नवीन ओखला औद्योगिक विकास प्राधिकरण

मुख्य प्रशासनिक कार्यालय,सैक्टर-6,नौएडा।

वाणिज्यिक विभाग

पत्रांक-नौएडा/वाणिज्य/2018/...951...
दिनाँक..25../09/2018

M/s ACE Infracity Developers Pvt Ltd.
(Formerly known as M/s Crest Promoters Pvt Ltd)
Plot No 01-B, Sector-126, Noida
Dist-Gautam Budh Nagar,
U.P.-201303.

विषयः-वाणिज्यिक स्पोर्टस सिटी भूखण्ड संख्या एस.सी.-02/जी, सेक्टर 150, नोएडा में M/s Crest Promoters Pvt Ltd को M/s ACE Infracity Developers Pvt Ltd में मर्जर किये जाने के संबंध में ।

कृपया उपरोक्त विषयक अपने पत्र दिनांक 07.06.2018 का सन्दर्भ ग्रहण करने का कष्ट करें जिसमें आपके द्वारा वाणिज्यिक स्पोर्टस सिटी भूखण्ड संख्या एस.सी.-02/जी, सेक्टर 150, नोएडा, क्षेत्रफल 60000.54 वर्ग मीटर के उप-पट्टा धारक M/s Crest Promoters Pvt Ltd को M/s ACE Infracity Developers Pvt Ltd में मर्जर किये जाने संबंधी मा0 नैशनल कम्पनी लॉ ट्रिबुनल, इलाहाबाद बेंच, इलाहाबाद द्वारा पारित आदेश दिनांक 21.03.2018 की प्रति संलग्न करते हुये उक्त भूखण्ड में कम्पनी का नाम M/s Crest Promoters Pvt Ltd से M/s ACE Infracity Developers Pvt Ltd किये जाने का अनुरोध किया है ।

उक्त के संबंध में आपके द्वारा प्रस्तुत किये गये दस्तावेज एवं मा0 नैशनल कम्पनी लॉ ट्रिबुनल, इलाहाबाद बेंच, इलाहाबाद द्वारा पारित आदेश दिनांक 21.03.2018 के अनुपालन में M/s ACE Infracity Developers Pvt Ltd का नाम उक्त भूखण्ड के अभिलेखों में इस शर्त के साथ दर्ज किया जाता है कि उक्त के संबंध में आप अपंजीकृत declaratory agreement निष्पादित कराकर उसकी प्रति 30 दिन के अन्दर प्राधिकरण रिकार्ड में रखे जाने हेतु प्रस्तुत करना सुनिश्चित करें । भविष्य में भूखण्ड से संबंधित समस्त पत्रालेख M/s ACE Infracity Developers Pvt Ltd के नाम से किया जायेगा । अन्य नियम व शर्तें यथावत रहेंगी ।

उक्त पत्र सक्षम अधिकारी के अनुमोदनोपरान्त जारी किया जा रहा है ।

सहा0महाप्रबंधक(वाणिज्य)

प्रतिलिपिः-
1. मुख्य वास्तुविद नियोजक को सूचनार्थ एवं आवश्यक कार्यवाही हेतु ।
2. लेखाधिकारी(वाणिज्य) को आवश्यक कार्यवाही हेतु ।

सहा0महाप्रबंधक(वाणिज्य)

नवीन ओखला औद्योगिक विकास प्राधिकरण

मुख्य प्रशासनिक भवन, सेक्टर–6, नौएडा

पत्रांकः नौएडा / वाणिज्य / 2017 / 192

दिनांक 1/3/17

M/s Crest Promotors Pvt. Ltd.
Plot No. 1/B, Sector-126,
NOIDA

महोदय,

कृपया अपने पत्र दिनांक 27.2.2017 का संदर्भ ग्रहण करने का कष्ट करें, जिसके द्वारा आपने स्पोटर्स सिटी भूखण्ड संख्या–SC-02/F, Sector-150 (क्षेत्रफल 58064.71 वर्ग मीटर) तथा भूखण्ड संख्या– SC-02/G, Sector-150 (क्षेत्रफल 60000.54 वर्ग मीटर) के पट्टाधारक M/s Crest Promotors Pvt. Ltd. को होल्डिंग कम्पनी ACE Infracity Developers Pvt. Ltd. में Merge किये जाने हेतु अनुमति दिये जाने का अनुरोध किया गया है।

उक्त के सम्बन्ध में अवगत कराना है कि Merger सम्बन्धी कार्यवाही रजिस्ट्रार ऑफ कम्पनीज अथवा माननीय सक्षम न्यायालय द्वारा की जाती है।

