

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH: C-IV**

**CA(CAA)-37/MB/2024**

*In the matter of  
Sections 230 to 232 and other applicable  
provisions of the Companies Act, 2013*

*And*

*In the matter of  
The Scheme of Amalgamation of  
**Kingmaker Developers Private Limited**  
(Transferor Company/  
Applicant Company-1)*

*with*

***Real Gem Buildtech Private Limited**  
(Transferee Company/  
Applicant Company-2)*

*And their respective Shareholders.*

**Kingmaker Developers Private Limited** ... Applicant Company-1/  
[CIN: U45203MH2008PTC180638] Transferor Company

**Real Gem Buildtech Private Limited** ... Applicant Company-2/  
[CIN: U45202MH2009PTC193816] Transferee Company

*(hereinafter collectively referred to as the 'Applicant Companies')*

Order pronounced on: **29.04.2024**

*Coram:*

Ms. Anu Jagmohan Singh  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearance :*

For the Applicants : Mr. Gaurav Joshi, Ld. Sr. Counsel a/w  
Mr. Anindya Basarkod  
i/b Khaitain & Co., Advocates.

### ORDER

1. This is an Application filed jointly by Kingmaker Developers Private Limited and Real Gem Buildtech Private Limited under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, seeking directions of this Bench for Scheme of Amalgamation of **Kingmaker Developers Private Limited** (Transferor Company) with **Real Gem Buildtech Private Limited** (Transferee Company) and their respective shareholders (the "Scheme").
2. *Nature of Business:* The Ld. Sr. Counsel for the Applicant Companies submits that the First Applicant Company is engaged in the business of real estate constructions, development and other related activities in India and the Second Applicant Company is engaged in the business of real estate and construction.
3. He further submits that the Second Applicant Company is the wholly owned subsidiary of the First Applicant Company.
4. The Applicants state that the Board of Directors of the Applicant Companies in their respective meetings held on 30.01.2024 have passed resolutions

wherein the Scheme has been approved. The Appointed Date for the Scheme is 01.04.2024.

5. ***Rationale of the Scheme:*** The Ld. Sr. Counsel for the Applicant Companies submits that the circumstances that have necessitated the Scheme and some of the benefits which would accrue from the Scheme are briefly stated as –

(1) *“The Transferor Company and the Transferee Company form part of the same group. By consolidating the assets and liabilities of the Transferor Company, the Transferee Company can expand its current service territory and strengthen its existing market share.*

(2) *The Scheme will result in the following benefits:*

(a) *Combination of resources, creating better synergies and deriving operating efficiencies;*

(b) *More efficient utilization of capital for enhanced development and growth of the consolidated business under a single entity; and*

(c) *Elimination of multiple entities, legal and regulatory compliances and reduction of administrative costs.*

(3) *The Scheme is in the best interests of the shareholders, employees and the creditors of each of the parties.*

6. The Applicant Companies state that the Authorized, Issued, Subscribed and Paid-up Share Capital of the Applicant Companies as on 31.12.2023 are as under:

*Transferor Company:*

<b>Particulars</b>	<b>Amount (Rs.)</b>
<b><u>Authorised Share Capital</u></b>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
<b>TOTAL</b>	<b>1,00,000</b>
<b><u>Issued, Subscribed and Paid-up Share Capital</u></b>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
<b>TOTAL</b>	<b>1,00,000</b>

*Transferee Company:*

<b>Particulars</b>	<b>Amount (Rs.)</b>
<b><u>Authorised Share Capital</u></b>	
500,000 Equity Shares of Rs. 10/- each	50,00,000
135,00,000 0.1% Redeemable Cumulative Preference Shares (RCPS) of INR 10/- each	13,50,00,000
<b>TOTAL</b>	<b>14,00,00,000</b>
<b><u>Issued, Subscribed and Paid-up Share Capital</u></b>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
135,00,000 0.1% Redeemable Cumulative Preference Shares (RCPS) of INR 10/- each	13,50,00,000
<b>TOTAL</b>	<b>13,51,00,000</b>

**7. Consideration:**

The Applicant Companies state that upon the Scheme becoming effective and in consideration for the amalgamation of the Transferor Company with the Transferee Company, the Transferee Company shall without any further application, act or deed, issue and allot to the shareholders of the

Transferor Company, whose names appear in the Register of Members of the Transferor Company as on the Effective Date, in the following swap ratio:

*"1 (One) equity share of INR 10/- (Ten) each of the Transferee Company, credited as fully paid up, for every 1 (One) equity share of INR 10/- (Ten) each of the Transferor Company."*

