

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**CSP NO. 546 OF 2017**  
**AND**

**CSP NO. 553 OF 2017**

**BELLISSIMO PROPERTIES DEVELOPMENT PRIVATE LIMITED**

...Petitioner/ Demerged Company

**AND**

**LODHA DEVELOPERS PRIVATE LIMITED**

...Petitioner/ Resulting Company

In the matter of the Companies Act, 2013;

**AND**

In the matter of Sections 230 to 232 of the  
Companies Act 2013;

**AND**

In the matter of Scheme of Arrangement between  
Bellissimo Properties Development Private Limited  
(Formerly known as Lodha Properties  
Development Private Limited) having CIN  
U45201MH2006PTC163751 (Demerged  
Company) and Lodha Developers Private Limited  
having CIN U45200MH1995PTC093041  
(Resulting Company) and their respective  
shareholders

Order delivered on 7<sup>th</sup> September 2017

coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner (s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for

Petitioner

**Per:** B.S.V Prakash Kumar, Member (J)

**MINUTES OF THE ORDER**

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement between Bellissimo

Properties Development Private Limited and Lodha Developers Private Limited and their respective shareholders.

3. Learned Counsel for the Petitioner Companies states that the Demerged Company is primarily engaged in the sale of construction material and the Resulting Company primarily engaged in the business of property development, sale of land and development rights and sale of construction material.
4. The proposed Scheme of Arrangement will achieve the following primary benefits:
  - Consolidation and simplification of the group structure;
  - Achieving operational and management efficiency by way of consolidation of businesses;
  - Rationalization and optimization of administrative expenses for both companies by eliminating duplication of efforts for similar line of business ie. real estate.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed an Affidavit dated 29<sup>th</sup> August, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
  1. *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 company.*

- 2. It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the income tax authorities dated 21.04.2017 for comments. The office of the Directorate also has issued reminder dated 21.08.2017.*
- 3. In addition to compliance of AS-14 (IND AS-103) the Transferee 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.,*
- 4. Petitioners have to undertake to serve notice to real estate regulator as the petitioner company is into real estate business.*
- 5. Petitioner companies have to undertake to comply with provision of Companies Act, 2013 read with rules for change in capital structure.*
9. In so far as observations made in paragraph IV. 1. of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. In so far as observations made in paragraph IV. 2. of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel confirms that the Petitioner Companies have served notice of Scheme on the income tax authorities vide letter dated 21.04.2017.
11. In so far as observations made in paragraph IV. 3. of the Report of Regional Director are concerned, the Petitioner Companies through its Counsel undertakes that the in addition to compliance of 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 as may be applicable.
12. In so far as observations made in paragraph IV. 4. of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that the Company Scheme Applications corresponding to Company Scheme Petition No. 546 and 553 were filed by the Petitioner Companies in the month

of March 2017. The admission hearing directing the Petitioner Companies to hold the meetings was held on 12<sup>th</sup> April 2017. However, the provisions of the Real Estate (Regulation and Development) Act, 2016 came into force only on 1 May 2017. The last date for registration under the Real Estate (Regulation and Development) Act, 2016 was 31 July 2017. The Petitioner Companies through their Counsel further state that all the projects which are required to be registered are registered under the relevant provisions and the Petitioner Companies are filing all returns/ reports as mandated in the said Act in a time bound manner. The Petitioner Companies undertake to comply with all provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations framed thereunder.

13. In so far as observations made in paragraph IV. 5. of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with all provisions of Companies Act, 2013 read with rules.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. 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. None of the parties concerned have come forward to oppose the Scheme.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 546 of 2017 and Company Scheme Petition No. 553 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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, on the same within 60 days from the date of receipt of the order.
18. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme 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.

19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of Order.
20. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V Prakash Kumār, Member (J)