यदि Merger सम्बन्धी कार्यवाही रजिस्ट्रार ऑफ कम्पनीज अथवा माननीय सक्षम न्यायालय द्वारा की जाती है तो इस पर प्राधिकरण को कोई आपत्ति नही है। Merger के उपरान्त वांछित प्रपत्र प्राधिकरण में प्रस्तुत किये जाने के उपरान्त नियमानुसार रिकार्ड पर लिया जायेगा।

भवदीय,

(एल० पी० सिंह)
सहायक महाप्रबंधक (वाणिज्य)

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

COMPANY PETITION NO. (CAA)-134 (ALD) 2017
CONNECTED WITH
COMPANY APPLICATION NO.CA(CAA)– 115(ALD)/2017

IN THE MATTER OF:

Sections 230 and 232 and other applicable sections and provisions of the Companies Act, 2013 read Companies (Compromises, Arrangements, and Amalgamation) Rules, 2016

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

1. CREST PROMOTERS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT PLOT NO. 01/B, SECTOR-126, NOIDA, GAUTAM BUDH NAGAR, UTTAR PRADESH-201 303

.......TRANSFEROR COMPANY /PETITIONER COMPANY NO.1

AND

2. AJAY BUILDHOME INDIA PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT A-300, Surya Nagar, Ghaziabad, Uttar Pradesh-201 011

.......TRANSFEROR COMPANY / PETITIONER COMPANY NO.2

AND

3. IDEAL MEGACITY PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT A-300, Surya Nagar, Ghaziabad, Uttar Pradesh-201 011

.......TRANSFEROR COMPANY / PETITIONER COMPANY NO.3

AND

4. DIVINE SPIRIT INFRA PROJECTS PRIVATE LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B-47, SURYA NAGAR, GHAZIABAD, UTTAR PRADESH-201 011

.......TRANSFEROR COMPANY / PETITIONER COMPANY NO.4

AND

5. VIVID HERBS LIMITED
A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B-47, SURYA NAGAR, GHAZIABAD, UTTAR PRADESH-201 011

.......TRANSFEROR COMPANY / PETITIONER COMPANY NO.5

Sd/— *AND* Sd/—

6. **SURYA MEDI-TECH LIMITED**
   A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B-47, SURYA NAGAR, GHAZIABAD, UTTAR PRADESH-201 011

   ....TRANSFEROR COMPANY / PETITIONER COMPANY NO.6

AND

7. **RISHABH SHOES PRIVATE LIMITED**
   A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B-47, SURYA NAGAR, GHAZIABAD, UTTAR PRADESH-201 011

   ....TRANSFEROR COMPANY / PETITIONER COMPANY NO.7

AND

8. **TAWA AGRO PRIVATE LIMITED**
   A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B-47, SURYA NAGAR, GHAZIABAD, UTTAR PRADESH-201 011

   ....TRANSFEROR COMPANY / PETITIONER COMPANY NO.8

AND

9. **LACHEN AGRO PRIVATE LIMITED**
   A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT B-47, SURYA NAGAR, GHAZIABAD, UTTAR PRADESH-201 011

   ....TRANSFEROR COMPANY / PETITIONER COMPANY NO.9

AND

10. **ACE INFRACITY DEVELOPERS PRIVATE LIMITED**
   A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956 HAVING ITS REGISTERED OFFICE AT PLOT NUMBER 01/B, SECTOR-126, NOIDA, GAUTAM BUDH NAGAR, UTTAR PRADESH - 201 303

   ....TRANSFEREE COMPANY / PETITIONER COMPANY NO.10

JUDGMENT/ORDER DELIVERED ON 21th March, 2018.

CORAM : **Sh. V.P. Singh, Hon'ble Member (Judicial)**
Ms. Saroj Rajware, Hon'ble Member (Technical)

Counsel for the Petitioner : Mr. Saurabh Kalia
A/w Mr.Palash Agarwal, Advocates

For the OL Allahabad : Shri Kuldeep Singh, STA

Per : **Ms. Saroj Rajware, Member (T)**

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ORDER/JUDGMENT

1. The Petitioner Companies filed the Present Company Petition under Section 230/232 of Companies Act, 2013 seeking prayer for the sanction of the Proposed Company Scheme of Amalgamation annexed in Annexure A-1 between Transferor Companies, with Transferee Company.

