

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

C.P. (CAA)/1848/MB/2018

Under Section 230-232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013

In the matter of Scheme of Arrangement between ARTHA REAL ESTATE CORPORATION LIMITED, (CIN: U65990KA2008PLC085891) (hereinafter referred to as "Demerged Company 1" or "ARECL") and ARTHA INFRA PROJECTS LIMITED (CIN: U70200KA2007PLC083431) hereinafter referred to as the "Demerged Company 2" or "AIPL") and BENNETT PROPERTY HOLDINGS COMPANY LIMITED (CIN: U70102MH2010PLC211087) (hereinafter referred to as the "Resulting Company" or "BPHCL").

BENNETT PROPERTY HOLDINGS COMPANY LIMITED  
....Petitioner/ the Resulting Company

Order delivered on 9<sup>th</sup> August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan Member (Judicial)

Hon'ble V. Nallasenapathy Member (Technical)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala  
i/b M/s. Rajesh Shah & Co., Advocate for the  
Petitioner.

Mr. S . Ramakantha, Joint Director for Regional Director

Per : V. Nallasenapathy, Hon'ble Member (Technical)

**ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement between ARTHA REAL ESTATE CORPORATION LIMITED, (CIN: U65990KA2008PLC085891) (hereinafter referred to as "Demerged Company 1" or "ARECL") and ARTHA INFRA PROJECTS LIMITED (CIN: U70200KA2007PLC083431) hereinafter referred to as the "Demerged Company 2" or "AIPL") and BENNETT PROPERTY HOLDINGS COMPANY LIMITED (CIN: U70102MH2010PLC211087) (hereinafter referred to as the "Resulting Company" or "BPHCL").
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 to a Scheme of Arrangement between ARTHA REAL ESTATE CORPORATION LIMITED, (CIN: U65990KA2008PLC085891) (hereinafter referred to as "Demerged Company 1" or "ARECL") and ARTHA INFRA PROJECTS LIMITED (CIN: U70200KA2007PLC083431) hereinafter referred to as the "Demerged Company 2" or "AIPL") and BENNETT PROPERTY HOLDINGS COMPANY LIMITED (CIN: U70102MH2010PLC211087) (hereinafter referred to as the "Resulting Company" or "BPHCL").
3. The Petitioner Company has approved the said Scheme of Arrangement by passing the Board Resolution on 9<sup>th</sup> February, 2018 which are annexed to the respective Company Scheme Petition.

4. The Learned Advocate appearing on behalf of the Petitioner states that the Petition has been filed in consonance with the Order passed in their Company Scheme Application No. 99 of 2018 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed the affidavit proving service dated 26<sup>th</sup> day of April, 2018 for the compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Company undertakes to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner states that the Petitioner Company at present is in the business of real estate, project marketing, leasing and all other related and ancillary activities and the Demerged Company 1 at present is the business of real estate development such as residential development, Special Economic Zone, Information Technology Parks and other commercial segments and the Demerged Company 2 at present is the business of real estate development i.e. construction and development of residential and commercial complexes, project marketing, leasing and all other related and ancillary activities. The Petitioner Company/Resulting Company is the holding company of Demerged Company 1, holding 100 per cent of the equity shares thereof, which in turn holds 100 per cent of the equity shares in Demerged

Company 2. Therefore, the Resulting Company i.e. Bennett Property Holdings Company Limited is the ultimate holding company of the Demerged Company 1 and Demerged Company 2. It has been realized by the Boards of Demerged Company 1 and Demerged Company 2 that it is desirable and expedient to reorganize their business operations. The operations of Demerged Company 1 presently comprise of real estate projects regulated by Real Estate (Regulation and Development) Act, 2016 ("RERA") and other businesses including projects not regulated by RERA. In order to ensure sustainable long term growth, profitability, market share and continuous customer service, it requires focused management attention, different set of skills and resources to meet competitive, regulatory environment and to mitigate risk. The management is also of the opinion that the demerger will lead to synergies of operations and it is further envisaged that the demerger of Demerged Undertakings (as defined in the Scheme) of Demerged Company 1 and Demerged Company 2 into the Resulting Company and the overall demerger will enable Demerged Company 1 and Demerged Company 2 to focus on the projects regulated by RERA and to create an independent market for the same from a long-term perspective. The demerger shall further enable Demerged Company 1 and Demerged Company 2 to focus and enhance its residual core business operations by streamlining operations and cutting costs and consequently, ensuring better and more efficient management control and the Petitioner Company will concentrate its resources towards development and management of the Demerged Undertakings, and thus, develop and operate them efficiently and

the demerger will enable Demerged Company 1, Demerged Company 2 and Petitioner Company, to productively utilize their respective resources and achieve cost and operational efficiencies while creating a separate market for each Project for future monetization. Further, this will enable Demerged Company 1, Demerged Company 2 and Petitioner Company to pool financial and managerial resources to concentrate on their respective business activities and the demerger will segregate the assets with different profiles between the legal entities so that the specific risks of the assets retained with a legal entity are limited to that entity alone.

