

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

CSP No.:1056/230-232/NCLT/MB/MAH/2017

Under Sections 230-232 read with Sections 52 and 66 and other applicable provisions of the Companies Act, 2013;

In the matter of:

M/s. Bageecha Glades Private Limited

...First Petitioner Company  
(Demerged Company)

M/s. Desons Finvest Private Limited

...Second Petitioner Company  
(Resulting Company)

Order delivered on: 19.01.2018

**Coram:**

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioners:**

Mr. Ajit Singh Tawar i/b M/s. Ajit Singh Tawar & Co., Advocates for the Petitioners.

**For the Regional Director:**

Mr. Ramesh Gholap - Deputy Registrar (W.R.)

*Per: Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 read with Sections 52 and 66 and other applicable provisions of the of the Companies Act, 2013, to a Scheme of Arrangement involving demerger between M/s. Bageecha Glades Private Limited (Demerged Company) and M/s. Desons Finvest Private Limited (Resulting Company).
2. The Petitioner Companies have approved the said Scheme of Arrangement involving demerger by passing the Board Resolutions which are annexed to Company Scheme Petition and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Demerged Company is engaged in the activities, *inter alia*, of (a) purchase of land for development thereof and; (b) to purchase, invest in and acquire, hold and sell shares or securities.
4. The Resulting Company is engaged in the activities of investment in shares and securities and is yet to start operations.

*Bhaskara Pantula Mohan:*



5. The rationale of the Scheme of Arrangement involving demerger is as under:

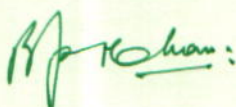
- In case of the Demerged Company, the Scheme of Arrangement involving demerger helps the Demerged Company in focusing on its core business activity i.e. real estate activities and provides for an efficient and focused management of the real estate Undertaking;
- The Demerged Company is seeking investor participation in its real estate Undertaking. In this regard in order to meet the investor objectives it wishes to segregate the investment Undertaking from the real estate Undertaking;
- The segregation of the investment Undertaking from the real estate Undertaking, will provide independence to the management in decisions regarding the use of their respective cash flows, thereby unlocking the value for the shareholders;
- The proposed demerger is likely to enhance significantly the values and synergies for both the Demerged Company as well as the Resulting Company;
- The nature of risk and return involved in businesses of both the Undertakings of the Demerged Company is distinct from each other. The proposed demerger will lend greater focus to the operations of each of these Undertakings;
- The Demerger is in the interest of the Shareholders and the other stakeholders of the respective Companies and is in no way prejudicial to the interest of the stakeholders and the public at large; and
- Reduction of existing paid up Share Capital of Desons Finvest Private Limited will reflect mirror image of share-holding in Desons Finvest Private Limited post arrangement involving demerger.

6. The Authorized Share Capital of the Demerged Company is Rs. 1,00,00,000/- (Rupees One Crore only) comprising of 1,00,00,000 (One Crore) equity shares of Rs. 1/- (Rupee One only) each and the Issued, Subscribed and Paid Up Share Capital is Rs. 11,29,950/- (Rupees Eleven Lakhs Twenty-Nine Thousand Nine Hundred and Fifty only) comprising of 11,29,950 (Eleven Lakhs Twenty-Nine Thousand Nine Hundred and Fifty) equity shares of Rs. 1/- (Rupee One \) each, fully paid up.

7. The Authorized Share Capital of the Resulting Company is Rs. 2,00,00,000/- (Rupees Two Crores only) comprising of 20,00,000 (Twenty Lakhs) equity shares of Rs. 10/- (Rupees Ten) each and the Issued, Subscribed and Paid Up Share Capital is Rs. 1,05,000/- (Rupees One Lakh and Five Thousand only) comprising of 10,500 (Ten Thousand Five Hundred) equity shares of Rs. 10/- (Rupees Ten only) each.