2. It is submitted that the Proposed Company Scheme of Amalgamation has earlier been approved by the respective Board of Directors. Copy of Certified True Copy of the Resolution Passed by the Board of Directors of the Transferor Companies and Transferor Company is annexed with the present Petition from annexure A-2 to annexure A-12.

3. Certificate of statutory Auditor of Transferor Company No.1-9 and Transferee Company to the effect that the accounting treatment involved in the Scheme of Amalgamation is in conformity of the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 is annexed in the Annexure A-13 of the present Petition.

4. The ***Appointed Date*** as mentioned in the Proposed Company Scheme of Amalgamation is **April 1, 2017.**

5. Circumstances that necessitated the amalgamation and benefits sought to be achieved by the amalgamation and its effect are stated as under-

   (a) The proposed scheme of amalgamation would enable pooling of physical, financial and human resource of these Companies for the most beneficial utilization of factors in the combined entity.

   (b) The proposed scheme of amalgamation would result in optimum utilization of the manpower of the concerned Companies and it

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will open the better avenues for the employees. The employees will have a better choice of skill up gradation, development and career growth.

(c) The proposed scheme of amalgamation will result in growth of economies as a centralized large Company including elimination of duplication of work and efforts, reduction in cost of overheads, better and more productive utilization of all the resources and enhancement of overall business efficiency. It will enable these Companies to combine their managerial and operational strength, to build a wider organizational structure with enhanced capital and improved financial base, and to promote security in growth of their businesses.

(d) The proposed scheme of amalgamation will contribute in fulfilling and furthering the objects of the Transferor Companies and the Transferee Company. It will strengthen, consolidate and facilitate further expansion and growth of their businesses. The resulting Amalgamated/Transferee Company will able to participate more vigorously and profitably in the competitive market scenario.

(e) The proposed scheme of amalgamation would enhance the Shareholders value of the Transferor and Transferee Companies.

(f) The proposed scheme of amalgamation will have beneficial impact on Transferor and the Transferee Company, their employees, their shareholders and all concerned.

6. First Motion application seeking the directions for dispensing with the meetings of Shareholders, Secured and Unsecured creditors of the

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Petitioner Companies was filed before this Tribunal bearing CA(CAA) No. 115(ALD) 2017. The Tribunal vide its *order dated 14.09.2017* had dispensed with the requirement of convening the meetings of the Shareholders and Creditors of the Petitioner Company in view of their consent affidavits having been placed on record.

7. The Petitioner Companies then filed a petition for being C.P 134/ALD/2017 for the second motion. On *12.10.2017,* we directed the Petitioner Companies to issue Notice in the Second Motion petition to the Registrar of Companies, Regional Director, Income Tax Department, and all other sectorial regulators if necessary. The Petitioner Companies were also directed to carry out publication of notices in any English Daily and Hindi Daily. An *Affidavit dated 22.11.2017* has been filed by the Petitioner Companies confirming that notices were duly published in both the Newspapers on *24.10.2017.* The affidavit also shows that since the date of publication of the Notices till the date of filing the affidavit, no objections have been received for final approval of the Scheme. Further, the affidavit dated 22.11.2017 discloses that copies of petition along with the copies of the Scheme have been duly served on the Registrar of Companies, Regional Director, Northern Region, the Official Liquidator and Income Tax Department, New Delhi in compliance with the order dated 12.10.2017 and in proof of the same acknowledgement issued by the respective offices have also been enclosed.

8. Upon this Scheme becoming effective and in consideration of the transfer and vesting of the undertaking of the Transferor Companies in the Transferee Company in terms of this Scheme, the Transferee Company shall not allot and shares to the equity shareholders of the Transferor

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Companies as all the Transferor Companies are either wholly owned subsidiaries of the Transferee Company either directly or indirectly.

9. Regional Director, Northern Region, Ministry of Corporate Affairs, after receiving the report from the Registrar of Companies has filed his report *on 30.11.2017.* It has been stated in the report that the Petitioner Companies have not violated any provisions as Companies Act, 1956/2013 FEMA, SEBI Act, RBI Act, etc. Further, ***it has been submitted that the Petitioner Companies may be directed to give an undertaking to pay the stamp duty as may be applicable consequent upon transfer of assets due the Amalgamation of undertakings.***

10. The Official Liquidator has filed a report on ***20.11.2017*** wherein it has been stated that he has not received any complaint against the proposed Scheme of Amalgamation from any person or any party interested in the Scheme in any manner and that the affairs of the Applicant Companies do not appear to have been conducted in a manner prejudicial to the interest of its members, creditors or public interest.

