

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

**CP (CAA) No. 88/KB/2021
Connected with
CA (CAA) No. 1236/KB/ 2020**

In the Matter of the Companies Act, 2013 - Section 230(6) read with Section 232(3)

And

In the Matter of :

Emami Realty Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. L45400WB2008PLC121426 and its registered office at Acropolis, 13th Floor, 1858/1, Rajdanga Main Road, Kasba, Kolkata - 700107 in the State of West Bengal;

..... Petitioner No. 1/ Resulting Company

And

In the Matter of :

Oriental Sales Agencies (India) Private Limited, a company incorporated under the Companies Act, 1956 and being a Company within the meaning of the Companies Act, 2013, having Corporate Identification No. U51909WB1987PTC042332 and its registered office at Acropolis, 13th Floor, 1858/1, Rajdanga Main Road, Kasba, Kolkata - 700107 in the State of West Bengal.

----- Petitioner No. 2 / Demerged Company

And

In the Matter of :

1. Emami Realty Limited
2. Oriental Sales Agencies (India) Private Limited

. Petitioners

Date of Hearing: 02/08/2021

Date of pronouncing the order: 10/08/2021

Coram:

Shri Rajasekhar V.K., Member (Judicial)

Shri Harish Chander Suri, Member (Technical)

Appearance (via video conferencing)

For the Petitioners : Mr. Joy Saha, Senior Advocate
: Mr. Shashi Agarwal, Pr. CA

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The court convened by video conference on 02/08/2021.
2. The instant application has been filed under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction of the Scheme of Arrangement (demerger) between Emami Realty Limited, being the Petitioner No. 1 abovenamed ("Emami" or “**Resulting Company**” or “**Petitioner No. 1**”) and Oriental Sales Agencies (India) Private Limited, being the Petitioner No.2 abovenamed ("Oriental" or “**Demerged Company**” or “**Petitioner No.2**”), and their respective shareholders and creditors. The Scheme provides for demerger from the Appointed Date, viz 1st April, 2019 in the manner and on the terms and conditions stated in the said Scheme of Arrangement (“**Scheme**”).
3. The Petition has now come up for a final hearing. Counsel for the Petitioners submits as follows:-
 - (a) The Scheme was approved unanimously by the respective Board of Directors of the Petitioner Nos.1 and 2 at their meetings held on 05.03.2021 respectively.
 - (b) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
 - (i) The Demerged Company and the Resulting Company are part of the Emami Group.

- (ii) The Demerged Company is currently engaged in the business of (i) Real Estate and (ii) Trading in Paintings/shares & securities.
- (iii) The 'Real Estate Undertaking' of the Demerged Company comprises of (i) Leasehold interest on 14.4890 Acres of landed property comprising in Municipal Premises No. 2, Jessore Road, Kolkata - 700028 acquired by a registered Deed of Lease dated 16th April, 2007 (as modified from time to time) made between the Demerged Company and the Governor of the State of West Bengal for a period of 99 years commencing from 10th April 2007 and also the right to renew the same for a further period of 99 years subject to the terms and conditions contained and recorded therein, for the development of which the Demerged Company has entered into Development Agreements dated 30th April, 2011, 27th February, 2013 and 30th December, 2016 (as modified from time to time) with the Resulting Company and (ii) 1,12,505 nos. of equity shares in Delta PV Private Limited, held by the Demerged Company. Presently, Delta PV Private Limited is already a subsidiary (55%) of the Resulting Company, and post demerger, the percentage of holding in Delta PV Private Limited is going to be increased to 80%.
- (iv) Recognizing the growth potential of the 'Real Estate Undertaking' of the Demerged Company in the backdrop of the fact that the Demerged Company's 'Real Estate Undertaking' has matured, the companies are proposing to consolidate this vertical in the Resulting Company.
- (v) Accordingly, the management of the companies has examined the relative business strengths and the potential commercial and other synergies of the consolidated entity and proposes to consolidate their real estate businesses under a single entity. As the Demerged Company is having two business undertakings, it was proposed to demerge the real estate undertaking only. Post demerger, the Demerged Company having retained undertaking comprising Trading will be able to focus specifically on the said business of the company, as the same require an altogether different expertise and focus, planning, business strategies and decision making.
- (vi) This arrangement would result in reduction of costs including efficiency in

administrative costs, pooling of business and strategic resources, economies of scale and focused management control. The Scheme is in the interest of both the companies and will help in the growth and expansion of the businesses. The arrangement would enable the consolidation of business and carry on the same more efficiently and effectively.

