

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

CSP NO. 987 OF 2017

AND

CSP NO 988 OF 2017

**Lodha Buildcon Private Limited**

..... **Petitioner Company / Demerged Company**  
AND

**Lodha Developers Private Limited**

..... **Petitioner Company / Resulting Company**

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other  
relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between  
Lodha Buildcon Private Limited ("Demerged  
Company") and Lodha Developers Private  
Limited ("Resulting Company") and Their  
respective shareholders.

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioners

Mr. S Ramakantha , Joint Director in the office of Regional Director

Mr Parvez Naikwadi Asst. ROC

Order delivered on 21<sup>st</sup> December 2017.

Coram: M.K Shrawat , Member (J)

V .Nallasenapathy, Member (T)

**Per: V .Nallasenapathy, Member (T)**

**ORDER**

1. Heard Learned Counsel for the Petitioner Companies. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between Lodha Buildcon Private Limited ("Demerged Company") and Lodha Developers Private Limited ("Resulting Company") and Their respective shareholders.
3. The Learned Counsel for the Petitioners submits that the Demerged Company is engaged in the business of construction, development and leasing of real estate and also, to dealing in any materials required for such construction and development activities and the Resulting Company is engaged in the business of construction, development and dealing in real estate.

4. The Learned Counsel for the Petitioners submits that the Companies involved in the proposed Scheme of Arrangement are part of Lodha Group ("Group"). The Group believes that the proposed Scheme of Arrangement would benefit the respective Petitioner Companies and their shareholders, *inter alia*, on account of the following reasons:
  - a. The Scheme would result in integration and consolidation of the various development projects / businesses of the Group which would lead to more productive and optimal utilization of resources;
  - b. The Scheme would enable consolidation of various development projects / businesses which would strengthen the competitive position of Lodha Developers Private Limited (i.e. the Resulting Company) by enabling it to harness and optimize the synergies. The financial and managerial resources, personnel capabilities, skills, expertise of the Demerged Company, pooled into the Resulting Company, will lead to increased competitive strength, cost reduction and efficiencies, thereby significantly contributing to future growth and market consolidation; and
  - c. The Scheme would also enable the Demerged Company to focus on its Remaining Businesses.
5. The Petitioners Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the respective Company Scheme Petitions have been filed in consonance with the orders passed in Company Scheme Application No. 483 of 2017 and Company Scheme Application No. 484 of 2017 of the National Company Law Tribunal, Mumbai Bench dated 9<sup>th</sup> August, 2017 which is annexed as Exhibit F to the respective Company Scheme Petitions.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, the Petitioner Companies through their Learned Counsel undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
8. The Regional Director, Western Region, Mumbai in his Report dated 13<sup>th</sup> day of December, 2017 stating therein that save and except as stated in para IV (a) to (e) of the



said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Para IV (a) to (e) of the said Report read as follows:

- “(a) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation/ Arrangement to the Income Tax Department for their representation. It appears that the company vide letter dated 21.08.2017 has served a copy of Company Application No. 483 & 484 of 2017 along with relevant orders et,*
- (b) 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 transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- (c) M/s. Lodha Buildcon Private Limited ('the Demerged Company') and M/s Lodha Developers Private Limited ('the Resulting Company') are engaged in the business of constructing, developing and dealing in real estate. Hence, the petitioner may be directed to comply/clarify the applicability of (RERA) Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulation 2017.*
- (d) The ROC Mumbai, at Para No. 15 & 18 of the report, as mentioned at Para 12 above has raised objection by mentioning that “Notice to Real Estate Regulatory (RERA) Authority is not submitted and the Resulting Company has not given Notice to CCI Authority”. In view of the same Hon'ble NCLT may pass appropriate order/orders as deem fit.*
- (e) regarding Clause 6.4. of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account of the Resulting Company / Transferee Company.”*

9. In so far as observations made in paragraph IV (a) & (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all the applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
10. In so far as observations made in paragraph IV (c) & (d) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that the notices to RERA authority were already served on 13<sup>th</sup> day of September, 2017. The copy of notices served upon RERA are annexed to the affidavit of service filed by the Petitioner Companies and are also annexed to the respective Company Scheme Petitions.



The Petitioner Companies were not required to serve notices to CCI Authority since proposed Scheme of Arrangement is within the Lodha Group since Demerged Company is a wholly owned subsidiary of the Resulting Company and therefore, the proposed Scheme of Arrangement will not result into dominant position of the Resulting Company.

11. In so far as observations made in paragraph (e) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that the surplus, if any, arising out of the Scheme shall be credited to Capital Reserves and deficit, if any, arising out of the same shall be debited to Goodwill in the books of accounts of the Resulting Company / Transferee Company.
12. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 987 of 2017 and the Company Scheme Petition No. 988 of 2017 are made absolute in terms of prayer clauses (a) to (c) of respective Petitions.
15. The 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 physical copy, within 30 days from the date of receipt of the Order from the Registry.
16. The Petitioner Companies to lodge a copy of this Order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 days from the date of receipt of the Order.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai within four weeks from the date of the receipt of the Order.
18. All authorities concerned to act on a copy of this Order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

**Sd/-**

**V. Nallasenapathy, Member (T)**

Date: 21.12.2017

**Sd/-**

**M.K Shrawat, Member (J)**