

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

CSP 858/230-232/NCLT/MB/MAH/2017

CSP 859/230-232/NCLT/MB/MAH/2017

CSP 860/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Godrej Vikhroli Properties India Limited

.....Petitioner in CSP 859/2017

(Demerged Company)

M/s. Godrej Green Homes Limited

.....Petitioner in CSP 858/2017

(1st Resulting Company)

M/s. Godrej Highrises Properties Private
Limited

.....Petitioner in CSP 860/2017

(2nd Resulting Company)

Order delivered on: 10.11.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

1) Ms. Alpana Gone, Counsel

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

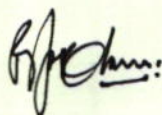
For the Regional Director :

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

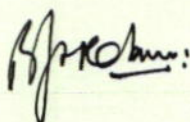
Per : Bhaskara Pantula Mohan, Member (J)

ORDER

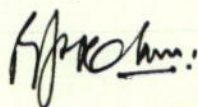
1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Arrangement between Godrej Vikhroli Properties India Limited (Demerged Company) and Godrej Green Homes Limited (1st Resulting Company) and Godrej Highrises Properties Private Limited (2nd Resulting Company) and their respective shareholders



2. The Petitioner Companies 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 and the Resulting Companies are engaged in the business of Real Estate Construction, Development and other allied activities.
4. The rational of the Scheme of Arrangement is, Demerged Company is engaged in real estate development business. It is currently developing a mixed use project on a land parcel in Vikhroli bearing New C.T.S. NO.51/B, (Old C.T.S. Nos. 51(pt), 52(pt), 52/1 to 17) of Village Vikhroli, Pirojshanagar, Eastern Express Highway, Vikhroli (E), Mumbai – 400079, Maharashtra admeasuring approximately 34.2 acres which will be developed into premium commercial office space ('the Commercial Project'), residential towers ('the Residential Project') and a luxury hotel ('the Hotel Project'). It is proposed to segregate business of development of Commercial Project and development of Hotel Project into separate companies such that it will result in focused approach to exploit the growth potential of each of the projects. It will help providing flexibility to attract fresh set of investors / strategic partners to participate in each of the projects. This Scheme will result in providing flexibility to Demerged Company in scouting for and inviting the potential investors into different segments of the business it is undertaking resulting in unlocking the value of each of the Projects for the stakeholders of Demerged Company.
5. The Authorised Share Capital of the Demerged Company is ₹ 4,00,00,00,000/- comprising of 40,00,00,000 equity shares of ₹ 10/- each and the Issued, Subscribed and Paid-up Share Capital is ₹ 3,68,29,59,150/- comprising of 36,82,95,915 equity shares of ₹ 10/- each.
6. The Authorised, Issued, Subscribed and Paid- up Share Capital of the Resulting Company 1 is ₹ 45,00,000/- comprising of 4,50,000 equity shares of ₹ 10/- each.
7. The Authorised, Issued, Subscribed and Paid- up Share Capital of the 2nd Resulting Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.
8. The averments made in the Petition and the submissions made by the Learned Counsel for the Petitioners are:



- a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies undertake 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.
- b) The Regional Director has filed his Report on 9th of November, 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:-
- a) *As per Clause 3.3 of the Scheme "Effective Date" means last of the date on which authenticated / certified copies of the Order of the High Court sanctioning the Scheme has been filed with the concerned Registrar of Companies, Mumbai, Maharashtra by the Amalgamating Company and the Amalgamated Company if required" in this regard it is submitted that the "Effective date" shall be in terms of provisions of section 232(6) of the Companies Act, 2013:*
- b) *M/s. Godrej Vikhroli Properties India Limited (GVPIIL) Demerged Company M/s. Godrej Green Homes Limited (GGHL) the Resulting Company No. 1 and M/s. Godrej Highrises Properties Private Limited (GHPPL) the Resulting Company No. 2 are engaged in the business of Real Estate Construction, development and other allied activities. Hence, the petitioner may be directed to comply with the requirements of (RERA) Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulations 2017.*
- c) *The demerger has to invariably indicate the Remaining Business. As the scheme expressly does not provide for Remaining Business / Remaining Undertaking of M/s. Godrej Vikhroli Properties India Limited (GVPIIL - the Demerged Company). This Hon'ble Tribunal may kindly direct the Demerged Company to file an affidavit / undertaking indicating clearly the details of Remaining Business / Remaining Undertaking.*