- (vii) The proposed Scheme, with effect from the Appointed Date, is in the interest of the shareholders, creditors, stakeholders, and employees, as it would enable a focused business approach for the maximization of benefits to all stakeholders and the purposes of synergies of business.
- (c) The Statutory Auditors of the Petitioner Nos.1 and 2 have by their certificates dated 16.10.2020 and 17.10.2020 respectively confirmed that the accounting treatment in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013.
- (d) No proceedings are pending under Sections 210 to 227 of the Companies Act, 2013 against the Petitioners.
- (e) The entitlement ratio of shares in consideration of the Arrangement/Demerger has been fixed on a fair and reasonable basis and on the basis of the Report thereon of Mr. Sandeep Agrawal, Registered Valuers. Further, Messrs. Narnolia Financial Advisors Limited Merchant Bankers, have also confirmed that the said ratio is fair and proper by their fairness opinion thereon.
- (f) The shares of the Petitioner No.1 are listed on the BSE Limited (“BSE”), National Stock Exchange of India Limited (“NSE”), and The Calcutta Stock Exchange Limited (“CSE”). The shares of the Petitioner No.2 are not listed on the stock exchanges.
- (g) In compliance with the Securities and Exchange Board of India (“SEBI”) Circular dated 10th March 2017 on Schemes of Arrangement, as amended from time

(“SEBI Circular”), the said Petitioners duly filed the Scheme with the said Stock Exchange(s) for their approval to the same. The said BSE, NSE, and CSE by their respective letters dated 14/07/2020, 17.07.2020, and 19.08.2020 respectively after receiving comments from SEBI, have confirmed they have ‘no adverse observation’ on the Scheme.

(h) By an order dated 07/01/2021 in Company Application (CAA) No. 1236/ KB / 2020, this Tribunal made the following directions with regard to meeting(s) of shareholders and creditors under Section 230(1) read with Section 232(1) of the Act:-

(i) Meeting(s) dispensed: Meetings of the Unsecured Creditors of the Petitioner No.1 and meetings of the Equity Shareholders and Unsecured Creditors of the Petitioner No.2 for considering the Scheme were dispensed with in view of all such shareholders and over 90% in value of such creditors having respectively given their consent to the Scheme by way of affidavits. Further, necessary meetings of the Secured creditor of Petitioner No.1 was not required as secured creditors of Resulting Company more than 75.66% in value have given consent in the form of an affidavit and 24.33% creditor have given consent in the form of the letter and the scheme does not contain any clause of compromise and/or arrangement of any kind with creditors. However, in terms of the order of this Tribunal notice of the proposed Scheme has been sent to creditors.

(ii) Meeting(s) directed to be held: Meetings of the Equity Shareholders of the Petitioner No.1 for considering the Scheme were directed to be held on 04/03/2021 Considering the unprecedented COVID-19 pandemic, the meetings, as above, were directed to be convened and held virtually via video conferencing or other audiovisual mode (“Virtual Mode”) in accordance with the framework provided therefor in the Ministry of Corporate Affairs General Circular No.14/2020 dated 8th April, 2020, as clarified/extended from time to time.

- (j) Pursuant to the said order dated 07/01/2021 in Company Application CAA) No. 1236/ KB / 2020, and the applicable provisions of the Companies Act, 2013 and Rules framed thereunder, the shareholders of Petitioner No. 1 were given the option of voting on the Scheme by remote e-voting during the period commencing at 9:00 a.m on February 02, 2021 and ending at 5:00 p.m on March 03, 2021.
- (k) The said meeting(s) were duly held on March 04, 2021, as directed. The said meeting(s) duly approved the Scheme by the requisite majority. Further, the votes cast by public shareholders in favor of the Scheme also exceeded the votes cast by them against the Scheme as required by paragraph I(A)9 of Annexure I of the SEBI Circular.
- (l) Consequently, the Petitioners presented the instant petition for sanction of the Scheme. By an order dated 12/05/2021 the instant petition was admitted by this Tribunal and fixed for hearing on 17/06/2021 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 12/05/2021, the Petitioners have duly served such notices on the Regional Director, MCA, Registrar of Companies, Income Tax Department, NSE, CSE, BSE on 17/05/2021. The Petitioners have also published such advertisements once each in the Business Standard and Aajkaal in their respective issues dated 20/05/2021. An affidavit of compliance dated 14/06/2021 in this regard has also been filed by them.
- (m) All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
4. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“**RD**”), have filed their representations before this Tribunal.

