

CSP 883/230-232/NCLT/MB/MAH/2017
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CSP 889/230-232/NCLT/MB/MAH/2017
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CSP 896/230-232/NCLT/MB/MAH/2017

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

CSP 883/230-232/NCLT/MB/MAH/2017
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CSP 896/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Palava Dwellers Private Limited
.....Petitioner in CSP 896/2017
(1st Amalgamating Company)

M/s. Microtec Constructions Private Limited
.....Petitioner in CSP 885/2017
(2nd Amalgamating Company)

M/s. Bellissimo Hi-Rise Builders Private
Limited
.....Petitioner in CSP 884/2017
(3rd Amalgamating Company)

M/s. Lodha Estate Private Limited
.....Petitioner in CSP 883/2017
(4th Amalgamating Company)

M/s. Samvara Buildtech Private Limited
.....Petitioner in CSP 889/2017
(5th Amalgamating Company)

M/s. Lodha Developers Private Limited
.....Petitioner in CSP 894/2017
(Amalgamated/Transferor Company)

M/s. EISA Trading Private Limited
.....Petitioner in CSP 895/2017
(Transferee Company)

Date of Hearing : 09.01.2018

Order delivered on: 11.01.2018

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)



For the Petitioners :

- 1) Ms. Alpana Gone, Counsel
- 2) 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 the Composite Scheme of Amalgamation and Arrangement between Palava Dwellers Private Limited (First Amalgamating Company) and Microtec Constructions Private Limited (Second Amalgamating Company) and Bellissimo Hi-Rise Builders Private Limited (Third Amalgamating Company) and Lodha Estate Private Limited (Fourth Amalgamating Company) and Samvara Buildtech Private Limited (Fifth Amalgamating Company) (hereinafter collectively referred to as (Amalgamating Companies) and Lodha Developers Private Limited (Amalgamated Company/Transferor Company) and EISA Trading Private Limited (Transferee Company) and their respective shareholders and creditors.
2. The Petitioner Companies have approved the said Composite Scheme of Amalgamation and Arrangement by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The First Amalgamating Company, Second Amalgamating Company, Third Amalgamating Company, Fourth Amalgamating Company and the Fifth Amalgamating Company are all currently engaged in the business of real estate development and construction activities.



4. The Amalgamated/Transferor Company is currently engaged in the business of real estate development and construction activities, trading of building material and dealing in transferable development rights.
5. The Transferee Company, as per the amended clause of its memorandum of association, shall carry on the business of real estate development and construction related activities and trading of construction material.
6. The rational of the said Scheme is, pursuant to the merger of the Amalgamating Companies into the Amalgamated Company, all the Palava projects shall be subsumed into the Amalgamated Company which will result in synergies and achieve operational and management efficiencies. Also, the vesting of the 'Identified Business Undertaking' of the Transferor Company with the Transferee Company by way of Slump Sale on a going concern basis will enable a dedicated management focus on affordable housing projects undertaken in Phase II of the Palava city, access to varied sources of funds including ability to raise funds from prospective investor(s) interested in affordable housing real estate segment and enhancing strategic flexibility for the management to build a unique platform.
7. The Authorised Share Capital of the First Amalgamating Company is ₹ 55,00,000 comprising of 31,000 Equity Shares of ₹100/- each and 24,000 Preference Shares of ₹ 100/- each and the Issued, subscribed and paid up capital is ₹ 10,00,000/- comprising of 10,000 Equity Shares of ₹100 each, fully paid up.
8. The Authorised Share Capital of the Second Amalgamating Company is ₹ 5,00,000 comprising of 10,000 Equity Shares of ₹10 each and 40,000 Preference Shares of ₹ 10 each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹10 each, fully paid up.
9. The Authorised Share Capital of the Third Amalgamating Company is ₹ 30,01,12,500 comprising of 11,250 Equity Shares of ₹10 each; 30,00,000 Equity Shares of ₹ 100 each and 1,250 Preference Shares of ₹ 10 each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹10 each, fully paid up.