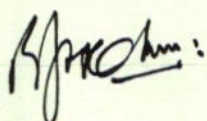


- d) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 22nd August 2017, has served a copy of Company Scheme Petition No.858 to 860 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 30th October, 2017 to IT Department.*
- e) *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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner companies.*
- f) *Regarding Schedule – 2 & Schedule - 3 of the Scheme, The terms of issue of preference Shares by GGHL & GHPPL respectively in pursuant to the Scheme, under the head Redemption it is mentioned that “Upon redemption of preference shares, the liability of GGHL & GHPPL to the Preference Shareholders shall stand extinguished from the date of dispatch of the cheques / pay order for the Redemption Amount” In this regard it is submitted that the redemption of preference shares, the liability of M/s. Godrej Green Homes Limited – GGHL & M/s. Godrej Highrises Properties Private Limited – GHPPL to the Preference Shareholders shall stand extinguishes on due payment / honor of cheque by both the Companies (i.e. GGHL & GHPPL).*
- g) *Regarding Clause 6.1, 6.2 & 6.3 (Demerged Undertaking No. 1) and Clause 14.2 to 14.4 (Demerged Undertaking No. 2) of the Scheme. It is submitted that A portion of Clause 6.1 of the scheme i.e. The difference between the book value of assets transferred and the book value of liabilities transferred shall be adjusted against the equity share capital of Demerged Company to the extent required and consequently, the equity share capital of Demerged Company shall stand cancelled to*

that extent" and clause 6.2 and 6.3 are to be deleted. Further, Clause 14.2 to 14.4 of (Demerged Undertaking No. 2) needs to be deleted. Hon'ble Tribunal may kindly direct the Demerged Company and the Resulting Company to delete relevant clause of the Scheme.

h) The present structure of capital of M/s. Godrej Green Homes Limited and M/s. Godrej Highrises Properties Private Limited do not provide preference share capital. Hence, the company has to modify the capital structure before issue of preference share capital. Hon'ble NCLT may kindly direct the petitioner to take necessary action in accordance with Law.

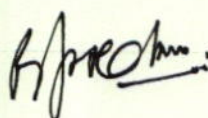
- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, Learned Counsel for the Petitioners submits that, the Petitioner Companies confirms and undertakes that upon the Hon'ble NCLT approving the scheme, the Scheme shall take effect from the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013.
- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the projects which are required to be registered under the relevant provisions of the Real Estate (Regulation and Development) Act, 2016 have been registered with the MAHA RERA Authority. Also, a notice of meeting of shareholders under sub-section (5) of Section 230 of the Companies Act, 2013 was served to MAHA RERA by the Petitioner Companies. Further, the Petitioner Companies undertake to comply with the applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations framed thereunder and the circulars or notifications issued thereunder
- e) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the Demerged Company, as referred in para I of the scheme explaining the rationale of the scheme is engaged into development of Commercial Project, Residential Project and Hotel Project. Post demerger of Commercial Projects and Hotel Projects, the Residential Project will remain and continue as "Remaining Business" with the Demerged Company.



- f) Apropos observations made in paragraph IV (d) and (e) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners submits that, Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Arrangement will be met and answered in accordance with applicable law.
- g) Apropos observations made in paragraph IV (f) of the Report of Regional Director regarding Clause of Redemption in Schedule - 2 and Schedule - 3 of the Scheme is concerned, the Learned Counsel for the Petitioners hereby undertakes that, upon Redemption of Preference Shares, the liability of 1st Resulting Company & 2nd Resulting Company to the Preference Shareholders will stand extinguished from the date of honor of the cheques / pay order issued by the respective Resulting Companies for the Redemption Amount.
- h) Apropos observations made in paragraph IV (g) is concerned, Learned Counsel for Petitioner Companies submits that, the Petitioner Companies are agreeable to delete a portion of Clause 6.1 of the Scheme i.e. "The difference between the book value of assets transferred and the book value of liabilities transferred shall be adjusted against the equity share capital of Demerged Company to the extent required and consequently, the equity share capital of Demerged Company shall stand cancelled to that extent". Also, the Petitioner Companies are agreeable to delete Clause 6.2, Clause 6.3 and Clauses 14.2 to 14.4 of the Scheme.
- i) Apropos observation made in IV (h) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that, 1st Resulting Company and 2nd Resulting Company, both, undertakes to take all necessary steps to increase the authorized share capital for the issue and allotment of preference shares pursuant to the Scheme of Arrangement in accordance with the provisions of the Companies Act, 2013 and file the prescribed form before the Registrar of Companies along with fees.
- j) No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement.
9. 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 assets and liabilities of the 'Demerged Undertaking 1' and 'Demerged Undertaking 2' shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets and liabilities of the 1st Resulting Company and 2nd Resulting Company respectively.
- 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 the consideration of the Scheme, 10,000 Preference Share of 1st Resulting Company of ₹ 10 each fully paid up shall be issued and allotted to all the shareholders of Demerged Company (except GGHL, i.e. the 1st Resulting Company) in proportion of their holdings in Demerged Company.
- d) Moreover, in lieu of consideration of further Demerger, 10,000 Preference Share of 2nd Resulting Company of ₹ 10 each fully paid up shall be issued and allotted to all the shareholders of Demerged Company (except GHPPL, i.e. 2nd Resulting Company) in proportion of their holdings in Demerged Company.
- e) Further that, 1st Resulting Company and 2nd Resulting Company shall, before allotment of shares in lieu of consideration, increase their Authorised Share Capital, so as to meet the necessity after the Scheme becomes effective.
- f) Petitioner Companies are directed to lodge 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 Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- g) 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.



- h) Petitioner Companies to pay costs of ₹25,000/- each to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of the receipt of the duly Certified Copy of this Order.
- i) 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.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- k) The Scheme is sanctioned and the Appointed Date of the Scheme is fixed as 31st March, 2017.

10. Ordered Accordingly

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 10.11.2017

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)