

IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Company Petition No. 12/ALD/2018
Company Application No. 212/ALD/2017

IN THE MATTER OF:

A Petition under Section 230 To 232 of the Companies Act, 2013;

IN THE MATTER OF:

ELDECO CITY LTD

(A company within the meaning of Companies Act, 2013, having its registered office at First Floor, 15/54-B, Civil Lines, Virendra Smriti Complex, Kanpur-208 001 in the State of Uttar Pradesh, within the jurisdiction above) CIN: U70109UP2006PLC066091

PETITIONER/TRANSFEROR COMPANY

And

ELDECO HOUSING AND INDUSTRIES LTD,

(A company within the meaning of Companies Act, 2013, having its registered office Eldeco Corporate Chamber -I, 2nd Floor, Vibhuti Khand (Opposite Mandi Parishad), Gomti Nagar, Lucknow-226 010 in the State of Uttar Pradesh, within the jurisdiction above) CIN L45202UP1985PLC099376

PETITIONER/TRANSFeree COMPANY

JUDGMENT/ORDER DELIVERED ON 27.03.2018

Coram: Hon'ble Shri V.P. Singh, Member (Judicial)
Hon'ble Ms Saroj Rajware (Technical)

For the Petitioners: Mr Rajeev K Goel, Advocate
For the Central Government: Mr M.K. Bagri, OL

AS PER: Saroj Rajware, Member (Technical)

ORDER

1. The object of this petition is to obtain the sanction of this Tribunal to a Scheme of Amalgamation of Eldeco City Ltd with Eldeco Housing and Industries Ltd and their respective shareholders. A copy of the Scheme

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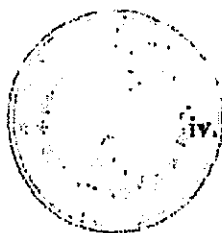
of Amalgamation is annexed with the Petition and marked as Annexure "P-1". The Transferor Company is a wholly owned subsidiary of the Transferee Company.

2. The Board of Directors of each Company is of the opinion that the proposed Amalgamation would have beneficial results for the Companies, their shareholders and all concerned, and will not be prejudicial to the interests of any concerned shareholders or creditors or the general public at large.
3. It has been submitted in the Petition that the present Scheme of Amalgamation will result in Consolidation of similar businesses (commercial and residential real estate development) and related assets leading to synergistic linkages and benefits, by combining the businesses and operations of the Petitioner Companies. From a financial and legal perspective, enhancing the feasibility of multiple commercial and financing aspects through carrying on of businesses in one legal entity.
4. It has further been submitted in the Petition that the said Scheme of Amalgamation, among other things, provides as under:

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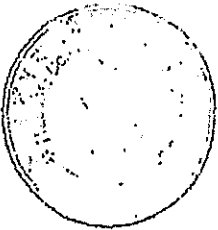
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- i. All assets and liabilities including Income Tax and all other statutory liabilities, if any, of the Transferor Company, will be transferred to and vest in the Transferee Company.
- ii. All the employees of the Transferor Company in service on the Effective Date, if any, shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favourable than those subsisting in the Transferor Company on the said date.
- iii. Appointed Date for Amalgamation will be 1st April 2017 or such other date, as the Hon'ble National Company Law Tribunal may approve.
- iv. Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, no shares will be issued by the Transferee Company under this Scheme.



5. The first motion joint Application being CA 212 (ALD) of 2017, was filed before this Hon'ble Tribunal to obtain appropriate orders to dispense with the requirement of convening meetings of Shareholders, Secured Creditors and Un-secured Creditors of the Petitioner Companies for the purpose of the considering and approving, with or without modification, the aforesaid Scheme of Amalgamation and based

on such joint Application moved under section 230-232 of the Companies Act, 2013, by an Order dated 29th December 2017, directions were issued by this Tribunal to dispense with the requirement of convening meetings of Shareholders and Un-secured Creditors of the Transferor Company; and Shareholders, Un-secured Creditors and Secured Creditors of the Transferee Company. The Transferor Company does not have any Secured Creditors. Further, directions were issued to serve a copy of the Company Application to the Central Government through the office of the Regional Director, Northern Region, Ministry of Corporate Affairs; Registrar of Companies, Kanpur; Official Liquidator, Allahabad; Income Tax Department; BSE Ltd; The Securities and Exchange Board India; Uttar Pradesh Real Estate Regulatory Authority (RERA) and such other Statutory Authorities, if they are legally required so.



