

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

AT NEW DELHI BENCH-III

(SPECIAL BENCH)

AMENDED ORDER

CAA- 12/ND/2018

**IN THE MATTER OF SCHEME OF AMALGAMATION
BETWEEN**

1. Singhal Wire & Insulations Private Limited and Others
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.1)
AND
2. Gaurav Infrazone Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.2)
AND
3. Sigma Suppliers Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.3)
AND
4. Royal Infrabuild Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.4)
AND
5. Neelanchal Shelters Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.5)
AND
6. Pee ESS Build Cons Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.6)



8.4.2019

AND

7. Neelanchal Town Projects Private Limited
(TRANSFEROR COMPANY/APPLICANT COMPANY NO.7)

WITH

8. Govinda Housing Limited
(TRANFEE COMPANY/ APPLICANT COMPANY NO.8)

CORAM: SMT. INA MALHOTRA, MEMBER (JUDICIAL)

SMT. DEEPA KRISHAN, MEMBER (TECHNICAL)

ORDER DELIVERED ON -05.04.2019

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

1. This Joint application has been filed by the Applicant Companies under sections 230 and 232 of the Companies Act, 2013 read with the Company (Compromises, Arrangements and Amalgamations) Rules, 2016 and the National Company Law Tribunal Rules, 2016, for the purpose of approving the Scheme of Amalgamation, as contemplated between the Transferor Companies with Transferee Company.
2. All the Transferor Companies as well as Transferee Company have their registered offices which lie within the jurisdiction of this Tribunal.
3. A perusal of the petition discloses that the Board of Directors of the Transferor Company (Applicant No.1 to 7) and Transferee Company (Applicant No.8) had approved the scheme for merger in their respective meetings held on 15th April, 2017 and had jointly filed the first motion



application bearing C.A. No. [CAA] 59(PB)/2017. The Tribunal vide its order dated 9th August, 2017 had dispensed with the meetings of the equity shareholders and unsecured creditors of all Companies in view of the consent affidavits being on record.

There were no secured creditors of the applicant companies.

4. The applicant companies have now initiated the Second Motion. An affidavit dated 24.11.2018 discloses that the petitioners have effected publication in the daily newspapers "Financial Express" in English and "Jansatta" in Hindi, both dated 24.05.2018 and having circulation in Delhi inviting objections if any to the proposed Scheme of Amalgamation. The affidavit further discloses that due notice of the proposed scheme had been served on the Registrar of Companies, Regional Director, Northern Region, Income Tax Dept. and the Official Liquidator in compliance with the order of the Tribunal.

Pursuant to the Publication in the daily newspapers, for listing of the matter before this Bench, no objector has appeared before us.

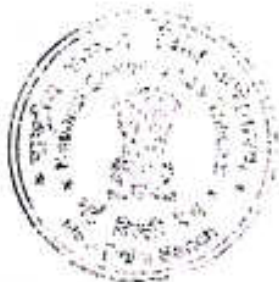
Additionally, it has been deposed that no objection to the proposed Scheme has been received by the applicant companies or their counsel. The replies of the Regional Director, NR, MCA dated 10.12.2018 and the Report of Official Liquidator dated 24.07.2018 have been placed before us.

5. We have heard the counsels for the petitioners and also considered the representation dated 10.12.2018 made by the Regional Director, Northern Region. In the reply filed by the Regional Director (NR), it has been confirmed that the Transferor and Transferee companies are regular in filing their statutory returns. No prosecution has been filed, no complaints are pending and no inspection or investigation has been conducted in respect of the applicant companies. Further in their report, they have



stated that they have no objection to the sanction of the proposed scheme. The OL has also not made any observation that the scheme would be against public policy or detrimental to the interest of the Shareholders. As per the affidavit on record, notice was served to the Income Tax Dept but no objection has been received even after lapse of 30 days of service.

