuild Private Limited (i.e. petitioner no.11/transferor company no.11), Novel Nestbuild Private Limited (i.e. petitioner no. 12/ transferor company no. 12), Novel Promart Private Limited (i.e. petitioner no.13/transferor company no.13), Nucleus Nestbuild Private Limited (i.e. petitioner no.14/transferor company no.14), Pike Buildtech Private Limited (i.e. petitioner no.15/transferor company no.15), Rouge Town Developers Private Limited (i.e. petitioner no.16/transferor company no.16), Striver Probuild Private Limited (i.e. petitioner no.17/transferor company no.17), Super Built Real Esates and Land Developers Private Limited (i.e. petitioner no. 18/ transferor company no. 18), Thistle Town Planners Private Limited(i.e. petitioner no. 19/ transferor company no. 19), Toppers Real Estates and Land Developers Private Limited (i.e. petitioner no. 20/ transferor company no. 20), and Tzar Probuild Private Limited(i.e. petitioner no. 21/ transferor company no. 21) with Suncity Hi-tech Infrastructures Private Limited (i.e. petitioner no. 22/ 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 21 will hereafter be conjointly referred to as transferor companies.

1.2 The registered office of the petitioners are located within the territorial jurisdiction of this court.

1.3 The details with respect to incorporation and the petitioners' authorized, issued, subscribed and paid-up capital are set out in paragraph nos 1 and 3 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 5; transferor company nos 6 to 10; transferor company nos 11 to 15; transferor company nos 16 to 21 and the transferee company in their separate meetings held on 06.10.2014, 07.10.2014, 08.10.2014, 09.10.2014 and 01.11.2014 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 greater financial strength and flexibility to the transferee company thereby resulting in maximizing overall shareholders' value. It has been further claimed that the amalgamation will also result in improved organizational capabilities and leadership, cost savings and greater leverage to the transferee company in operations planning and process optimization.

4.1 Furthermore, the petitioners have claimed that there are no proceedings pending against them, under Sections 235 to 251 of the Act or under Sections 206 to 229 of the Companies Act, 2013.

5. To recapitulate, the petitioners had, in the earlier round filed an application (i.e. the first motion), being: CA(M) No. 37/2015, 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 unsecured creditors of the transferor company nos. 16 and 19 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 1 to 15, 17, 18, 20 and 21 and, unsecured creditors, being 99.9% in value (though 60% in number), belonging to the transferee company had given their consent to the scheme, dispensed with the requirement of convening meetings of this 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 28.09.2015. Notices were accepted on behalf of both the Regional Director (RD) and the Official Liquidator (OL). Furthermore, citations were ordered to be published.

7.1 Accordingly, citations were published in the Delhi Editions of Business Standard (English) and Business Standard (Hindi), on 09.01.2016.

7.2 An affidavit dated 21.01.2016 demonstrating service of the petition on the RD and the OL and establishing publication of notice of hearing alongwith the newspaper extracts, was filed by the petitioners.

7.3 Further, the petitioners filed an affidavit dated 02.02.2016, wherein it is averred that the petitioners, have not received any objections/complaints from any third party qua the scheme.

8. 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.

8.1 The RD, evidently, has received information from the ROC vide communication dated 28.01.2016 which is indicative of the fact that the ROC has not made any adverse comments qua the scheme.

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

8.3 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.

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

9. To be noted, the scheme in clause 6.2.7 provides that all 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, similar to those subsisting in the transferor companies, as on the said date.

10. As per clause 14.1 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.

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

12. In terms of clause 16.1.1 of the scheme, the transferee company shall follow pooling of interest method as prescribed under Accounting Standard 14 as notified under Companies (Accounting Standards) Rules 2006.

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.

16. In terms of the provisions of Section 391 and 394 of the Act, and in consonance with clause 6.1 of the scheme, the entire business and undertakings, properties and assets, rights, benefits 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 clause 6.2.3 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.

16.1 More particularly, upon the scheme coming into effect, the transferor companies shall stand dissolved without having to follow the process of winding up.

16.2 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.

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

MARCH 21, 2016

RAJIV SHAKDHER, J