7. The Regional Director has filed his Affidavit with the Hon'ble Tribunal. In paragraphs IV (a) to (e) of the said Affidavit the Regional Director has stated that:

*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

- a. The Petitioners under the provisions of section 230(5) of the Companies Act, 2013 have to serve notices to the concerned authorities which are likely to be affected by the Compromise or arrangement. Further, the approval of the Scheme by this 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 is binding on the Petitioner Company (ies).*
- b. In addition to compliance of AS - 14 (IND AS-103) the Petitioner Companies shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- c. It is observed that the Resulting Company has not submitted a Chairman's report, admitted copy of the Petition, and Minutes of Order for admission of the Petition. In this regard Resulting Company has to undertake to submit the same for the record of the Regional Director and also to undertake that the scheme as admitted with the Hon'ble NCLT through*

*company petition and the scheme which is served to the Regional Director through company application is one and the same, and in case of deviation, if any, shall be brought to the notice of the Regional Director.*

- d. As per Clause 1.2 of the Scheme, "Appointed Date" shall mean April 1<sup>st</sup>, 2017 or such other date as NCLT, may direct. In this regard, it is submitted that Section 232(6) of the Companies Act, 2013 states that the scheme under this section shall clearly indicate the appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.*
- e. The Registered office of both the Demerged Companies are situated in the State of Karnataka, i.e. outside of the jurisdiction of NCLT of this Tribunal and fall within the jurisdiction of NCLT of Bengaluru. Accordingly, similar approval be obtained by the Demerged Companies from Hon'ble NCLT at Bengaluru.*

8. With regard to the observation made in paragraph IV (a) of the Report of the Regional Director, the Learned Counsel for the Petitioner Company submits that it has duly served notices to all concerned authorities which are likely to be affected by the compromise or arrangement in compliance with directions of the Hon'ble Tribunal vide its order dated March 20, 2018. Further, the Petitioner Company through its Learned counsel submits that the approval of the Scheme by this 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 is binding on the Petitioner Company, as per applicable laws.
9. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the

Petitioner Companies submits to comply with the applicable Accounting Standards notified under Section 133 of the Companies Act, 2013 and shall pass such accounting entries which are necessary in connection with the scheme to comply with all the applicable Accounting Standards.

10. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned the Learned Counsel for the Petitioner Company submits that a copy of the company petition, along with chairman's report was filed with the office of the Regional Director on August 3, 2018, and an acknowledgement for the same was duly received. A copy of the minutes of the order of NCLT dated July 4, 2018, admitting the petition, has been filed with the Regional Director on July 23, 2018. Further the Petitioner Company herewith undertakes that there are no deviations in the scheme submitted with the Hon'ble Tribunal through the company petition and the scheme which is served to the Regional Director through company application and that both are the same.
11. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Appointed Date is 1<sup>st</sup> April, 2017, as defined in Clause 1.2 of the Scheme, and the Scheme will be effective from Appointed date i.e. April 1, 2017.
12. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that a company petition for sanction of the Scheme of Arrangement has been duly submitted by the

Demerged Companies with the Hon'ble NCLT in Bengaluru, being their jurisdictional Tribunal and the petition is currently pending for approval. In this regard, the learned counsel further submits that the scheme shall be effective upon the receipt of similar approvals from the Hon'ble NCLT in Bengaluru.

13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 & 12 above. The clarifications and undertakings given by the Petitioner Company are accepted by the Tribunal.
14. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 1848 of 2018 are made absolute in terms of prayers clause (a) to (c).
16. Petitioner is directed to lodge a copy of this Order along with a copy of the Scheme of Amalgamation and Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 2013.
17. The Petitioner Company to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the certified copy of the order, if any.

18. The Petitioner Company to pay costs of Rs.25,000/- to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 1848 of 2018. Cost to be paid within four weeks from the date of receipt of the certified copy Order.
19. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.
20. The Scheme is hereby approved. The Appointed Date 1<sup>st</sup> April, 2017.

SD/-

V. Nallasenapathy, Member (T)

SD/-

Bhaskara Pantula Mohan, Member (J)