10. The Authorised Share Capital of the Fourth Amalgamating Company is ₹ 1,00,00,000 comprising of 1,00,000 Equity Shares of ₹100 each and the Issued, subscribed and paid up capital is ₹ 1,99,000/- comprising of 1,990 Equity Shares of ₹100 each, fully paid up.
11. The Authorised Share Capital of the Fifth Amalgamating Company is ₹ 20,00,000 comprising of 1,60,000 Equity Shares of ₹10 each and 40,000 Preference Shares of ₹ 10 each and the Issued, subscribed and paid up capital is ₹ 1,05,960/- comprising of 10,596 Equity Shares of ₹10 each, fully paid up
12. The Authorised Share Capital of the Amalgamating / Transferor Company is ₹ 160,88,02,200 comprising of 30,07,20,440 Equity Shares of ₹5 each and 2,10,40,000 Preference Shares of ₹5 each and the Issued, subscribed and paid up capital is ₹ 113,10,80,000/- comprising of 22,62,16,000 Equity Shares of ₹5 each, fully paid up.
13. The Authorised Share Capital of the Transferee Company is ₹ 1,00,000 comprising of 10,000 Equity Shares of ₹ 10/- each and the Issued, subscribed and paid up capital is ₹ 1,00,000/- comprising of 10,000 Equity Shares of ₹10 each, fully paid up.
14. The averments made in the Petition and the submissions made by the Learned Counsel 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 9th of November, 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. It is further submitted that:



- a) It is observed from the main objects of the Transferee Company that it does not contain **objectives of the Identified Business Undertaking** of the Transferor Company. Therefore, the Hon'ble NCLT may direct to the Transferee Company to amend its objects under **Section 12** and other applicable provisions of the Companies Act, 2013, accordingly.
- b) As regards Para No. 7 of Part-B of Section-II of the Scheme, it is stated that in the Scheme that upon the Scheme becoming effective name of the Transferee Company shall stand **Change** to M/s **Palava Dwellers Private Limited** subject to such approvals as may be necessary. In this regard it is submitted that the same shall be subject to compliance with the provisions of **Section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.**
- c) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Company may be directed to file a **Certificate from the Company's Statutory Auditors** to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under **Section 133 of the Companies Act, 2013.**
- d) The Hon'ble NCLT direct to the Petitioner Companies to state their policy for **staff, Employee and Workmen on transfer of the Identified Business Undertaking** of the Transferor Company to the Transferee Company. It is pertinent to mention here that the said policy should not be less favorable for such Staff, Employee and Workmen in compare to their present terms & conditions in the Transferor Company. The Transferee Company may be directed to make such compliance.



- e) *As regards Para No. No. 7 of Part-A of Section-I of the Scheme, the Amalgamated Company may be allowed in respect of fees payable by the Amalgamating Companies on their Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Amalgamating Company on their Authorized Share Capital in accordance to the provisions of **Section 232 (3) (i)** of the Companies Act, 2013.*
- f) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. The Petitioner Companies served copy of the Scheme along with relevant orders etc to Income Tax Department. Further, the Office of the Regional Director, Western Region, Mumbai has also issued reminders on **23-10-2017**.*
- g) *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 Returns filed by the transferee Company, after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
- h) *As the Transferor Companies and Transferee Company are engaged in real estate business, the Hon'ble Tribunal may kindly direct to them to make compliance of the provisions of the **Real Estate (Regulations and Development) Act, 2016**.*
- c) *Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies through their learned Counsel state that the Memorandum of Association of the Transferee Company has been amended, under Section 12 and other applicable provisions of the Companies Act, 2013, to include the objectives of the Identified Business Undertaking of the*



Transferor Company through a special resolution passed at in the extra-ordinary general meeting held on 10th July 2017. Necessary filings in this regard in MGT-14 have been made with the Registrar of Companies on 21st July 2017. The altered Memorandum of Association were filed with the office of the Registrar of Companies on 14th September 2017. The altered Memorandum of Association has also been annexed to the Company Scheme Petition submitted to the Hon'ble NCLT.

- d) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies through their learned Counsel state that the change of name of the Transferee Company to 'Palava Dwellers Private Limited' shall be in accordance with the provisions of Section 4(2) and (3) of the Companies Act, 2013. The said change of name shall also be in compliance with Rule 8(8) of the Company (Incorporation) Rules, 2014 since utilization of a group company name is permitted with specific direction from the competent authority in the course of compromise, arrangement and amalgamation.
- e) Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through their learned Counsel state that certified copies of the Auditors Certificate certifying the accounting treatment in the proposed Scheme were filed with the office of Regional Director on 7th September 2017. The same were also annexed to the Company Scheme Application and Company Scheme Petition submitted to the Hon'ble NCLT.
- f) Apropos observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies through their learned Counsel state that their policy for staff, employee and workmen of the Identified Business Undertaking of the Transferor Company shall not be less favorable in comparison to their present terms and conditions in the Transferor Company. Following shall be policy for staff, employee and workmen of the Identified Business Undertaking of the Transferor Company:
- i. On the Scheme becoming effective, all staff, workmen and employees of the Identified Business Undertaking of the Transferor Company, who are



in service on the date immediately preceding the Effective Date shall become staff, workmen and employees of the Transferee Company, without any break or interruption in their services, on same terms and conditions on which they are engaged as on the Effective Date. The Transferee Company further agrees that for the purpose of payment of any retirement benefit / compensation, such immediate uninterrupted past services with the Transferor Company shall also be taken into account.