6. The report of the statutory auditors certifying that the Accounting Standards as required u/s 133 of the Companies Act 2013 had been adhered to is on record. The Audited Financial Statements for the year ended 31st March, 2016 of all the applicant companies have been filed.
7. The scheme of Amalgamation as contended by the Petitioners is sought to be justified on grounds that it:
 - a. would result in consolidation of the Group Companies and pooling of their resources into a single entity;
 - b. Would result in pooling of physical, financial and human resource of these Companies for the most beneficial utilization of these factors in the combined entity;
 - c. Will contribute in furthering and fulfilling the objects of the company concerned and enabling the optimum growth and development of their combined entity;
 - d. Facilitate administrative compliances and conveniences and reduce overhead, operative and administrative costs and consequently improve profitability;
 - e. Would have beneficial impact on the Transferor and the Transferee Companies, their shareholders, employees and other stakeholders and all concerned.
8. Based on the Valuation Report by S. Kumar Jain and Associates, CA, the Share Exchange ratio proposed has been accepted by the Board of Directors and members of the applicant Companies. The authorized



Share Capital of the Transferor Companies shall be combined with the Authorized Share Capital of the Transferee Company.

9. In view of the foregoing, upon considering the approval accorded by the members and creditors of all companies to the proposed Scheme, and no objections being raised by the office of the Regional Director or the Income Tax Dept, there appears to be no impediment in granting sanction to the Scheme. Consequently, sanction is hereby granted to the Scheme under sections 230-232 of the Companies Act, 2013. The sanctioned Scheme of amalgamation shall be binding on the Transferor and the Transferee Companies and on all their respective shareholders and creditors. The Petitioners shall also be bound to comply with the statutory requirements in accordance with law.
10. 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 both the petitioner companies.
11. 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, Statutory dues or any 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.
12. This tribunal doth further order that upon scheme of Amalgamation by way of Merger coming into effect;



- a. That Transferor Companies shall stand dissolved without being wound up.
 - b. That the entire business, properties and assets of the Transferor companies, be transferred without further act or deed to the Transferee company and accordingly the same shall, pursuant to section 232 of the Act, be transferred to and vest in the Transferee company, but subject nevertheless to all charges now affecting the same;
 - c. That all the assets and liabilities including Income Tax and all other Statutory dues, if any, of the Transferor companies, be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liability and duty of the transferee company;
 - d. All employees of the Transferor Companies in service on the effective date 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 favorable than those subsidiary with the Transferor Company on that date.
 - e. The Appointed date for Amalgamation shall be 1st April 2017.
 - f. That all proceedings now pending by or against the transferor companies, be continued by or against the transferee company;
13. That petitioners shall within thirty days of the date of the 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 being so delivered, the transferor companies shall be dissolved and the Registrar of Companies shall place all documents relating to the transferor company and registered with them and shall consolidate the files of the companies, is accordingly duly approved and sanctioned in terms of the above.



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

15 Each of the transferee Companies is directed to pay Rs. 1,00,000/- to the Prime Minister's Relief Fund, Receipt of which shall be produced before the RoC at the time of Submission of the Sanctioned Scheme.

Deepa Krishan
Member (T)

Ina Malhotra
Member (J)

Rajin 8/4/2019
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NATIONAL COMMISSION FOR
SECURITY OF INDIA
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EV 013393

COLLABORATION AGREEMENT

THIS AGREEMENT is made at Agra on this 8th day of March 2018 between

M/s K.P.Buildwell Pvt.Ltd. A company incorporated under the companies Act, 1956 having its registered office at 2481/9, IInd Floor, Gurudwara Road, Karol Bagh, New Delhi-110005. Through its director Mr. Ved Prakash Gupta (hereinafter referred to as First Party of the One Part which expression shall mean and include its successors in interest and legal heirs.) and **Mahadev Sahakari Avas Samiti Ltd.** Registration No. 2925 having its registered office at E-213, Kamla Nagar, Agra. Through its Authorized person Mt. V.C.Jain (hereinafter referred to as First Party of the One Part which expression shall mean and include its successors in interest and legal heirs).

AND

M/s Neelanchal Town Projects Pvt.Ltd. now which is amalgamate in Govinda Housing Limited by order of Companies Arrangements and Amalgamations Rules 2016 and the National Company Law Tribunal Rules, 2016 vide writ petition no. CAA-121/ND/2018 dated 18-01-2019.

M/s Govinda Housing Limited a company incorporated under the Companies Act, 1956 having its corporate office at GH-2, 164C, Ankur Apartment, Paschim Vihar, New Delhi-110063 through its director Mr. Ashok Kumar Agarwal, R/o E-213, Kamla Nagar, Agra which expression shall mean and include its representatives, successors in interest and assigns hereinafter referred to as Second Party of the Other Part :

Whereas :

For K.P. Buildwell Pvt. Ltd.