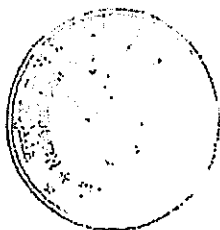
6. Learned Counsel submits that in Compliance with Order dated 29th December 2017, of this Tribunal, notice of the Company Application has been sent to the Central Government through the office of the Regional Director, Northern Region; Registrar of Companies, Kanpur; Official Liquidator, Allahabad; Income Tax Department; BSE Ltd; The Securities and Exchange Board India; Uttar Pradesh Real Estate Regulatory Authority (RERA) and affidavit dated 10.01.2018 was filed in compliance of the said Order.

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7. After such due compliance, the petitioners have made the instant petition bearing CP No. 12 (ALD)/2018 before this Tribunal, among other things, seeking final sanction to the proposed Scheme of Amalgamation and for orders facilitating and giving effect to the same, in terms of provisions of Section 230 to 232 of the Companies Act, 2013, read with Rule 16 of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016.

8. In Compliance of proviso to Section 230(7) of the Act, the Statutory Auditors of both the Petitioner Companies, by a certificate dated 10.11.2017 St~~certified~~ that the accounting treatment proposed in the Scheme of Amalgamation conforms with the Accounting Standards under Section 133 of the Act. A copy of the said Certificate of the Statutory Auditor of the Petitioner Companies is annexed to the Petition and marked as Annexure P-2.



9. It has been submitted by the Petitioner that the proposed Scheme of Amalgamation does not envisage any corporate debt restructuring. There is no proposal to restructure or vary the debt obligation of the Transferor Company or the Transferee Company towards their respective creditors. The proposed Scheme of Amalgamation will not adversely affect the rights of any of the creditors of the Transferor Company or the Transferee Company in any manner whatsoever.

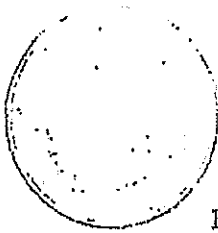
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10. It has also been stated in para 1.10 & 2.10 of the Petition that no proceeding for inspection, inquiry or investigation under the provisions of the Companies Act, 2013, or under the provisions of the Companies Act, 1956, is pending against any of the Petitioner Companies.

11. It is further stated in the Petition that no one will be prejudiced if the proposed Scheme of Amalgamation is sanctioned and the sanction of the said Scheme will benefit all and is in the interest of the Transferor Company and the Transferee Company, their Shareholders, Creditors, Employees and all concerned.

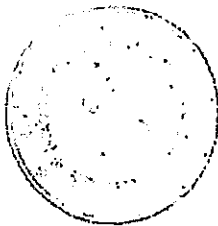
12. This Tribunal had passed an Order dated 25th January 2018, in the said Petition, directing publication to be effected of the hearing of the Petition, issuance of notices of this Petition to the concerned authorities for their objections, if any.



13. In Compliance with the Order dated 25th January 2018, passed by this Tribunal, notices of this Petition were also served upon the Central Government through the office of the Regional Director, Northern Region; Registrar of Companies, Kanpur; Official Liquidator, Allahabad; Income Tax Department; BSE Ltd; The Securities and Exchange Board India; Uttar Pradesh Real Estate Regulatory Authority having jurisdiction over the Petitioner Companies.

14. The Advertisement of the hearing of the Petition was also published once in "Business Standard" (English, Lucknow Edition) and once in "Business Standard" (Hindi, Lucknow Edition), vernacular daily both dated 09.02.2018 an affidavit was filed on 27.02.2018 in compliance of the said order.

15. The Official Liquidator, Allahabad, in his report submitted that the affairs of the Transferor Company as such not conducted in a manner prejudicial to the interest of their members or public interest. The Official Liquidator has also mentioned that he has no objection to the dissolution of the Transferor Company without winding up under provisions of Section 230-232 of the Companies Act, 2013 and other applicable sections and rules thereunder. The Registrar of Companies, Kanpur has also submitted his report on the said Scheme and has not raised any observation.



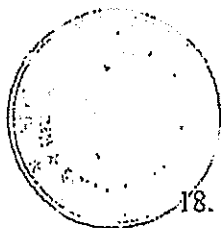
16. The Regional Director, Northern Region, Ministry of Corporate Affairs; Mr S.B. Gautam filed his report by way of the affidavit dated 27.02.2018. In his report, Regional Director refers to the report of the Registrar of Companies, Kanpur. It is also stated that none of the Petitioner Companies was investigated u/s 235/237 of the Companies Act, 1956/2013 or inspected u/s 209A/206 of the Companies Act, 1956/2013. The Regional Director further submitted that the "Petitioner Transferee Company is listed on Bombay Stock Exchange (BSE). Since

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the present Scheme of Amalgamation solely provides for amalgamation of a wholly owned subsidiary with its parent Company, no formal approval, NOC or vetting is required from BSE or SEBI for the Scheme, in terms of the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, read with the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2017, and SEBI Circular No. CFD/DIL3/CIR/2017/21 dated 10th March 2017, and applicable provisions, if any".

