

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

CSP 281/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Denise Realities Private Limited

.....Petitioner in CSP 281/2017
(Transferor Company)

M/s. Thaler Developers Private Limited

.....Petitioner in CSP 282/2017
(Transferee Company)

Order delivered on: 04.09.2017

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

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 Amalgamation between M/s Denise Realities Private Limited (Transferor Company), with M/s Thaler Developers Private Limited, (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor and Transferee company both are engaged in business of real estate viz. land developers, builders, property dealers, development contractors etc.
4. The rationale of the Scheme of Amalgamation is, it will simplify corporate structure and eliminate inter-company transactions and holdings. The Scheme will



also rationalise administrative overheads and will bring greater administrative efficiency.

5. The Authorised, Issued, Paid-up and Subscribed Share Capital of the Transferor Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.
6. The Authorised, Issued, Paid-up and Subscribed Share Capital of the Transferee Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each.
7. Presently the entire Issued, Paid-up and Subscribed Share Capital of the Transferor Company is held by the Transferee Company.
8. 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 10th August, 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:-

1. The tax implication if any arising out of the scheme is subject to final decision of the 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 Company.

2. It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 07.03.2017 for comments. The office of Directorate also has issued reminder dated 31.07.2017.

Approved:

3. Petitioner Companies are into real estate business and hence proof of serving notice to Real Estate Regulator is to be submitted.

4. It is submitted that the petitioner companies are into real estate business whereas there are huge borrowings which are invested in companies are in the form of loans and advances and the income is only from investment.

- c) Apropos observations made in paragraph IV (1) and (2) of the Report of Regional Director is concerned, the Petitioner Companies 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.
- d) Apropos observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Petitioner Companies submits that, if there is any real estate project undertaken by the company then only the company needs to register itself with the Real Estate Regulatory Authority established under the Real Estate (Regulation and Development) Act, 2016. However, the Petitioner Companies states that the Petitioner Companies have not undertaken any real estate project at present and therefore, serving notice on Real Estate Regulatory Authority shall not apply.
- e) Apropos observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Petitioner Company was incorporated to carry on business of real estate. On account of unforeseen reasons, Petitioner Company could not execute any projects. Therefore, the borrowed funds were invested in other group entities. Income on such investments is shown as other income since it is ancillary objects and not the main object of the Petitioner Company.
- f) The Official Liquidator has filed his report dated 6th June, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company can be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.

[Signature]

- g) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

9. From the material on record, the Scheme of Amalgamation 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 liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee 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) Petitioner Companies are directed to file a copy of this Order along with a copy of the Scheme of Amalgamation 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.
- d) 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.
- e) 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.



- f) Transferor Company i.e. Petitioner in CSP No. 281 of 2017 to pay cost of ₹ 25,000/- to the Official Liquidator, 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) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 31st March, 2016.

10. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 04.09.2017