

**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

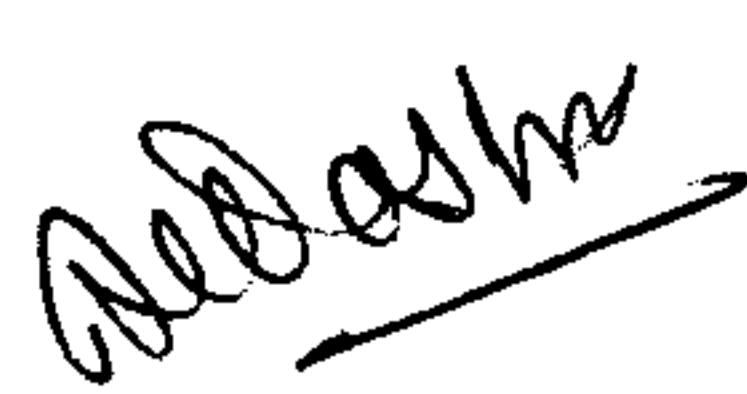
**CP(CAA) No. 70/NCLT/AHM/2018 in
CA(CAA) No. 10/NCLT/AHM/2018**

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.10.2018**

Name of the Company: Asnani Builders and Developers Ltd.,
Asnani Lifespaces Pvt. Ltd.,
Anani Ventures Pvt. Ltd.


Section of the Companies Act: Section 230-232 of the Companies Act, 2013

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	ES Ashish C. Doshi	PC&	Applicants	
2.				

ORDER

PCS Mr. Ashish Doshi is present for the Applicant.

The Order is pronounced in the open court, vide separate sheet.


**MANORAMA KUMARI
MEMBER JUDICIAL**


**HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL**

Dated this the 3rd day of October, 2018

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

CP(CAA) No.70/NCLT/AHM/2018

In the matter of :-

1. Asnani Builders and Developers Ltd.,
A company incorporated under the
Companies Act, 1956 and having its
Registered office at Office No.509,
Fifth Floor, Corporate Zone,
Aashima Mall, Hoshangabad Road,
Bhopal – 462026, M.P. ...
Petitioner
(Demerged Company)
2. Asnani Lifespaces Private Limited,
A company incorporated under the
Companies Act, 1956 and having its
Registered office at Office No.602,
Sixth Floor, Corporate Zone,
Aashima Mall,
Bhopal – 462001, M.P. ...
Petitioner
(Resultant Company-1)
3. Asnani Ventures Private Limited,
A company incorporated under the
Companies Act, 1956 and having its
Registered office at Office No.602,
Sixth Floor, Corporate Zone,
Aashima Mall, Hoshangabad Road,
Bhopal – 462026, M.P. ...
Petitioner
(Resultant Company-2)

Order delivered on 3rd October, 2018

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

And

Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Sh. Ashish Doshi PCS with Dr. Sanjeev Kumar, Advocate for the Petitioner Companies.

ORDER

[Per se: Harihar Prakash Chaturvedi, Member (J)]

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1. The Petitioner Companies have filed the present Company Petition under Section 230-232 of Companies Act, 2013 seeking for sanction of a Proposed Scheme of Arrangement in the nature of demerger of "Luxury Villas Division" and "Affordable Residences Division" of Asnani Builders And Developers Ltd. (hereinafter referred to as Petitioner No.1 Company or Demerged Company) and vesting the same with Asnani Lifespaces Private Limited (hereinafter referred to as Petitioner No. 2 Company or Resultant Company-1) and Asnani Ventures Private Limited (hereinafter referred to as Petitioner No.3 Company or Resultant Company-2), respectively ("Scheme" for short).

2. The registered offices of all the Petitioner Companies are situated at Bhopal, which is within the jurisdiction of this Tribunal.

3. Petitioner No. 1 Company, having CIN: U24111MP1992PLC006969, is a company originally incorporated under the Companies Act, 1956 on 28/02/1992 in the State of Madhya Pradesh. The issued, subscribed and paid up share capital of Petitioner No.1 Company is Rs. 48,07,100/- (Rs. Forty Eight Lakhs Seven Thousand and One Hundred Only) divided into 4,80,710 (Four Lakh Eighty Thousand Seven Hundred and Ten) Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid-up.

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4. Petitioner No. 2 Company having, CIN: U45200MP2013PTC031764, is a company originally incorporated under the Companies Act, 1956 on 14.11.2013 in the State of Madhya Pradesh. Issued, subscribed and paid up share capital of Petition No.2 Company is Rs. 3,00,000 /- (Rs. Three Lakhs Only) divided into 30,000 (Thirty Thousand) Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid-up.

