

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 214 OF 2017

SUMER BUILDERS PRIVATE LIMITED

...Demerged /Petitioner Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

TRANSFERRRED COMPANY SCHEME PETITION NO. 215 OF 2017

LOONKAR PROPERTIES PRIVATE LIMITED

...Resulting /Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956) and other relevant provisions of the Companies Act,2013;

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 AND Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement

BETWEEN

Sumer Builders Private Limited ('SBPL' or 'the Demerged Company')

WITH

Loonkar Properties Private Limited ('LPPL' or 'the Resulting Company')

AND

their respective Shareholders and Creditors

CALLED FOR HEARING:

Ms. Alpana Ghone, Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocates for the Petitioner Company.

Coram: SH. M.K. Shrawat Hon'ble Member (J)

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Date: 16th June, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. 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 a Scheme of Arrangement between Sumer Builders Private Limited with Loonkar Properties Private Limited and their respective shareholders and creditors.
3. Learned counsel for the Petitioners states that the Demerged Company is engaged in the business of real estate development, selling and buying of land, selling of constructed properties. Currently, SBPL has three ongoing projects/ properties situated at different locations i.e. Dadar, Indore and Vakola (Mumbai).
4. Learned counsel for the Petitioners further states that the Arrangement of the Demerged Company with the Resulting Company will result in two different companies with focused project under construction, which would provide opportunities to the independent projects to attract different set of investors, strategic partners, lenders, and other stake holders. Further, re-structuring would facilitate respective management to focus on independent projects, thereby improving efficiency and profitability. Additionally, the proposed restructuring would create long term value by unlocking value of respective projects and focused management of companies by the respective factions of the family.
5. The Petitioner 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 Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Summons for Direction Nos. 449 of 2016 and 450 of 2016 of the Bombay High Court.
7. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.



8. Pursuant to transfer of the Company Scheme Petitions to this Hon'ble Tribunal, the Regional Director, Western Region, Mumbai has filed his Report on 2nd May, 2017 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.

- a) *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,*
- 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 27th October, 2016 has served a copy Company Scheme Petition No. 725 & 726 of 2016 along with relevant orders et., further the Regional Director has also issued a reminder on 24th April 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 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.*
- d) *Regarding **Clause 8.4 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 and shall not be treated as General Reserve of LLPL, the Transferee Company.*
- e) *Regarding **Clause 1.1.11 & 6 of the Scheme** it is submitted that The Resulting Company means LPPL a wholly owned subsidiary of M/s Sumer Reality (India) Private Limited (SRIPL) (clause 1.1.11 of the Scheme) to which demerged undertaking is being transferred and SRIPL in which shares are being issued to the shareholders of SBPL for transfer of Demerged Undertaking as defied under section 2 (19AA) of the Income Tax- Act, 1961.*

In this regard it is submitted that M/s Sumer Reality (India) Private Limited (SRIPL) the resulting Company, is the ultimate Holding Company is (not a petitioner and is not before this Hon'ble Tribunal) further, both (LPPL) and (SRIPL) are the companies having independent separate legal entity. Any commercial contract/transaction entered in to without consideration is void ab initio. Hence, the issue of shares by (SRIPL) to the shareholders of M/s

Sumer Builders Private Limited (SBPL) for the demerging the business in to M/s. Loonkar Properties Private Limited (LPPL) is void initio. Hon'ble NCLT may pass appropriate orders/orders as deem fit.

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioner Companies undertakes that in addition to compliance of AS-14 (IND AS -103) accounting treatment as applicable, 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.,
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) and (c) of his report are concerned, the Petitioner Companies submit that the 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.
11. So far as observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his Report is concerned the Petitioner Companies submit that the surplus if any arising out of the scheme which shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against the General Reserve of the LLPL, the Transferee Company.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his report is concerned the Petitioner Companies submit that Sumer Reality (India) Private Limited ('SRIPL') is a holding company of Loonkar Properties Private Limited ('LPPL'). SRIPL has passed a board resolution taking on record the Scheme of Arrangement between SBPL and LPPL and has given its consent for issuance of shares pursuant to demerger being a holding company of LPPL. Further, SRIPL has obtained approval of its shareholders for issuance of shares pursuant to the said Scheme of Arrangement

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between SBPL and LPPL vide resolution dated May 11, 2017. The said resolution giving their consent is uploaded by SRIPL on the portal of Ministry of Corporate Affairs on May 12, 2017. In case of Composite Scheme of Arrangement and Amalgamation between Sterling Holiday Resorts (India) Limited, Thomas Cook Insurance Services (India) Limited and Thomas Cook (India) Limited and their respective shareholders and creditors, the Hon'ble High Court at Bombay has upheld that *"It is not that in every case the consideration for transfer of an undertaking as part of a scheme of arrangement must come in the form of an allotment of shares of a transferee company or for that matter allotment of any shares. The consideration for such transfer can be any legitimate consideration, which the transferor is entitled to accept for contract of transfer. The scheme may, thus, not provide for any allotment of shares at all or provide any other appropriate consideration including allotment of shares of a holding company of the transferee company. Acceptance of any particular consideration is part of the commercial wisdom to be exercised by the shareholders of the transferor company. As long as such consideration is not against public interest or in any other manner illegal or inappropriate, it is not for the company court to accept or reject such consideration."*The said explanation is found to be satisfactory as the shareholders of SRIPL have also approved the scheme.

13. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai have been explained by the Petitioner Companies in Para 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
14. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.

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15. Since all the requisite statutory compliances have been fulfilled, the Transferred Company Scheme Petition Nos. 214 and 215 of 2017 are made absolute in terms of prayer clauses (a) to (c).
16. 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 by the Registry.
17. The Petitioner Companies to lodge a copy of this order and 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, within a period of 60 days from the date of receipt of the order.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.
19. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the tribunal in the above matter for any direction that may be necessary.

Sd/-
M.K. Shrawat (J)