

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 801/230-232/NCLT/MB/MAH/2017
CSP 802/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Sambhavnath Infrabuild And Farms
Private Limited

.....Petitioner in CSP 802/2017
(Demerged Company)

M/s. Eirian Consulting Private Limited

.....Petitioner in CSP 801/2017
(Resulting Company)

Order delivered on: 03.11.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Rajesh Shah a/w. Mr. Ahmed Chunawala i/b. Rajesh Shah & Co., Advocates for the
Petitioners

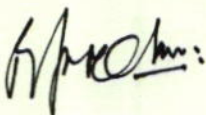
For the Regional Director :

Mr. Ramesh Gholap – Dy. Registrar (WR).

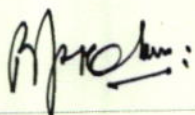
Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement between M/s. Sambhavnath Infrabuild and Farms Private Limited, (Demerged Company) with M/s. Eirian Consulting Private Limited (Resulting Company).
2. The Demerged Companies and the Resulting Company have approved the said Scheme of Arrangement by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.



3. The Demerged Company is currently engaged in the business of buying and selling of building material.
4. The Resulting Company was incorporated with the main object to carry on the business of consultancy, advisory and all related support services and is currently not engaged in any business activities.
5. The proposed Scheme is expected to enable better realisation of potential of the businesses, yield beneficial results and enhanced value creation for both the companies and their respective shareholders, lenders and employees. Pursuant to demerger, the Resulting Company would be able to enhance the business potential for trading business.
6. The Authorized Share Capital of the Demerged Company is ₹ 16,00,000 comprising of 1,60,000 Equity Shares of ₹ 10/- each.
7. The Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹10/- each.
8. The Authorized Share Capital of the Resulting Company is ₹ 1,00,000 comprising of 10,000 equity shares of ₹ 10/- each.
9. The Issued, subscribed and paid up capital is ₹ 1,00,000 comprising of 10,000 equity shares of ₹ 10/- each.
10. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his report on 25th September, 2017, inter alia, stating therein that save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said report, 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) In addition to compliance of AS-14 (Ind AS-103) the Resulting 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 (Ind As-8) etc.,

(b) As per existing practice, the Petitioner Companies are required to serve notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the Company vide letter dated 11th July, 2017 have served a copy of Company Scheme Application No. 666 & 667 of 2017 along with relevant orders et., further the Regional Director has also issued a reminder on 12th September, 2017.

(c) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the Resulting company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

(d) The authorised capital of the M/s Eirian Consulting Private Limited, the Resulting Company is ₹ 1,00,000/- on sanction of the scheme the authorized capital is not sufficient to allot shares worth ₹ 1,00,000/- to M/s Sambhavnath Infrabuild and Farms Private Limited the Demerged Company. Hon'ble NCLT may be direct the Resulting Company to increase its authorized share capital and to company with the provisions of Section 61 r/w Section 64 of the Companies Act, 2013.

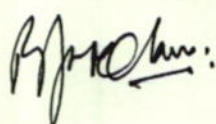
B. K. Sharma:

(e) M/s. Sambhavnath Infrabuild and Farms Private Limited, the Demerged Company is in the Real Estate Development Business. Hence, they may be directed to comply/clarify the applicability of Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulation 2017.

- c) Apropos the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Advocate for the Petitioners states that, the Petitioner Companies through its Counsel undertakes that in addition to compliance with IND AS 103, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.
- d) Apropos the observation in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
- e) Apropos the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Share Capital of the Resulting Company is fully paid up. In view of the same, the Resulting Company undertakes to increase its Authorised Share Capital by creation of such number of Equity Shares of ₹10/- each as may be necessary to fulfill its obligations under clause 5.1 of the Scheme pursuant to sanctioning of the Scheme. Further, the Resulting Company also undertakes comply with the provisions of Section 61 r/w Section 64 of the Companies Act, 2013 for such increase in authorized share capital.
- f) Apropos the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Petitioner Companies through its Learned Counsel submits that since the Demerged Company i.e., Sambhavnath Infrabuild and Farms Private Limited has not undertaken any real-estate projects, the provisions of Real Estate Regulation and Development Act, 2016 along with Maharashtra Rules and Regulation 2017 does not apply to the Demerged Company.
- g) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Arrangement.

11. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the Demerged liabilities including taxes and charges, if any, and duties of the Demerged Company shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of Consideration of the Scheme, the Resulting Company shall issue and allot 1 fully paid up equity share of ₹ 10/- each for every 1 fully paid up equity share of ₹ 10/- each, held by such equity shareholder in Demerged Company.
- d) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- e) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
- f) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.



- g) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- h) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- i) Further that, any concerned authority is at liberty to approach before this Bench for any clarification.
- j) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 31st March, 2017.

12. Ordered accordingly. To be consigned to records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 03.11.2017

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)