

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

COMPANY SCHEME APPLICATION NO. 784 OF 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and other applicable provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation between Bellissimo Crown Buildmart Private Limited ('Transferor Company') with Lodha Developers Private Limited ('Transferee Company') and their respective shareholders.

Lodha Developers Private Limited, a company incorporated }  
under the provisions of Companies Act, 1956 and }  
having its registered office at 412, 4<sup>th</sup> floor, 17G, }  
Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort }  
Mumbai – 400001 }

..... Applicant Company

Order delivered on 10<sup>th</sup> 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 Counsel for the Applicant states that the present Scheme of Amalgamation is an arrangement between Bellissimo Crown Buildmart Private Limited ('Transferor Company') and Lodha Developers Private Limited ('Transferee Company') and their respective Shareholders ("Scheme").
2. The Counsel further submits that the Transferor Company is primarily engaged in the business of development of land and property. The Transferee Company is primarily

engaged in the business of development of property, development rights, development of land.

3. The Counsel for the Applicant further submit that the rationale for the Scheme is that it would lead to:

- The Scheme will consolidate and simplify the group structure
- The Scheme will result in elimination of multiple entities in the group which will eliminate duplication of administrative functions and reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company.
- Achieving operational and management efficiency; and
- Synergies arising out of consolidation of business, such as, enhancement of net worth of the combined business to capitalise on future growth potential, optimal utilisation of resources.

Accordingly, with a view to effect such plan, the Board of Directors of the Transferor Company and the Transferee Company proposes that the business of the Transferor Company be transferred to and be vested in the Transferee Company on a going concern basis.

4. That the meeting of the Equity Shareholders of the Applicant Company be convened and held at 10<sup>th</sup> Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai- 400 011 on 22<sup>th</sup> day of September 2017 at 3.00 PM for the purpose of considering and, if thought fit, approving with or without modification(s), the proposed arrangement embodied in the Scheme of Amalgamation between Bellissimo Crown Buildmart Private Limited and Lodha Developers Private Limited and their respective Shareholders.

5. That at least one (1) month before the said meetings of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, date and time as aforesaid, together with a copy of the 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) Rules, 2016 notified on 14<sup>th</sup> December, 2016 and the prescribed Form of Proxy, shall be sent by hand delivery/courier /registered post /speed post 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), to each of the Equity Shareholders of the Applicant Company at their last known address or email address as per the records of the Applicant Company.

6. That at least one (1) month before the said meetings of the Equity Shareholders of the Applicant Company to be held as aforesaid, a notice convening the said meeting at the place, date and time as aforesaid, together with a copy of the 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) Rules, 2016 notified on 14<sup>th</sup> December, 2016 and the prescribed Form of Proxy can be obtained free of charge at the Registered Office of the Applicant Company (as the case may be) and / or at the office of their Advocates, M/s Hemant Sethi & Co., 1602 Nav Parmanu, Behind Amar Cinema, Chembur, Mumbai – 400 071.
7. That the notice of the meetings shall be advertised by the Applicant Company in 2 (two) local newspapers viz. “Free Press Journal” in English and “Navshakti” in Marathi, both circulated in Mumbai not less 30 (thirty) days before the date fixed for the said meetings.
8. That Mr. Varun Lodha, the Authorised Representative of the Applicant Company, and failing him, Mr. Abhijeet Shinde, the Authorised Representative of the Applicant Company and failing him Mr. Jitendra Prasad, the Authorised Representative of the Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Applicant Company to be held at 10<sup>th</sup> Floor, Lodha Excelus, Apollo Mills Compound, N. M. Joshi Marg, Mahalaxmi, Mumbai– 400 011 on 22<sup>th</sup> day of September 2017 at 3.00 PM or any adjournment or adjournments thereof.
9. That the Chairman appointed for the aforesaid meetings to issue the advertisement and send out the notices of the meetings referred to above. The said Chairman shall have all powers



as per the Articles of Association and also under the Act in relation to the conduct of the meetings, including for deciding procedural questions that may arise or at any adjournment thereof or resolution, if any, proposed at the meetings by any person(s).

10. That the quorum of the aforesaid meetings of the Equity Shareholders shall be as prescribed under Section 103 of the Act.
11. 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 meetings, are filed with the Applicant Company (as the case may be) at its registered office at 412, 4<sup>th</sup> floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort. Mumbai – 400001 not later than 48 hours before the aforesaid meeting.
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 or depository records and where the entries in the books / register / depository records are disputed, the Chairman of the meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
13. That Mr Sharatkumar Shetty, Practicing Company Secretaries, is hereby appointed as Scrutinizers of the meeting of Equity Shareholders of the Applicant Company proposed to be held on Friday, 22<sup>th</sup> September 2017 and his total remuneration is fixed as Rs. 5,000/-.
14. That the Chairman to file an affidavit not less than 7 (seven) days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices and the advertisement have been duly complied with.
15. That the Chairman of the meetings to report to this Tribunal, the results of the aforesaid meetings within 30 (thirty) days of the conclusion of the meetings.

16. The Applicant Company is directed to serve a notice along with a copy of the Scheme upon:- (i) the concerned Income Tax Authority with in whose jurisdiction the Applicant Company's assessments are made; (ii) the Central Government, through the office of Regional Director, Western Region, Mumbai; (iii) the Registrar of Companies, with a direction that they may submit their representations (if any), within a period of 30 (thirty) days from the date of receipt of such notice, to the Tribunal, failing which it shall be presumed that the authorities have no representations to make on the proposals. A copy of such representations shall also be simultaneously served upon the Applicant Company.
17. That Counsel for the Applicant Company submit that since the Scheme is an arrangement between the Applicant Company and their respective shareholders only a meeting of the Equity Shareholders is 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 notice to secured creditors as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company. This bench hereby also directs the Applicant Company to issue notice to unsecured creditors having outstanding balance in excess of Rs. 25,00,000/- as required under section 230(3) of the Companies Act 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the Applicant Company.
18. The Applicant Company to file affidavit of service in the Registry proving dispatch of notices to the Equity Shareholders, secured and unsecured creditors, publication of notices in newspapers and the regulatory authorities as stated in paragraph 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)**