8. The averments made in the Petition 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 08<sup>th</sup> day of December, 2017, *inter alia*, stating therein that save and except as stated in paragraph IV (a) to (c) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV (a) to (c) of the said Report, the Regional Director has stated that:-

*(a) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation/ Arrangement to the Income Tax Department for their representation. It appears that the company vide letter dated 29.09.2017 has served a copy Company Application No. 888 of 2017 along with relevant orders etc.*

*(b) 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.*

*(c) "Appointed Date" means 1<sup>st</sup> day of August, 2017 or such other date as may be fixed or approved by NCLT. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> August, 2017.*

- c. Apropos observations made in paragraph IV (a) and (b) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with all applicable provisions of the Income-Tax Act and all tax implications arising out of the Scheme of Arrangement involving demerger will be met and answered or complied with in accordance with applicable law.
- d. Apropos observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies confirm that in terms of provision of Section 232 (6) of the Companies Act, 2013 the Appointed Date for the Scheme of Arrangement involving demerger shall be 1<sup>st</sup> day of August, 2017.
- e. Further, the Learned Counsel for the Petitioner Companies submits that neither the Petitioner Companies nor the Tribunal has received any objection to the said Scheme of Arrangement involving demerger between the Demerged Company and the Resulting Company.
9. From the material on record, the Scheme of Arrangement involving demerger 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 Demerged Undertaking or the Investment Undertaking of the Demerged

*Approved:*



Company be transferred to the Resulting Company and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the assets, liabilities including taxes and charges, if any, and duties of the Resulting Company.

- b. The cancellation and reduction in paid up equity share capital of the Resulting Company pursuant to Clause 6 of the Scheme shall be effected as an integral part of the Scheme in accordance with the provisions of Sections 230 to 232 read with Section 66 of the Companies Act, 2013 and such reduction and cancellation would not involve either a diminution of liability in respect of unpaid share capital or payment of any paid up share capital and this order of the NCLT shall be deemed to be an order under Section 66 of the Act for the purpose of confirming reduction of the paid up equity share capital of the Resulting Company. Notwithstanding the reduction in the equity share capital of the Resulting Company, the Resulting Company shall not be required to add "And Reduced" as suffix to its name.
- c. The cancellation and reduction of the Securities Premium Account of the Demerged Company pursuant to Clause 7.2 of the Scheme shall be effected as an integral part of the Scheme in accordance with the provisions of Sections 230 to 232 read with Section 52 and 66 of the Companies Act, 2013 and such reduction and cancellation of the Securities Premium Account would not involve either a diminution of liability in respect of unpaid share capital or payment of any paid up share capital and this order of the NCLT shall be deemed to be an order under Section 66 of the Act for the purpose of confirming reduction of Securities Premium Account of the Demerged Company. Notwithstanding the reduction in the Securities Premium Account of the Demerged Company, the Demerged Company shall not be required to add "And Reduced" as suffix to its name.
- d. 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 undertake herein.
- e. In lieu of consideration of the Scheme, 1 (one) fully paid up equity share having face value of Rs. 10/- (Rupees Ten Only) each of Resulting Company shall be issued and allotted for every 1 (one) equity share of Rs. 1/- (Rupee One Only) each in the Demerged Company.
- f. The Petitioner Companies are directed to lodge a copy of this Order along with a copy of the Scheme of Arrangement involving demerger with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 (thirty) days from the date of issuance of the Order by the Registry, duly certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- g. The Petitioner Companies to lodge a copy of this Order and the Scheme of Arrangement involving demerger 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

*Signature*



purpose of adjudication of stamp duty payable, if any, on the same within 60 (sixty) working days from the date of the receipt of the Order.

- h. The Petitioner Companies to pay costs of Rs. 25,000/- (Rupees Twenty-Five Thousand only) each to the Regional Director, Western Region, Mumbai to be paid within 4 (four) weeks from the date of receipt of the duly Certified Copy of this Order.
  - i. All authorities concerned to act on a copy of this Order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
  - j. Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modifications that may be necessary.
  - k. The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 1<sup>st</sup> August, 2017 for demerger of Demerged Undertaking or the Investment Undertaking of the Demerged Company into the Resulting Company.
10. Ordered accordingly.

Sd/-

**Bhaskara Pantula Mohan**  
Member (J)

Sd/-

**M. K. Shrawat**  
Member (J)

**Date: 19<sup>th</sup> January, 2018**