

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

CSP 389/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Balavati Properties Private Limited

.....Petitioner in CSP 391/2017

(1<sup>st</sup> Demerged Company)

M/s. Cunni Realty And Developers Private Limited

.....Petitioner in CSP 390/2017

(2<sup>nd</sup> Demerged Company)

M/s. Reliable Trade & Realty Developers Private Limited

.....Petitioner in CSP 389/2017

(Resulting 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.

**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 M/s. Balavati Properties Private Limited (1<sup>st</sup> Demerged Company) and M/s. Cunni Realty And Developers Private Limited, (2<sup>nd</sup> Demerged Company) with M/s. Reliable Trade & Realty Developers Private Limited (Resulting Company).

*Bhaskara Pantula Mohan*

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 **1<sup>st</sup> Demerged Company** is engaged in the business of developers, builders, masonry and General Construction Contractors, Estate Agents, Erectors, Constructors of buildings, houses, apartments, structures, shelters, whether upon or otherwise, civil engineering and or residential, office, industrial, Institutional or commercial or developer of co-operative housing societies
4. The **2<sup>nd</sup> Demerged Company** has been carrying on the business as importers, exporters, buyers, sellers, marketors, processors, packers, re-packers, movers, preservers, producers, processors, repairers, super marketers and/or distributors, wholesalers, retailers, traders, dealers, exchangers, barterers, showroom owners, merchants, stockists, suppliers, indenters, agents, sub-agents, representatives, commissions agents, franchisers, brokers of all types of consumer products
5. The **Resulting Company** has been carrying on the business of as importers, exporters, buyers, sellers, marketors, processors, packers, re-packers, movers, preservers, producers, processors, repairers, super marketers and/ or distributors, wholesalers, retailers, traders, dealers, exchangers, barterers, showroom owners, merchants, stockists, suppliers, indenters, agents, sub-agents, representatives, commissions agents, franchisers, brokers of all types of consumer products, commodities, products, goods, services, merchandise, industrial products.
6. As per the Scheme, the management is of the opinion that the Investment Divisions of 1<sup>st</sup> Demerged Company and 2<sup>nd</sup> Demerged Company have significant potential for growth. The nature of risk, permissions and competition involved in these Divisions are distinct from other Divisions or businesses of 1<sup>st</sup> Demerged Company and 2<sup>nd</sup> Demerged Company and consequently Investments Divisions is capable of attracting different sets of investors, strategic partners and other stakeholders and in order to consolidate investments into one Company the proposed Scheme is in the interest of all the parties to the Scheme and their respective shareholders and creditors and will in the long term, be in the interest and welfare of the employees and that the Investment Divisions of 1<sup>st</sup> Demerged Company and 2<sup>nd</sup> Demerged Company have tremendous profitability potential therefore investments will be consolidated into one Company and it is believed that the proposed segregation will create enhanced value for shareholders and allow a focused strategy in operations, which would be in the best interest of 1<sup>st</sup> Demerged Company and 2<sup>nd</sup> Demerged Company, its shareholders, creditors and all

*Atty. Chaudhary*



persons connected with 1<sup>st</sup> Demerged Company and 2<sup>nd</sup> Demerged Company and that the demerger will also provide scope for independent collaboration and expansion without committing the existing organization in its entirety and that the proposed scheme is not prejudiced to the interest of the creditors or the employees of the Demerged Companies

7. The Authorised, Issued, Subscribed and Paid-up Share Capital of the 1<sup>st</sup> Demerged Company is ₹ 3,00,000/- comprising of 30,000 equity shares of ₹ 10/- each.
8. The Authorised, Issued, Subscribed and Paid- up Share Capital of the 2<sup>nd</sup> Demerged Company is ₹ 5,00,000/- comprising of 50,000 equity shares of ₹ 10/- each.
9. The Authorised Share Capital of the Resulting Company is ₹ 10,00,000/- comprising of 1,00,000 Equity Shares of ₹ 10/- each.
10. The Issued, Subscribed and Paid-up Share Capital of the Resulting Company is ₹ 8,82,000/- comprising of 88,200 Equity Shares of ₹ 10/- each.
11. The averments made in the petitions and the submissions made by the Learned Representative 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 25<sup>th</sup> September, 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:-

*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

*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 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.*

*2. Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 1013 is not available.*

*In this regard, it is requested that Petitioner Company may be asked to submit the certificate to comply with the provisions of Section 232(3) provisio of the Companies Act, 2013.*

*3. It is submitted that the Petitioner Companies have not submitted the proof of serving notice, upon the Income Tax Authorities for comments.*

*In this regard, Petitioner Companies have to undertake to serve notice to the Income Tax Authorities as per the provision of Section 230(5) of the Act, 2013.*

*4. Petitioner companies have not provided recommendation by the Chartered Accountant/ auditor regarding share exchange ratio.*