8. The Counsel for the Applicant Companies submits that there are 2 (Two) Equity Shareholders in the First Applicant Company holding 10,000 equity shares and all the Equity Shareholders have given their consent affidavits for the proposed Scheme. In view of all the Equity Shareholders of the First Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the First Applicant Company is hereby dispensed with.
9. The Counsel for the Applicant Companies further submits that there are 2 (Two) Equity Shareholders in the Second Applicant Company holding 10,000 equity shares and all the Equity Shareholders have given their consent affidavits for the proposed Scheme. As all the Equity Shareholders of the Second Applicant Company have given their consent to the Scheme, the meeting of the Equity Shareholders of the Second Applicant Company is hereby dispensed with.
10. The Counsel for the Applicant Companies further submits that the First Applicant Company does not have any Preference Shareholders. Therefore, no Preference Shareholders' meeting is required.

11. The Counsel for the Applicant Companies further submits that there is 1 (One) Preference Shareholder holding 1,35,00,000 fully paid-up preference shares of INR 10/- each and the sole Preference Shareholder has given its consent affidavit for the proposed Scheme. As the sole Preference Shareholder of the Second Applicant Company has given its consent to the Scheme, the meeting of the Preference Shareholders of the Second Applicant Company is hereby dispensed with.
12. The Counsel for the Applicant Companies further submits that the Applicant Companies do not have any Secured Creditors. Therefore, no Secured Creditors' meeting is required.
13. The Counsel for the Applicant Companies further submits that there are 4 (Four) Unsecured Creditors in the First Applicant Company amounting to INR 2,34,43,03,603/- (Indian Rupees Two Hundred Thirty-four Crore Forty-three Lakhs Three Thousand Six Hundred and Three only). It is submitted that a meeting of the Unsecured Creditors of the First Applicant Company be convened and held on 28<sup>th</sup> June 2024, at 11.00 a.m. at the registered office of the First Applicant Company, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme.
14. The Counsel for the Applicant Companies further submits that there are 494 (Four Hundred Ninety-Four) Unsecured Creditors in the Second Applicant Company amounting to INR 19,74,56,25,495/- (Indian Rupees

One Thousand Nine Hundred Seventy Four Crore Fifty Six Lakh Twenty Five Thousand Four Hundred Ninety Five only). It is submitted that a meeting of the Unsecured Creditors of the Second Applicant Company be convened and held on 28<sup>th</sup> June 2024, at 11:30 a.m. at the registered office of the Second Applicant Company, for the purpose of considering, and, if thought fit, approving, with or without modification(s), the proposed Scheme.

15. In terms of the meetings to be convened of Unsecured Creditors of the Applicant Companies, it is hereby directed as under:
  - i. At least one month before the meeting of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, notice convening the said meetings at the day, date and time as fixed in accordance with para nos. 13 and 14 above, together with a copy of the Scheme, a copy of the Explanatory Statement required to be sent under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the prescribed Form of Proxy, shall be sent to the respective Unsecured Creditors of the Applicant Companies, by electronic mail to their registered e-mail address, as per the records available with the respective Applicant Companies. The Applicant Companies shall ensure that, the Unsecured Creditors of the respective Applicant Companies whose e-mail address' are not available with the Applicant Companies or who have not received notice convening said

meetings, can access / download the said notices from the website of Keystone Realtors Limited at <https://www.rustomjee.com/>.

- ii. At least 30 (Thirty) days before the meetings of the Unsecured Creditors of the Applicant Companies to be held as aforesaid, notice convening the said meetings, at the date and time fixed in accordance with para nos.13 and 14 above be published each in 'Business Standard' in English and 'Navshakti' in Marathi having wide circulation in Maharashtra, stating that copies of the Scheme and the said statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 can be obtained free of charge from the registered office of the respective Applicant Companies, or by emailing the Applicant Companies at [cs@rustomjee.com](mailto:cs@rustomjee.com).

16. The Applicant Companies undertake to:

- (i) Issue notice convening meetings of the Unsecured Creditors of the Applicant Companies as per Form No CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;
- (ii) Issue statement containing all the particulars as per Section 230 of the Companies Act, 2013;
- (iii) Advertise the notice convening meetings as per Form No. CAA.2 (Rule 7) of the Companies (Compromises, Arrangements, and Amalgamations) Rules, 2016; and
- (iv) Publish the notice convening the meeting of the Unsecured Creditors of the Applicant Companies on the website of the



respective companies i.e. Kingmaker Developers Private Limited and Real Gem Buildtech Private Limited.