11. The Petitioner Companies through an affidavit dated 22.11.2017 has replied to the report/affidavit of Ld. Official Liquidator and Ld. Regional Director. ***It has been submitted that the petitioner company shall pay the stamp duty, if applicable, consequent upon the transfer of assets due to the Amalgamation of undertakings.***

12. The Income Tax Department through a letter dated 09.02.2018 has submitted that the transferor company no. 2 & 3 have reported large exempt income for assessment year 2017-18 for which scrutiny assessment under Section 143(3) is yet be finalized. Any tax liability raised against the transferor company no. 2 and 3 shall be borne by the transferee company. In reply to this

Transferor Company No. 2 and 3 and Transferee Company through its Affidavit dated 13.02.2018 have stated that the transferee / petitioner company no. 10 undertakes to pay any tax liability / demand raised by office of Income Tax with respect to Transferor Company No.2 and 3 under the Income Tax Act, 1961 of other applicable law.

13. We have gone through the above stated averments made in the Company Petition and perused the documents annexed therewith we perused the affidavit of the Regional Director as well as the Report of Registrar of Companies, Official Liquidator. We examined the merits of present Company Scheme Petition in the light of Judicial Trend as has been settled as such, "***the court must examine the scheme on its own merits and is not bound to treat the scheme as fait accompli. It is well-settled that in exercising its discretion in according sanction, the court will consider, first, whether the statutory provisions have been complied with; secondly, whether the classes were fairly represented by those who attended the meeting and whether the statutory majority were acting bona fide, and, thirdly, whether the scheme is such as a man of business would reasonably approve. Bearing in mind these principles, the scheme may be examined***".[1]

We found that the Scheme is not detrimental to the interests of the creditors or members or public interest.

14. By following the above stated legal principle, we are of the view that the proposed company scheme does not seems to be contrary to the public policy, nor prejudicial to the interest of its shareholders or detrimental to public interest at large. By perusing the material available on record, the

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[1] Bank Of Baroda Ltd. vs Mahindra Ugine Steel Co. Ltd.(1976)46Comp. Cas 227(Guj)

Company Scheme appears to be fair and reasonable and is not found violative of any provisions of Law.

15. In addition to above all the statutory compliance either seems to have been complied with or further undertaken for making compliances by Petitioner Companies as per its Affidavit. Therefore, the present Company Scheme Petition of the Petitioner Companies deserves to be allowed. Hence, the same is allowed and the prayer made therein is made absolute in terms of its Prayer Clause.

16. In the result, the proposed Company Scheme of Arrangement annexed to Company Petition is duly approved and hereby sanctioned with the following directions:

That in terms of the Scheme:

a. That the transferor company stand dissolved without being wound-up.

b. That all the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to section 232 of Act, be transferred to and vested in the Transferee Company for all estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

c. That all the liabilities of the Transferor Company be transferred without further act or deed to the Transferor Company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee Company; and

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d. That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company which shall include liability to pay Income Tax, GST or any other tax, if any; and

e. That the transferee company without further application undertake to allot such members of the transferor company, as have not given such notice of dissent, as is specified by the Scheme of Amalgamation herein the shares in the transferee company to which they are entitled under the said Scheme of Amalgamation.

f. That Petitioner Companies shall within thirty days of the date of the receipt of this order cause a certified copy of the order to be delivered to the Registrar of Companies for registration and the Transferor Company shall have deemed to be dissolved. The Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on file kept by him in relation to the Transferee Company and files relating to the Petitioner Companies shall be consolidated accordingly;

g. That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

h. All Concerned Regulatory Authorities to act on a copy of this order annexed with the Company Scheme duly authenticated by the Asst. Registrar, National Company Law Tribunal, Allahabad Bench.

i. 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.

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j. While approving the scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes including income tax and GST etc. or other charges, if any, and payment in accordance with law or in respect to any permission/ compliance with any other requirement which may be specifically required under any law.

k. The petition is allowed and stands disposed of accordingly.

Dated: 21.03.2018

Sd

(Saroj Rajware)
Member (Technical)

Sd

(V.P. Singh)
Member (Judicial)

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

28/03/18

S. A. MEHDI
DEPUTY REGISTRAR
NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD-U.P.

Date of Application 27/03/2018
Amount of copying fees along with application Rs-56/-
Copy prepared/ready for delivery Yes
Balance amount, if any Nil
Date of delivery 28/03/2018

Compared by me
Bhd Mishr
28/03/2018

Affixed with the Order ~~of~~ passed by NCLT. Allahabad in respect of company petition No. (CAA)-134 (ALD)-2017

GOVERNMENT OF NCT OF DELHI

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