*In this regard petitioner has to submit as per the provisions of section 232(2)(c) of the Act, 2013.*

*5. Petitioner companies have not submitted minutes of order of the Hon'ble NCLT with regard to affidavit for summons filed by the companies' petitioner companies seeking directions for convening meeting of shareholders, secured and Unsecured Creditors.*

*6. Petitioner in clause 12.3 of the scheme has inter alia mentioned that On the Scheme becoming effective all the employees of Demerged undertakings as may be identified by the Board of Directors demerged companies shall become the employees of the Resulting Company, without any break or interruption in their services, on same terms*

*Handwritten signature/initials*



*and conditions on which they are engaged as on the Effective Date. Agency in respect of the Investment Divisions.*

*In this regard petitioner companies have to undertake to protect the interest of the employees.*

*7. Petitioner in clause 3 of the scheme has inter alia mentioned that the board of the demerged companies to decide on any question that may arise on a specific assets or liabilities whether the same belong to Investment Division or not.*

*In this regard petitioner companies to undertake to comply the order of the Hon'ble Tribunal and not board.*

*8. Petitioner companies in clause 8.1 has inter alia mentioned that ratio of 1:101 as a consideration for demerger of Investment division of 2<sup>nd</sup> demerged Company.*

*Whereas number of shares proposed to be allotted is 1:10.*

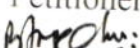
*In this regard petitioner companies to undertake to amend the scheme*

*9. Affidavits dated 03.03.2017 from all the Petitioner Companies have been received. However, all the affidavits are not notarized.*

*In this regard petitioner to submit duly notarized Affidavits.*

- c) Apropos the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company/Resulting Company undertakes to comply with all applicable provisions of the Income-Tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
- d) Apropos the observation in paragraph IV (2) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies have submitted the Auditors Certificate as per the provisions of section 232(3) of the Companies Act, 2013 with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.
- e) Apropos the observation in paragraph IV (3) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the

Petitioner Companies have submitted the proof of Income Tax Authorities as per the provisions of section 230(5) of the Companies Act, 2013 with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.

- f) Apropos the observation in paragraph IV (4) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies have submitted the Valuation Report as per the provisions of section 232(2)(c) of the Companies Act, 2013 with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.
- g) Apropos the observation in paragraph IV (5) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies have submitted the Minutes of the order with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.
- h) Apropos the observation in paragraph IV (6) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies undertakes to protect the interest of the employees and they have filed further Affidavit with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.
- i) Apropos the observation in paragraph IV (7) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies undertakes to comply the order of the Hon'ble Tribunal and not of the board and they have filed further Affidavit with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.
- j) Apropos the observation in paragraph IV (8) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, in clause 8.1 of the scheme of arrangement the share exchange ratio is erroneously (typographical error) mentioned as 1:101 as a consideration for the demerger of Investment division of 2<sup>nd</sup> Demerged company, whereas the number of shares proposed to be allotted is 1: 10 and the Petitioner Company hereby undertakes to amend the aforesaid clause 8.1 of the scheme.
- k) Apropos the observation in paragraph IV (9) of the report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies have submitted the copy of the Further Affidavit duly  




notarized and they have filed further Affidavit with the NCLT, Mumbai Bench and to the Regional Director, Western Region, Mumbai.

- 1) No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement.

12. 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 assets and liabilities including taxes and charges if any, and duties of the of the Demerged undertakings of the Demerged Companies, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Resulting 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) Further, as the Share Capital of the Resulting Company is not sufficient to meet the requirements after sanctioning of this Scheme, hence, the Resulting Company shall, on or before the allotment of shares in the Scheme of Arrangement, increase its Authorised Share Capital. And the Resulting Company shall comply with the applicable provisions of the Act and Rules therein, for raising of its Authorised Share Capital.
- d) In lieu of Consideration of this Scheme, 1 Equity Share of ₹ 10/- of the Resulting Company shall be issued and allotted against 10 Equity Shares of ₹ 10/- each to the shareholders of the 1<sup>st</sup> Demerged Company.
- e) In lieu of Consideration of this Scheme, 1 Equity Share of ₹ 10/- of the Resulting Company shall be issued and allotted against 10 Equity Shares of ₹ 10/- each to the shareholders of the 2<sup>nd</sup> Demerged Company.
- f) Leave is granted to the Petitioner Companies to amend the Scheme to the extent of undertaking given in Para 11 (j) (*Supra*). Rest of the Scheme shall remain unaltered.



- g) 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.
- h) The Petitioner Companies are directed 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.
- i) Each 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.
- j) 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.
- k) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- l) Any concerned Authority is at liberty to approach this Bench for any further clarification regards to this Scheme.
- m) The Scheme is sanctioned and the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2016.

13. Ordered Accordingly. To be consigned to Records.

**Sd/-**

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

**Dated : 04.09.2017**

**Sd/-**

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**