- ii. The accounts / funds of staff, workmen and employees, past or present, relating to pension and/or superannuation, provident fund, gratuity fund or any other special fund or trusts created or existing for the benefit of staff, workmen and employees of the Identified Business Undertaking of the Transferor Company shall be identified, determined and transferred to the respective Trusts / Funds of the Transferee Company and such employees shall be deemed to have become members of such Trusts / Funds of the Transferee Company.
- g) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, Amalgamated Company may be allowed to set-off fees paid by the Amalgamating Companies on their Authorized Share Capital in accordance with the provisions of Section 232 (3) (i) of the Companies Act, 2013.
- h) Apropos observations made in paragraph IV (f) and IV (g) of the Report of Regional Director is concerned, the Petitioner Companies through their learned 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. Further, it is made clear that approval of the Scheme by this Court will not deter the Income Tax Authorities to scrutinize character of the "Slump Sale" as also the tax returns filed by the Transferee Company, after giving effect of the Scheme.
- i) Apropos observations made in paragraph IV (h) of the Report of Regional Director is concerned, the Transferor Companies and the Transferee Company through their learned Counsel submit that all the projects which are required to be registered under the relevant provisions of the Real Estate (Regulations and



Development) Act, 2016 ('RERA') are registered 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 applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the rules and regulations framed thereunder. Further, the Amalgamating Companies and the Amalgamated Company have served notice of Company Scheme Application upon the RERA authority vide letters dated 12th September 2017. Further, the provisions of RERA are not applicable to the Transferee Company since it has not undertaken any real-estate projects.

j) The office of the Registrar of Companies have made the following observation:

"In the same Scheme different Appointed Date is provided, whereas one date should be provided as per practice. In case, the company intend to make different Appointed Date, it may bring different proposal. May be decided on merit"

k) Apropos the abovementioned observation of Registrar of Companies is concerned, the Petitioner Companies through their learned Counsel state that Appointed Date is stipulated in the Scheme for the purpose of identification and quantification of assets, liabilities, income and expenses of the Transferor Companies which would be transferred to the Amalgamated Company pursuant to the Scheme. Appointed Date is the domain of the Management of the Company and the same varies from company to company. Having different Appointed Dates does not in any manner impact the Scheme.

l) The Official Liquidator has filed his report on 3rd November, 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

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

Approved.

15. From the material on record, the said Scheme 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 of the Amalgamated/Transferor Company shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets and liabilities of the Transferee 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 and in the Report of Registrar of Companies 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) Since the Amalgamating Companies are directly and indirectly the wholly owned subsidiaries of the Amalgamated Company, on amalgamation, neither any consideration will be paid nor any shares shall be issued by the Amalgamated Company to the equity shareholders of the Amalgamating Companies in consideration thereof and consequent upon the amalgamation, the equity shares of the aforesaid Amalgamating Companies held by the Amalgamated Company, shall stand cancelled upon the Scheme becoming effective. Further as the vesting of the Identified Business Undertaking of the Transferor Company with the Transferee Company by way of Slump Sale hence, the cash consideration for the transfer of the Identified Business Undertaking would be ₹ 9,04,00,000/-.
- d) Considering the objections of the Regional Director [refer Para IV (f) and (g)] and undertaking given by the Petitioners and the Learned Counsel it is hereby directed that the approval of the Scheme by the NCLT, Mumbai Bench will not deter the Income-Tax Authorities to examine the nature of transaction whether falls under definition of "Slump Sale" and consequentially to assess the gain by the invoking the provisions of S. 50-B or S. 50-C of the Income Tax Act, 1961 or any other provisions of the Income Tax Act, 1961 as applicable on the facts of the Scheme.



- e) 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.
- f) The Petitioner Companies 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.
- g) 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.
- h) Transferor Companies (i.e. the Petitioners in the CSP No. 883, 884, 885, 889, 896 of 2017) each to pay costs of ₹ 25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
- i) All the Transferor Companies are to be dissolved without winding up.
- 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 clarifications/directions hereinafter under this Scheme.



- m) The Scheme is hereby sanctioned. The Appointed Date for amalgamation of First, Second and Third Amalgamating Company is fixed as 1st April 2016. Further, for amalgamation of Fourth Amalgamating Company it is fixed as 1st October 2016. And for the amalgamation of the Fifth Amalgamating Company it is fixed as 31st March 2017. The Appointed date for slump sale of the Identified Business Undertaking of the Transferor Company is fixed as 1st April 2017.

16. Ordered Accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Dated : 09.01.2018

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Avinash