17. The Regional Director also submitted that Petitioner Companies may be directed to give the undertaking to pay the stamp duty as may be applicable consequent upon the transfer of assets due to the Amalgamation of undertaking/assets.



18. The Petitioner Companies have filed their Reply/Affidavits on dated 06.03.2018 on the aforesaid submissions/observations of the Learned Regional Director. Learned Counsel for the Petitioners submits and confirm that the Petitioner Companies do not seek any waiver or exemption from payment of stamp duty and other charges which may be payable by the Petitioner Companies regarding the provisions of any Statute. The Companies under the Scheme of Amalgamation undertake and confirm to pay the stamp duty and other charges, if any, as may be

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applicable consequent upon the sanction of the Scheme of Amalgamation by the Tribunal.

19. Given the above, there does not impede the sanction of the Scheme. The Scheme (Annexure P-1) is approved. While approving the Scheme, it is clarified that this order should not be construed as an order in any way granting exemption from payment of any stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect of any permission /compliance with any other requirement which may be specifically required under any law. With the sanction of the Scheme, the Transferor Company shall stand dissolved without undergoing the process of winding up increasing the share capital of the Transferee Company.



AND THIS TRIBUNAL DO FURTHER ORDER:

- i) 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 sections 230 to 232 of the Companies Act, 2013, be transferred to and vested in the Transferee Company for all the estate and interest of the Transferor Company but subject nevertheless to all charges now affecting the same; and

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- ii) That all the liabilities and duties of the Transferor Company be transferred, without further act or deed, to the transferee Company and accordingly the same shall pursuant to Sections 230 to 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company; and
- iii) That all the proceedings now pending by or against the Transferor Company be continued by or against the Transferee Company; and
- iv) That the employees of the Transferor Company shall be transferred to the Transferee Company as per the 'Scheme'; and
- v) Since the Transferor Company is a wholly owned subsidiary of the Transferee Company, no shares will be issued by the Transferee Company under this Scheme; and
- vi) That the fee, if any, paid by the Transferor Company on its authorized capital shall be set off against any fees payable by the Transferee Company on its authorized capital subsequent to the sanction of the 'Scheme'; and
- vii) That the Petitioner Companies do, within 30 days after the date of receipt of this order, cause a certified copy of this order to be delivered to the Registrar of Companies for registration, and on such certified copy is so delivered, the Transferor Company shall be

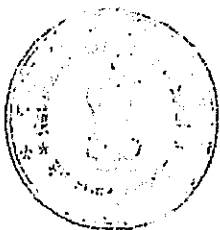


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dissolved without undergoing the process of winding up. The concerned Registrar of Companies shall place all documents relating to the Transferor Company registered with him on file relating to the said Transferee Company and the files relating to the Transferor and Transferee Companies shall be consolidated accordingly, as the case may be; and

- viii) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.
- ix) As per the above directions and Form No.CAA-7 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 formal orders be issued on the petitioners on the filing of the Schedule of Property, i.e. (i) freehold property of the Transferor Company and (ii) leasehold property of the Transferor Company, by way of affidavit of the Transferor Company.



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(Ms. Saroj Rajwade)
Member (Technical)

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(V.P Singh)
Member (Judicial)

Dated: 27.03.2018

Confirmed by me
Rohit Singh
02/04/2018

FREE OF COST COPY

Ravinder Kumar
02/04/2018
Bench Officer
National Company Law Tribunal
Allahabad-U.P.

ANNEXURES TO THIS ORDER ARE NOT BEING UPLOADED AS THE FILE SIZE WAS EXCEEDING 2 MB.THEY ARE AVAILABLE OFFLINE IF REQUIRED FOR REFERENCE.



GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS
Registrar of Companies, Kanpur

10/499-B, Allenganj,, Khalasi Line,,,, Kanpur, Uttar Pradesh, INDIA, 208002

Corporate Identity Number : U70109UP2006PTC066091

SECTION 13(5) OF THE COMPANIES ACT, 2013

Certification of Registration of Regional Director order for Change of State

M/s Eldeco City Private Limited having by special resolution altered the provisions of its Memorandum of Association with respect to the place of the Registered Office by changing it from the state of Delhi to the Uttar Pradesh and such alteration having been confirmed by an order of RD NOIDA, RD NR bearing the date 19/08/2014.

I hereby certify that a certified copy of the said order has this day been registered.

Given under my hand at Kanpur this Sixteenth day of September Two Thousand Fourteen.