5. The RD has filed his reply affidavit dated 16/06/2021 (“**RD affidavit**”). The observations of the RD and responses of the Petitioners are summarized as under:-

Paragraph No. 2 of RD Affidavit:

2. (b) Appointed Date is 1st April 2019. In terms of the Circular no.09/2019 dated 21.08.2019 of the Ministry of Corporate Affairs, ‘where the ‘appointed date’ is chosen as a specific calendar date, it may precede the date of filing of the application for scheme of merger/ amalgamation in NCLT. However, if the ‘appointed date’ is significantly ante-dated beyond a year from the date of filing, the justification for the same would have to be specifically brought out in the scheme and it should not be against the public interest. It is not ascertainable from the documents provided by the Applicant whether the application for the scheme was filed before the Tribunal within a year from 1st April 2019. If the application for the scheme was filed with Tribunal after more than one year from the appointed date, Tribunal may kindly direct the Applicant to bring out the justification for the appointed date being more than one year before the date of filing of the application for the scheme, in the scheme according to the Circular.

(c) It is submitted that the Equity Shares of the Resulting Company is listed with BSE Limited, National Stock Exchange of India Limited (NSE), and Calcutta Stock Exchange Limited (CSE). In this regard, the BSE Limited vide letter No. DCS/AMAL/PB/R37/1774/2020-21 dated 14/08/2020 issued ‘Observation letter regarding the draft Scheme of Arrangement’ which is valid for six months from the date of that letter, within which the scheme shall be submitted to the NCLT. Similarly, the NSE and CSE have also issued their ‘Observation letter’ vide letter dated 17/08/ 2020 and 19/08/2020 respectively which are also valid for six months from the date of that letter and within which the Scheme shall be submitted to the Hon’ble NCLT.

(d) Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation.

(e) That the Transferee Company should be directed to pay applicable stamp duty on the transfer of the immovable properties from the Transferor Companies to it.

{f} In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 or IND- AS-8 etc.

(g) The Hon'ble Tribunal may kindly seek the undertaking that this scheme is approved by the requisite majority of members and creditors as per section 230(6) of the Companies Act 2013 in a meeting duly held in terms of section 230(1) read with sub-sections (3) to (5) of section 230 of the said Act and the Minutes thereof are duly placed on record.

(h) The Hon'ble Tribunal may kindly direct the Petitioners to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy or no change is made.

(i) The Petitioners under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the Petitioner Company (s) concerned.

(j) It is submitted that as per instructions to the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 08/03/2021 for their views/ observation in the matter but the same is still awaited.

6. RD's report has been dealt with by the Petitioners by their Rejoinder/undertaking affidavit ("**Rejoinder**"). The rejoinder to the RD's report is summarized as under:

- (a) With reference to para 2(b), it is stated that Appointed Date is 1st April, 2019 as when the scheme was considered by the Board of Directors of the Petitioner Companies on 05/03/2020 and the accounts for the year ended 31/03/2020 of the petitioner's companies was not audited. Further as Emami Realty Limited is a listed company and only after prior approval of stock exchange Company Application was filed. However, it is stated that the Scheme of Arrangement (Demerger) with an appointed date as 01/04/2019 is not against the public interest.
- (b) With reference to para 2(c), it is stated that after receipt of observation letter regarding the draft Scheme of Arrangement from Bombay Stock Exchange on 14/08/2020, National Stock Exchange on 17/08/2020, and Calcutta Stock exchange on 19/08/2020 immediately Company Application was filed before the Hon'ble National Company Law Tribunal, Kolkata Bench on 05/11/2020 and accordingly the said filed within six months.
- (c) With reference to para 2(d), it is stated that the Scheme is relating to demerger between Emami Realty Limited / Resulting Company /Transferee Company and Oriental Sales Agencies (India) Private Limited/ Demerged Company /Transferor Company whereby the entire "Real Estate Division" of The Transferor Company" ("Demerged Undertaking" or Real Estate Division") with all assets and liabilities relating thereto as a going concern is proposed to be transferred to and vested in Transferee Company/EMAMI and the said section 232(3)(i) of the Companies Act,2013 is not applicable. It is stated that the said scheme do not contain any clause relating to transfer of authorised capital.
- (d) With reference to para 2(e), it is stated that the Emami Realty Limited (Resulting Company) undertakes to pay applicable stamp duty on the transfer of the immovable properties from the Oriental Sales Agencies (India) Private Limited (Demerged Company) to Emami Realty Limited (Resulting Company).