5. Petitioner No. 3 Company, having CIN: U45400MP2013PTC031741, is a company incorporated under the Companies Act, 1956 on 08.11.2013 in the State of Madhya Pradesh under the name and style of Asnani Ventures Private Limited. Issued, subscribed and paid up share capital of Petitioner No.3 Company is Rs. 3,00,000 /- (Rs. Three Lakhs Only) divided into 30,000 (Thirty Thousand) Equity Shares of Rs. 10/- (Rupees Ten only) each fully paid-up.

6. A copy each of the Memorandum and Articles of Association of the Petitioner Companies has been produced on record with the present Company Petition. In addition to that, a copy each of Audited Balance Sheets as on 31st March, 2017 and Provisional Balance Sheets as on 30th September, 2017 of all Petitioner Companies is also filed.

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J. K. Singh

7. It is submitted that the proposed Company Scheme of Arrangement was approved by the Respective Boards of Directors of all the Companies in their meetings held on 30th September, 2017. The Appointed date fixed for the Proposed Scheme of Arrangement is 1st April, 2017.

8. The main object and rationale of the Proposed Company Scheme of Arrangement, as narrated in the present scheme petition, are as under:-

- *Over the years, ABDL, a renowned real estate company in the Central India, has expanded its business in the various verticals of real estate viz; residential, commercial, and institutional etc. with the changing dynamics of business, ABDL now requires a reconsolidation and restructuring of its business operations to move with the time in the industry and socio-economic environment. ABDL has three divisions now to take up its prestigious projects namely, (a) Commercial Projects Division, (b) Luxury Villa Division and (b) Affordable Residences Division. In order to facilitate collaborations and joint development of these projects and other requirements, ABDL has to reorganize, segregate and trifurcate its three divisions.*
- *The nature of projects, consumer segment served, marketing strategy, risk, competition and capital intensity involved in each of the business divisions of ABDL is distinct. Consequently, each division of ABDL requires different collaborations for joint development of project and fund raising etc. in view of independent opportunities, deploying different strategies and attracting different sets of investors, strategic partners, lenders*

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- and other stakeholders. Hence, as part of an overall business re-organization plan, it is considered desirable and expedient to reorganize and reconstruct each division by demerging into a separate company being a Special Purpose Vehicle (SPV) in the manner and on the terms and conditions contained in this Scheme.
- The demerger is likely to enable the business and activities comprised in the SPVs and remaining business and activities of ABDL to be pursued and carried on with greater focus and attention through three separate companies each having its own administrative set up. Independent management of each of these undertakings will ensure required depth and focus on each of the projects and adoption of strategies necessary for the growth of respective businesses. The structure provides independence to the management in decision-making regarding the use of their respective cash flows for dividends, capital expenditure or other reinvestment in their respective businesses.
 - The demerger seeks to create new platforms for independent development, of projects and growth of the real estate business in different product segments, while allowing ABDL to concentrate its growth efforts in the existing and new commercial real estate projects in a more focused manner thereby strengthening the Group's market leadership.
 - Pursuant to the issue and allotment of shares in terms of this Scheme, the shareholders shall hold shares in three companies i.e. ABDL, ALPL and AVPL. It gives the shareholders the ability to continue to remain invested in both or either of the two companies giving them greater flexibility in managing and/or dealing with their investments.
 - The restructuring proposal is thus aimed at protecting and maximizing value for the shareholders of the ABDL. This Scheme is in the interest of the shareholders, creditors and all other stakeholders of ABDL and shall not in any manner be prejudicial to the interests of shareholders and creditors or general public at

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large. The restructuring under this Scheme would enable focused business approach for the maximization of benefits to all stakeholders and capitalize on the opportunity for growth.

9. Upon the Scheme becoming effective and in consideration of the demerger, transfer and vesting of the Luxury Villas Division (with respective Assets and Liabilities as Specified in the Scheme), ALPL shall, without further application, issue and allot to the shareholders of ABDL belonging to Asnani Group, whose names appear in the register of members of ABDL as on the Record Date, 100 (One Hundred) equity shares of Rs.10/- (Rupees Ten only) each in ALPL, credited as fully paid up for 75 (Seventy Five) equity shares of Rs. 10/- (Rupees Ten only) each held by them in ABDL and to the shareholders belonging to Kriplani Group, whose names appear in the register of members of ABDL as on the Record Date, 100 (One Hundred) Preference shares of Rs. 10/- (Rupees Ten only) each in ALPL, credited as fully paid up for 75 (Seventy Five) equity shares of Rs. 10/- (Rupees Ten only) each held by them in ABDL.