SATYA PARKASH KUMAR
Registrar of Companies
Registrar of Companies
Kanpur

Mailing Address as per record available in Registrar of Companies office:

Eldeco City Private Limited
CORPORATE CHAMBER - I, II nd FLOOR, VIBHUTI KHAND, OPPOSITE MANDI PARISHAD,
GOMTI NAGAR,
LUCKNOW - 226010,
Uttar Pradesh, INDIA



For Eldeco City Private Limited

Director

Certificate of Incorporation Consequent upon conversion to Public Limited Company



सत्यमेव जयते

GOVERNMENT OF INDIA

MINISTRY OF CORPORATE AFFAIRS

Registrar of companies, Kanpur

10/499-B, Allenganj,, Khalasi Line,, Kanpur, Uttar Pradesh, India, 208002

Corporate Identity Number: U70109UP2006PLC066091

Fresh Certificate of Incorporation Consequent upon Conversion from Private Company to Public Company

IN THE MATTER OF ELDECO CITY PRIVATE LIMITED

I hereby certify that ELDECO CITY PRIVATE LIMITED which was originally incorporated on Twentieth day of June Two thousand six under the Companies Act, 1956 as HORIZON INFRACON PRIVATE LIMITED. and upon an intimation made for conversion into Public Limited Company under Section 18 of the Companies Act, 2013; and approval of Central Government signified in writing having been accorded thereto by the RoC - Kanpur vide SRN G38437414 dated 24.03.2017 the name of the said company is this day changed to ELDECO CITY LIMITED.

Given under my hand at Kanpur this Twenty fourth day of March Two thousand seventeen.

DS MINISTRY OF
CORPORATE
AFFAIRS 10

Ruvit Kumar

Deputy Registrar of Companies

Registrar of Companies

RoC - Kanpur.

Mailing Address as per record available in Registrar of Companies office:

ELDECO CITY LIMITED

FIRST FLOOR, 15/54- B CIVIL LINES, VIRENDRA SMRITI
COMPLEX, KANPUR, Kanpur, Uttar Pradesh, India, 208001



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GOVERNMENT OF INDIA

MINISTRY OF COMPANY AFFAIRS

National Capital Territory of Delhi and
Haryana

B-block Paryavaran Bhawan, CGO Complex, Lodhi Road, , New Delhi - 110003, Delhi, INDIA

Corporate Identity Number : U70109DL2006PTC149911

**Fresh Certificate of Incorporation Consequent upon
Change of Name**

IN THE MATTER OF M/s HORIZON INFRACON PRIVATE LIMITED.

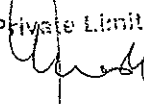
I hereby certify that HORIZON INFRACON PRIVATE LIMITED, which was originally incorporated on TWENTIETH day of JUNE TWO THOUSAND SIX under the Companies Act, 1956 (No. 1 of 1956) as HORIZON INFRACON PRIVATE LIMITED, having duly passed the necessary resolution in terms of Section 21 of the Companies Act, 1956 and the approval of the Central Government signified in writing having been accorded thereto under Section 21 of the Companies Act, 1956, read with Government of India, Department of Company Affairs, New Delhi, Notification No. G.S.R 507 (E) dated 24/06/1985 vide SRN A05397435 dated 03/11/2008 the name of the said company is this day changed to Eldaco City Private Limited and this Certificate is issued pursuant to Section 23(1) of the said Act.

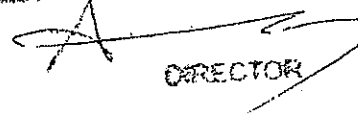
Given under my hand at Delhi this THIRD day of NOVEMBER TWO THOUSAND SIX.




(TEJ PRAKASH SHAMI)

Registrar of Companies
National Capital Territory of Delhi and
Haryana

For Eldaco City Private Limited

Director

ELDECO CITY PVT. LTD.

DIRECTOR



Form 1


Certificate of Incorporation

Corporate Identity Number: U70109DL2006PTC149911 2006-2007

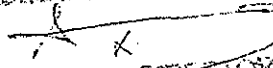
I hereby certify that HORIZON INFRACON
PRIVATE LIMITED is this day incorporated under the
Companies Act, 1956 (No. 1 of 1956) and that the Company
is Limited.

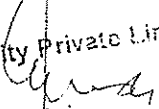
Given under my hand at DELHI this TWENTIETH Day of
JUNE TWO THOUSAND SIX.




(V.P. KATKAR)
Asstt. Registrar of Companies
NCT OF DELHI AND HARYANA

CERTIFICATE NEW/0664


DIRECTOR

For Eldeco City Private Limited

Director