04/09/2018/61

Director

MAHADEV SAKHARI AVAS SAMITI LTD

M/s Govinda Housing Ltd.

SECRETARY

Director

1. The First Party is absolutely seized and possessed of K.P. Buildwell Pvt. Ltd. a Khasra Number 1046 area 11750(Sq.Mtr), and possessed of Mahadev Sahakari Avas Samiti Ltd. a Khasra Number 1020 area 4633.33(Sq.Mtr) situated at village Barauli Aheer, near Samshabad Road, Agra (U.P)
2. The First Parties has requested the Second Party to develop the said land and the Second Party is willing to develop the same as described in the schedule hereunder written.
3. The First Parties has authorized the Second Party to develop the said land, by developing a Residential Colony, Shops, Offices etc. on ownership basis and the First Parties is agreeable to directly convey the said land on the following terms and condition agreed to and between the parties hereto :

NOW IT IS AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS :-

1. The Second Party hereby agrees to develop the above said land (hereinafter referred to as the SAID PROPERTY) as may be permitted by all concerned authorities and the First Parties hereby agrees to entrust and hand over vacant peaceful possession to the Second Party the work and right of development of the said property described in the Schedule hereunder written on the terms hereinafter contained.



2. The Second Party hereby agrees to develop the said property on the terms mentioned herein and as permitted by the concerned authorities by constructing one or more building thereon comprising Plots, Offices, etc. and other premises on ownership basis. The Second Party also agrees that it will obtain whatever permissions are required to develop the property at its costs and on its own responsibility.

That in consideration of the First Parties having agreed to entrust to the Second Party the development of the said property and to confer upon the Second Party the rights, powers, privileges and benefits as mentioned herein, the Second Party agrees that the K.P. Buildwell Pvt. Plot Number 127, 128, 129, 130, 131, 146, 181, 182, 183, 184, 185, 186, 187, 188, 189, C-1 and Mahadev Sahakari Avas Samiti Ltd. Plot Number 102, 111, 112, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126 marked in the layout of "Govind Vihar Phase-1", approved by Agra Development Authority will be given to the First Parties. Remaining Plot devolve to the Second Party.

MAHADEV SAHAKARI AVAS SAMITI LTD.

M/s Govinda Housing Ltd.

for K.P. Buildwell Pvt. Ltd.

अग्रविहार

Director

SECRETARY

Director

4. This agreement will not be treated as a partnership between the parties or an agreement for sale of the said property by the First Parties to the Second Party. The Second Party has been fully allowed with all the rights to develop the said property as aforesaid.
5. The Second Party is satisfied that the First Parties has got full and absolute ownership of the said property and that the property and that the property is not subject to any mortgage, charge of any other encumbrance whatsoever.
6. The Second Party shall not start any work of development on the said property unless the Layout plans are sanctioned by the Agra Development Authority and the formal Commencement Certificate are issued in favor of the First Parties.
7. The development of the said property by plotting and Road, Sever, Water Line etc. construction or other development thereon shall be done at the entire costs, expenses and on the entire account of the Second Party. The First Parties will co-operate and sign all necessary documents required for the approval in various department for development purposes. The Plotting & Construction building to be constructed on the said land shall be in accordance with the development rules and regulations applicable for the time being in force.
8. The First Parties agrees to give license and permission to the Second Party to enter upon the said property or any part thereof as aforesaid with full right and authority to commence, carry on and complete development thereof in accordance with the permission herein mentioned.

If the Second party does not fulfill conditions thereof as aforesaid then and in that event the First Parties shall become entitled to terminate this agreement. On such termination the license to develop the property given to the property and to the Second Party shall stand revoked and the Second Party shall take away and remove with 3(Three) months of such termination all building structure and material brought on the said property and in default thereof the same shall belong to the vest in the First Parties absolutely and the Second Party shall not be entitled at any compensation or damage in respect thereof.

10. The First Parties shall, at the request of the Second party, sign and execute from time to time the necessary documents, plans and other applications for layout, scheme construction of the building and approval by the Agra Development Authority or other authorities provided that all cost, charges and expenses including Architect's fees in this connection shall be borne by the Second Party, The First Parties shall execute a power of attorney in favor of the Second Party or his delegate giving all necessary powers required to carry out work of development in all respects as contemplated by these presents.



For K.P. Buildwell Pvt. Ltd.