17. Mr. S.K. Shah, having mobile No.9820048128 is hereby appointed as the Chairperson for the meeting of the Unsecured Creditors of the First Applicant Company.
18. The Chairperson shall be paid a sum of Rs.1,00,000/- for holding/ conducting meetings of the Unsecured Creditors of the First Applicant Company. The payments to the Chairperson shall be paid by the First Applicant Company.
19. Mr. S.K. Shah, having mobile No.9820048128, is hereby appointed as the Chairperson for the meeting of the Unsecured Creditors of the Second Applicant Company.
20. The Chairperson shall be paid a sum of Rs.1,00,000/- for holding/ conducting meetings of the Unsecured Creditors of the Second Applicant Company. The payments to the Chairperson shall be paid by the Second Applicant Company.
21. Ms. Ria Ahuja, Practicing Company Secretary, failing whom, Mr. Dinesh Kumar Deora or failing him Mr. Tribhuwneshwar Kaushik is hereby appointed as a Scrutinizer for the meetings of the Unsecured Creditors of the Applicant Companies.
22. The Chairperson appointed for the aforesaid meetings to issue notice of the meetings of the Unsecured Creditors of the Applicant Companies referred

above. The Chairperson shall have all powers under the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, as may be applicable for meeting of the Unsecured Creditors, in relation to the conduct of the meetings including for deciding procedural questions that may arise at the meetings or at any adjournment thereof or any other matter including, any amendment to the Scheme or resolution, if any, proposed at the meetings by any Unsecured Creditor(s).

23. The quorum for the aforesaid meetings of the Unsecured Creditors shall be as prescribed under Section 103 of the Companies Act, 2013.
24. The value and number of the Unsecured Creditors shall be in accordance with the books/records maintained by the Applicant Companies and where the entries in the books/records are disputed, the Chairperson of the meeting shall determine the value and number for the purpose of the aforesaid meetings and his decision in that behalf would be final.
25. The Chairperson shall file a compliance report not less than 7 (Seven) days before the date fixed for holding of the meetings of the Unsecured Creditors for the Applicant Companies and report to this Tribunal that the directions regarding the issue of notices and advertisements have been duly complied with, as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

26. The voting by authorized representative, in case of a body corporate be permitted, provided that the authorization duly signed by the person entitled to attend and vote at the meeting is filed with the respective Applicant Company, in physical at its registered office, at least 48 (Forty-Eight) hours before the aforesaid meetings, as required under Rule 10 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
27. The Chairperson shall report to this Tribunal, the result of the aforesaid meetings within 7 (Seven) days of the conclusion of the said meeting of the Unsecured Creditors of the Applicant Companies, and the said report shall be verified by his undertaking as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
28. The Applicant Companies are directed to serve notice along with copy of Scheme upon the -
- i. Central Government through the office of Regional Director, Western Region, Mumbai;
  - ii. jurisdictional Registrar of Companies;
  - iii. jurisdictional Income Tax Authority within whose jurisdiction the respective Applicant Company's assessment are made;
  - iv. the concerned Nodal Officer in the Income Tax Department i.e. Pr. CCIT, Mumbai, Address: 3rd Floor, Aayakar Bhawan, M. K. Road, Mumbai – 400020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
  - v. concerned Goods and Service Tax Authorities;

- vi. Maharashtra Real Estate Regulatory Authority;
  - vii. the Official Liquidator, Bombay (in case of Transferor Company); and
  - viii. Any sectoral regulator, as applicable, pursuant to Section 230(5) of the Companies Act, 2013 read with Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
29. The above notice shall be served through Registered Post AD/Speed Post and e-mail pursuant to section 230(5) of the Companies Act, 2013 and rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. The said notice will contain a statement that *“If no response is received by the Tribunal from such authorities within 30 days of the date of receipt of the notice, it will be presumed that they have no objection to the proposed Scheme”*.
30. The Applicant Companies shall host the notices along with a copy of the Scheme on their respective websites, if any.
31. The Applicant Companies will submit –
- a. details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any;
  - b. list of pending IBC cases, if any;
  - c. details of all other litigation pending against the Applicant Company having material impact on the proposed Scheme;

- d. details of all Letters of Credit sanctioned and utilized as well as Margin Money details, if any.
32. The Appointed Date is 01.04.2024.
33. The Applicant Companies to file an Affidavit of Service and Compliance Report within 10 working days after serving notice to all the Regulatory Authorities as stated above.
34. With the above directions, CA(CAA)-37/2024 is **allowed**.

Sd/-  
**Anu Jagmohan Singh**  
**Member (Technical)**

Sd/-  
**Kishore Vemulapalli**  
**Member (Judicial)**

29.04.2024/pvs