10. Upon the Scheme becoming effective and in consideration of the demerger and transfer of the Affordable Residences Division (with respective Assets and Liabilities as specified in the Scheme), AVPL shall, without further application, issue and allot to the shareholders of ABDL belonging to Asnani Group, whose names appear in the register of members of ABDL as on the

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Record Date, 100 (One Hundred) equity shares of Rs.10/- (Rupees Ten only) each in AVPL, credited as fully paid up for 75 (Seventy Five) equity shares of Rs. 10/- (Rupees Ten only) each held by them in ABDL and to the shareholders belonging to Kriplani Group, whose names appear in the register of members of ABDL as on the Record Date, 100 (One Hundred) Preference shares of Rs. 10/- (Rupees Ten only) each in AVPL, credited as fully paid up for every 75 (Seventy Five) equity share of Rs. 10/- (Rupees Ten only) each held by them in ABDL.

11. It is stated by the Petitioner Companies that the Scheme does not involve any corporate debt restructuring. It is further stated that the all the Petitioner Companies are closely held companies and their shares are not listed on any Stock Exchange. It is further stated by the Petitioner Companies that no investigation proceedings against any of the Petitioner Companies are pending under Sections 235 to 251 of the Companies Act, 1956 or under Sections 210 to 226 of the Companies Act, 2013.

12. The Petitioner Companies submitted that the Proposed Scheme of Arrangement is neither intended to in any manner nor having any beneficial effect on the managerial interest of the Directors of the Petitioner Companies, except to the extent of their shareholdings. That apart, the proposed scheme does not adversely affect rights or interests of either any creditors or any

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shareholders of the Petitioner Companies in any manner whatsoever.

13. It is further submitted by the Petitioner Companies that the proposed Scheme of Arrangement does not make any compromise with the interest of their creditors because due provisions are made in the proposed scheme to make payments of all the liabilities as and when arise and fall due in the usual course.

14. It is stated in the petition that the Petitioner Companies have duly complied with all the accounting standards as applicable. In support of this, the Petitioner Companies have placed on record necessary certificates from their respective Auditors certifying that the accounting treatment under the proposed scheme is found to be in order and confirm with the accounting standards.

15. The Petitioner Companies earlier filed a Company Application, being CA(CAA)No.10/NCLT/AHM/2018, before this Bench seeking for dispensation of meetings of their shareholders and unsecured creditors and also seeking directions from this Bench to convene meeting of secured creditors of Petitioner No.1-Company. This Tribunal vide its order dated 02.02.2018 dispensed with meetings of shareholders and un-secured

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creditors of the Petitioner Companies and issued directions for holding meeting of secured creditors of Petitioner No.1-Company. This Bench also directed the Petitioner Companies to issue notice to the Central Government through the Office of the Regional Director (Northern Western Region), Ministry of Corporate Affairs, the Registrar of Companies, Gwalior and to the concerned Income tax authorities. Petitioner No.1-Company was also directed to publish an advertisement in English and Hindi newspapers about the meeting that was to be held on 12th March, 2018. Accordingly, the Petitioner Companies complied with the directions of this Tribunal and the authorized signatory of the Petitioner Companies filed an affidavit of service confirming compliance of the aforesaid directions along with proof of delivery and proof of publication.

16. In accordance with the directions of this Bench, meeting of Secured Creditors of Petitioner No.1-Company was duly convened and held and the scheme was duly approved by the majority of persons representing three-fourth in value of the Secured Creditors. Thereafter, results of the meeting were submitted by the Chairman of the meeting along with the Scrutinizer's report on 19.03.2018. Pursuant to the notices issued, the Regional Director (North Western Region) filed a representation on 16th April, 2018 making certain observations.

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17. The Petitioner Companies have, thereafter, filed the present company petition seeking for sanction of the proposed Company Scheme. The Petitioner Companies have also preferred an interlocutory application praying for condonation of delay of 25 days which occurred in filing the present Company Petition. This Tribunal vide its order dated 12.06.2018 allowed such application by condoning the delay in filing of the Company Petition.

18. This Bench by its order dated 30.07.2018 has admitted the present company petition and issued necessary direction to the Petitioner Companies to effect paper publication of notice of date of hearing of present company petition in English daily "Central Chronicle" and Hindi daily "Nai Duniya", both Bhopal editions by prescribing not less than ten days before the date fixed for hearing and to issue further notice to the Regional Director (North Western Region), ROC and to the Income Tax Department by informing the date of hearing.