24/11/2014

Director

MAHADEV SENIORITY WAS CAN...

SECRETARY

M/s Govinda Housing Ltd.

Director

11. The Second Party shall be entitled to carry out at his own cost, charges and expenses in all respects all or any item of work for development of the said property including laying of drainage, cables, water pipes and other connection construction and lighting of roads and other items as per the terms and conditions imposed by the competent authority while sanctioning the layout scheme and the said plans and also other items of works as may be required to carry out for the purpose of making the said property fit for construction of building and structures therein. All finances for completion of the said items of work shall be provided and borne and paid by the Second party. The first Parties hereby agrees to render all assistance and co-operation and may be required by the Second Party from time to time to carry out the development work in respect of the said property and construction of buildings and structures thereon in accordance with the terms and conditions as may be stipulated by the concerned authorities and in respect of any other matters related to or arising there from.
12. The Second Party shall be at liberty to sell/or allot units of Plots residential units, commercial Shops, Offices etc. or enter into any package deal arrangement for allotment of buildings and structures to be constructed on the said property at such price and on such terms and conditions and provisions as the Second Party may think fit and any term which may be released or discharged from his liabilities and obligations hereunder to the first parties. All such allotments shall, however, be made by the Second Party at his own costs and account t to such Party or Parties in connection with all dealings between the Second party and such Party or Parties.
13. The Second Party shall be entitled to put up and permit to be put up advertisement boards upon the said property, but without involving the name of the First Parties on any manner.
14. The First Parties shall sign all applications or papers for the necessary permission and sanctions of the competent Authority of the state government under the provisions of the Urban land (Ceiling & Regulations) Act 1976 for the transfer of the said application and obtain permissions. The First Parties shall produce his certificate under Income Tax Act 1961, for the registration of the aforesaid Deed of conveyance and do all other things necessary under the Income Tax Act 1961.
15. The First Parties declares that no notice from the Government or any local body or Agra Development Authority has been received by or served upon the First Parties or any person interested in the said property.



For K.P. Buildwell Pvt. Ltd.

अ. ज. क. (21/1/17)

Director

MAHADEV SEHKARI AYAS SAMITI L M/s Govinda Housing Ltd.

SECRETARY

Director

16. The First Parties declares :-

- (a) That the First Parties is competent and entitled to enter into this agreement with the Second Party and has full right and absolute authority to sign and execute the same.
- (b) That the First Parties has not agreed, committed or contracted or entered into any agreement for sale or lease of the said property or any part thereof to any person or persons other than the Second Party and that it has not created any mortgage charge or any other encumbrances on the said property as mentioned herein.
- (c) That the First Parties has not done act or deed whereby the development of the property may be prevented or affected in any manner whatsoever.

17. The Second Party declares that they have entered into this agreement after all due diligence and satisfaction about the title of the owner.

18. That all out-of-pocket expenses of and incidental to this agreement and the transactions in pursuance thereof including the Deed/Deeds of conveyance and other assurance in respect thereof including stamp duty and registration charges shall be borne by the Second party.

19. The Second Party shall indemnify and keep indemnified the First Parties against all losses, damages, costs, charges expenses that will be incurred or suffered by the First Parties on account and arising out of any breach of any of these terms or any law, rules construction or otherwise howsoever.

20. The Second Party shall be entitled to enter into separate contracts in his own name with building contractor, architects and others for carrying out and said development at his risk and costs.



For K.P. Buildwell Pvt. Ltd

9/13/19

Director

MAHADEV SENKARI WAS SAMITI LTD.

SECRETARY

M/s Gowind Housing Pvt. Ltd.

Director

ATTESTED

Madhu Jain
Regd. No. 9(24)/2000
Distt. Notary, AGRA

In Witness WHEREOFF the parties have put their hands the day and year First hereinabove written.

Signed by the First Party

(1) K.P. Buildwell Pvt. Ltd. For K.P. Buildwell Pvt. Ltd.
Director

(2) Mahadev Sahakari Avas Samiti Ltd.
SECRETARY

Signed by Second Party

(1) Govinda Housing Limited M/s Govinda Housing Ltd.
Director



With presence of

Rajendra Sharma

Rajendra Sharma

31 Ganga Enclave
Transjammu AGRA

ATTENDED
9/3/19
MAGISTRATE
124/2000
Dist. Notary, AGRA