

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TCSA NO. 483 OF 2017

In the matter of the Companies Act, 1956 and 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 Composite Scheme of Arrangement
and Amalgamation between Lodha Buildcon Private
Limited and M/s Vivek Enterprises and Lodha
Developers Private Limited and Their respective
shareholders and partners.

LODHA DEVELOPERS PRIVATE LIMITED, a)

company incorporated under the provisions of)

Companies Act, 1956 and having its Registered)

Office at 412, 4th Floor, 17G Vardhaman Chamber,)

Cawasji Patel Road, Horniman Circle, Fort, Mumbai)

- 400001.

).....Applicant Company

Order delivered on 9th August, 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 Applicants
Per: **V .Nallasenapathy**, Member (T)

Order

1. The present Scheme was a Composite Scheme of Arrangement and Amalgamation between Lodha Buildcon Private Limited ("Transferor Company 1") and M/s Vivek Enterprises

("Transferor Company 2") and Lodha Developers Private Limited ("Transferee Company") and Their respective shareholders and partners ("the Scheme"). The Scheme *inter alia* proposes for (i) the demerger of the demerged undertaking of the Transferor Company 1 and vesting of the same with the Transferee Company; and (ii) the amalgamation of the Transferor Company 2 and vesting of the same with the Transferee Company. The learned Counsel for the Applicant Company states that the Applicant Company is engaged in the business of construction, development and dealing in real estate.

2. The rationale for the Scheme is as under:

Companies involved in the Scheme are part of Lodha Group ("Group"). The Group believes that the Scheme would benefit the respective companies and their shareholders and partners, *inter alia*, on account of the following reasons:

- (a) The Scheme would result in integration and consolidation of the various developments projects / businesses of the Group which would lead to more productive and optimal utilisation of resources;
- (b) The Scheme would enable consolidation of various developments projects / businesses which would strengthen the competitive position of Lodha Developers Private Limited (i.e. the Transferee Company) by enabling it to harness and optimize the synergies. The financial and managerial resources, personnel capabilities, skills, expertise of Transferor Companies, pooled into Lodha Developers Private Limited, will lead to increased competitive strength, cost reduction and efficiencies, thereby significantly contributing to future growth and market consolidation; and
- (c) The Scheme would enable the Transferor Company 1 to focus on their respective Remaining Businesses.

3. That pursuant to the resolution passed in the partners meeting of Transferor Company 2 held on 1st day of August, 2017, the Transferor Company 2 have approved to withdraw from the arrangement proposed in the Scheme i.e. amalgamation of Transferor Company 2 into Transferee Company. Accordingly, the executive committee of directors of the Applicant Company in their meeting held on 1st day of August, 2017 have approved the modification and amendment to the Scheme to the extent of clauses referring to the Transferor Company 2 and accounting treatment pertaining to Transferor Company 1 and the Transferee Company in line

with Indian Accounting Standard. The Applicant Company hereby undertakes to send such modified and amended Scheme of Arrangement to the Shareholders, Creditors and to the concerned Regulatory Authorities for their approval. Said undertaking of the Applicant Company is accepted.

4. That a meeting of the Equity Shareholders of the Applicant Company be convened and held at Lodha Excelus, 10th Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Friday, 22nd September, 2017 at 10:00 A.M., for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed arrangement embodied in the modified and amended Scheme of Arrangement between Lodha Buildcon Private Limited and Lodha Developers Private Limited and Their respective shareholders ('Modified Scheme').
5. At least 30 clear days before the said meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meetings at the place, date and time as aforesaid, together with a copy of the Modified Scheme, a copy of statement disclosing all material facts as required under Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 notified on 14th December, 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post / Hand Delivery or through Email (to those shareholders whose email addresses are duly registered with the Applicant Company for the purpose of receiving such notices by email), addressed to each of the Equity Shareholders of the Applicant Company, at their last known address or email addresses as per the records of the Applicant Company.
6. At least 30 clear days before the meeting of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting, indicating the place, date and time of meeting as aforesaid be published once each in 'The Free Press Journal' in English and 'Navshakti' in Marathi, both circulated in Mumbai and stating that copies of the Modified Scheme and the statement required to be furnished pursuant to Section 230(3) of the Companies Act, 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rule, 2016 and the Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company as aforesaid and / or at the office of its Advocates, M/s Hemant Sethi & Co., 309 New Bake House, Maharashtra Chamber of Commerce Lane, Kala Ghoda, Fort, Mumbai 400023.

7. That Mr. Nilesh Parab, Authorised Signatory of the Applicant Company, and failing him, Mr. Nilesh Rawat, Authorised Signatory of the Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders to be held at Lodha Excelus, 10th Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Friday, 22nd September, 2017 at 10:00 A.M. or any adjournment or adjournments thereof.
8. That Mr. Vishal Ghadigaonkar, (Authorised representative of Sambhavnath Infrabuild and Farms Private Limited, Equity Shareholder of the Applicant Company) is hereby appointed as Scrutinizer of the meeting of Equity Shareholders of the Applicant Company to be held at Lodha Excelus, 10th Floor, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai 400 011 on Friday, 22nd September, 2017 at 10:00 A.M. or any adjournment or adjournments thereof.
9. That the Chairman appointed for the aforesaid meeting to issue the advertisement and send out the notices of the meeting referred to above. The said Chairman shall have all powers as per Articles of Association and also under the Companies Act, 2013 in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Modified Scheme or resolution, if any, proposed at the meeting by any person(s) eligible to vote at the aforesaid meeting.
10. That the quorum of the aforesaid meeting of the Equity Shareholders shall be as prescribed under Section 103 of the Companies Act, 2013.
11. That in connection with the Applicant Company, the voting shall be allowed on the proposed Modified Scheme by voting in person or by proxy. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form / authorisation duly signed by the person entitled to attend and vote at the meeting, is filed with the Applicant Company at their Registered Offices not later than 48 hours before the aforesaid.
12. That the value and number of the shares of each Equity Shareholder shall be in accordance with the books / register of the Applicant Company and where the entries in the books / register are disputed, the Chairman of the meeting shall determine the value for the purpose of the aforesaid meeting and his decision in that behalf would be final.
13. That the Chairman of the meeting of the Applicant Company to file an affidavit not less than seven (7) days before the date fixed for the holding of the meeting of the Equity Shareholders

of the Applicant Company and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.

14. That the Chairman of the meetings of the Applicant Company to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meeting.
15. The Counsel for the Applicant Company submits that the Scheme is an arrangement between the Applicant Companies and their Respective shareholders, meeting of the Equity Shareholders of the Applicant Company are proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act, 2013. This bench hereby directs the Applicant Company to issue individual notice of the meeting of Equity Shareholders by Post / Courier / Email / Hand-delivery to all its Secured Creditors and to its Unsecured Creditors, which are due and payable, having outstanding balance of Rs.25,00,000/- and above as on 30th June, 2017 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon Applicant Company.
16. That the Applicant Company are directed to serve notices along with copy of Modified Scheme upon:- (i) concerned Income Tax Authority, Range 7(3), Aayakar Bhavan within whose jurisdiction the Applicant Company's assessments are made, (ii) to the Central Government through the office of Regional Director, Western region, Mumbai and (iii) Registrar of Companies, as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 with the direction that they may submit their representations, if any, within a period of thirty days from the date of the receipt of such notice to the Tribunal with copy of such representations shall simultaneously be served to the Applicant Company, failing which, it shall be presumed that the authorities have no representations to make on the proposed Modified Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
17. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the shareholders, creditors, publication of notices in newspapers and to the regulatory authorities as stated in Clause 16 above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)