19. Heard learned PCS, Mr. Ashish Doshi, for the Petitioner Companies.

20. In response to the representation affidavit filed by the Regional Director (North Western Region), the petitioner companies have filed their reply affidavit. In respect of the

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observation relating to protection of interest of Kriplani group, petitioners replied that the shareholdings of both the groups are equal and the same will be continued post demerger. In reply to the observation of the Regional Director relating to issue and allotment of equity as well as preference shares upon demerger as per agreed exchange ratio, petitioners have confirmed that the equity as well as preference shares to respective shareholders are being issued as per intrinsic desire and consent of each shareholder of applicant companies and same has been reviewed and consented by the creditors of the company. Moreover, it was submitted that the terms of issue of preference shares shall be decided by the Boards of directors of respective companies at their meeting at the time of allotment which shall be subject to provisions of Companies Act, 2013 and will not be prejudicial to the interest of any shareholder as the same has been consented by each shareholder. So far as the observation regarding accounting treatment is concerned, the petitioners have confirmed that the accounting treatment will be strictly as per AS 14 and other applicable accounting standards as on the effective date. The petitioners have also confirmed to pay the legal fees/expenses of the office of Regional Director as may be directed by the Hon'ble Tribunal. The Regional Director in his representation has relied upon the report of the ROC, Gwalior, stating that there is no complaint against any of the Petitioner Companies and that the affairs of the Petitioner Companies do

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not seem to have been conducted in a manner prejudicial to the interest of its members, creditors or the public at large.

21. Considering the above stated facts and circumstances of the present case, we are of the view that the observations made by the Regional Director stand clarified and satisfied by the petitioner companies in their reply affidavits.

22. Considering the entire facts and circumstances of the case and on perusal of the Scheme and the documents produced on record, it appears that the requirements of the provisions of Sections 230 and 232 of the Companies Act, 2013 are fulfilled. The Scheme appears to be genuine and bona fide and in the interest of the shareholders and creditors. Hence, this petition deserves to be allowed.

23. In the result, this Company Petition is allowed. The Composite Scheme of Arrangement, which is at **Annexure - I** to the Petition, is hereby sanctioned and it is declared that the same shall be binding on the Petitioner Companies, their Shareholders, Creditors and all concerned under the Scheme.

24. Filing and issuance of drawn up orders are dispensed with. All concerned authorities to act on a copy of this order along with the Scheme duly authenticated by the Registrar of this

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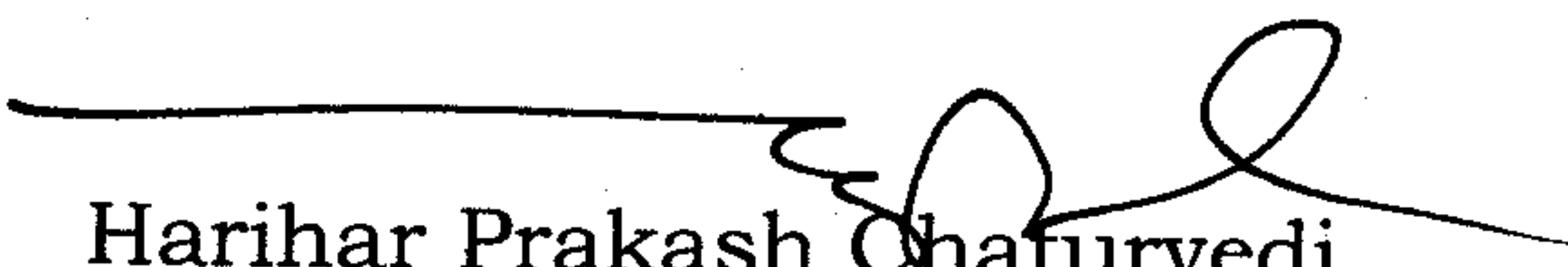
Tribunal. The Registrar of this Tribunal shall issue the certified copy of this order along with the Scheme immediately.

25. The Petitioner Companies are hereby instructed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned superintendent of stamps for the purpose of adjudication of stamp duty payable, if any, within 30 days from the date of this order.

26. The legal fees/expenses of the office of the Regional Director are quantified at Rs. 10,000/- in respect of each of the petitioner companies. The said fees to the Regional Director shall be paid by each of the Petitioner Companies.

27. This Company Petition is disposed of accordingly.


Ms. Manorama Kumari
Member (Judicial)


Harihar Prakash Chaturvedi
Member (Judicial)

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