- (e) With reference to para 2(f), it is stated that in Scheme of Arrangement (Demerger), Part – II Clause No. 5 it is stated Petitioners companies Emami Realty Limited will follow IND AS 103 and whereas Oriental Sales Agencies (India) Private Limited will follow Accounting Standard issued by Central Government in terms of the Companies (Accounting Standards) Rules, 2016. Further, the petitioner companies undertake that it will follow Accounting Standard-14 or IND-AS 103 as applicable.
- (f) With reference to para 2(g), it is stated that meeting of shareholders of Emami Realty Limited was held on 04/03/2021 and whereas meeting of shareholders of Oriental Sales Agencies (India) Private Limited was dispensed by Hon'ble National Company Tribunal vide order dated 07/02/2021 in C.A. (CAA) No. 1236/KB/2020 as shareholders of demerged company have given consent in writing by ways of affidavit. Shareholders of Emami Realty Limited have approved the Scheme by requisite majority. Chairman report has been filed.
- (g) With reference to para 2(h), it stated that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy and no change.
- (h) With reference to para 2 (i), it is that under provisions of section 230(5) of the Companies Act 2013 notices to all concerned authorities which are likely to be affected by the scheme of arrangement (demerger) have been served. Affidavit of service/compliance has been filed.
- (i) With reference to para 2(j), it is stated that twice notices was forwarded to the Income Tax Department by the petitioner's Companies. The Petitioner Companies have received no No-objection from the Income Tax Department and the said are annexed herewith marked with letter "A".

7. It is further submitted by the Ld. Counsel that the petitioner companies undertake that if there are any deficiencies found, or violations committed relating to any enactment, statutory rules, or regulation, the sanction granted by the Tribunal to the scheme will not come in the way of action being taken in accordance with the law, against the concerned persons, directors, and official of the petitioners and Transferee Company.

8. Heard submissions made by the Ld. Counsel appearing for the Petitioner and representative of Regional Director. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

- (i) The Scheme of Arrangement mentioned in paragraph 1 of this petition, being Annexure "A" hereto, be and is hereby sanctioned by this Tribunal to be binding with effect from the 1st April,2019 (“**Appointed Date**”) on Emami Realty Limited ("Emami" or “**Resulting Company**” or “**Petitioner No.1**”) and Oriental Sales Agencies (India) Private Limited ("Oriental" or “**Demerged Company**” or “**Petitioner No.2**”), their respective shareholders and creditors and all concerned;
- (ii) All the property, rights, permission, license, interest and powers of Demerged Company relating to the Real Estate Undertaking, as defined in the Scheme, including those described in the Schedule of Assets, be transferred from the said Appointed Date, without further act or deed, to Resulting Company and, accordingly, the same shall pursuant to Section 232(4) of the Companies Act, 2013 be transferred to and vest in Resulting Company for all the estate and interest of Demerged Company relating to the Real Estate Undertaking therein but subject, nevertheless, to the charges affecting the same, as provided in the Scheme;
- (iii) All the debts, liabilities, duties and obligations of Demerged Company relating to the Real Estate Undertaking be transferred from the said Appointed Date, without further act or deed, to Resulting Company and, accordingly, the same shall pursuant

to Section 232(4) of the Companies Act, 2013, be transferred to and become the debts, liabilities, duties and obligations of Resulting Company;

- (iv) All the employees of Demerged Company relating to the Real Estate Undertaking shall be engaged by Resulting Company, as provided in the Scheme;
- (v) All proceedings and/or suits and/or appeals pending by or against Demerged Company in respect of the Real Estate Division be continued by or against Resulting Company, as provided in the Scheme;
- (vi) Resulting Company shall issue and allot to the shareholders of Demerged Company, the shares in Resulting Company in accordance with clause 4 of the Scheme;
- (vii) Any person interested be at liberty to apply to this Tribunal in the above matter for any directions that may be necessary;
- (viii) Leave be granted to the Petitioner to file the Schedule of Assets of the Real Estate Undertaking of the Demerged Company in the form as prescribed in the Schedule to Form No.CAA-7 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within three weeks from the date of the order to be made herein;
- (ix) Resulting Company and Demerged Company do each within thirty days of the date of the receipt of this order, cause a certified copy to be delivered to the Registrar of Companies for registration.

9. The Petitioners shall supply legible print out of the scheme and schedule of assets in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.

10. Company Petition (CAA) No. 88/KB/2021 is disposed of accordingly.

10. Urgent Photostat certified copy of this order, if applied or be supplied to the parties, subject to compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rajasekhar V K)
Member (Judicial)

Order dated on 10th August,2021

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