

CSP 956/230-232/NCLT/MB/MAH/2017
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**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CSP 956/230-232/NCLT/MB/MAH/2017
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CSP 990/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Lodha Developers Private Limited
.....Petitioner in CSP 956/2017
(Resulted Company)

M/s. Lodha Impression Real Estate Private
Limited
.....Petitioner in CSP 985/2017
(1st Demerged Company)

M/s. Shree Sainath Enterprises Construction
and Developers Private Limited
.....Petitioner in CSP 989/2017
(2nd Demerged Company)

M/s. Jineshwer Real Estate and Farms Private
Limited
.....Petitioner in CSP 990/2017
(1st Amalgamating Company)

M/s. Marutinandan Real Estate Dovelopers
Private Limited
.....Petitioner in CSP 986/2017
(2nd Amalgamating Company)

M/s. Odeon Theatres Private Limited
.....Petitioner in CSP 984/2017
(3rd Amalgamating Company)

Order delivered on : 02.02.2018


Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co. – Advocate for the Petitioners.



For the Regional Director:

Mr. Ramesh Gholap, Deputy Registrar (WR).

Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Composite Scheme of Arrangement and Merger (by absorption) between Lodha Impression Real Estate Private Limited ("Demerged Company 1") and Shree Sainath Enterprises Construction and Developers Private Limited ("Demerged Company 2") and Jineshwer Real Estate and Farms Private Limited ("Amalgamating Company 1") and Marutinandan Real Estate Developers Private Limited ("Amalgamating Company 2") and Odeon Theatres Private Limited ("Amalgamating Company 3") and Lodha Developers Private Limited ("Resulting Company / Amalgamated Company") and their respective shareholders. The Composite Scheme of Arrangement and Merger *inter alia* proposes for:-
 - a) Demerger of the respective demerged undertaking of the Demerged Company 1 and the Demerged Company 2 and vesting of the same with the Resulting Company / the Amalgamated Company; and
 - b) Merger of Amalgamating Company 1, Amalgamating Company 2 and Amalgamating Company 3 and vesting of the same with the Resulting Company / Amalgamated Company.
2. The Learned Counsel for the Petitioners submits that the Demerged Company 1 and the Demerged Company 2 are engaged in the business of construction, development and leasing of real estate and also, to deal in any materials required for such construction and development activities. Amalgamated Company 1 and Amalgamated Company 2 are engaged in the business of construction and development of real estate and also, to deal in agricultural and allied activities and any business of farmers. Amalgamated Company 3 is engaged in the business of purchasing, constructing, leasing and hiring the theatre and cinema businesses and other allied activities relating to such businesses. Resulting Company / Amalgamated Company is engaged in the business of construction, development and dealing in real estate.
3. The Learned Counsel for the Petitioners submits that the Companies involved in the proposed Scheme of Arrangement are part of Lodha Group ("Group"). The Group

Bhaskara Pantula Mohan:

believes that the proposed Composite Scheme of Arrangement and Amalgamation would benefit the respective Petitioner Companies and their shareholders, *inter alia*, on account of the following reasons:

- a. The Scheme would result in integration and consolidation of the various development projects / businesses of the Group which would lead to more productive and optimal utilization of resources;
 - b. The Scheme would enable consolidation of various development projects / businesses which would strengthen the competitive position of Lodha Developers Private Limited (i.e. the Resulting Company / Amalgamated Company) by enabling it to harness and optimize the synergies of all the companies. The financial and managerial resources, personnel capabilities, skills, expertise of all the companies, pooled into the Resulting Company / Amalgamated Company, 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 all the Demerged Companies to focus on their respective Remaining Businesses.
4. The authorized, issued, subscribed and paid-up share capital of the Demerged Company 1 as on March 31, 2016 is as under:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
1,00,000 Equity Shares of Rs. 10/- each	10,00,000
10,000 Preference Shares of Rs. 10/- each	1,00,000
TOTAL	11,00,000
<u>Issued, subscribed and paid-up Share Capital</u>	
1,00,000 Equity Shares of Rs. 10/- each, fully paid up	10,00,000
TOTAL	10,00,000

5. The authorized, issued, subscribed and paid-up share capital of the Demerged Company 2 as on March 31, 2016 is as under:

B. K. Khan.

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
TOTAL	1,00,000
<u>Issued, subscribed and paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each, fully paid up	1,00,000
TOTAL	1,00,000

Subsequent to the above date, the authorized share capital of the Demerged Company 2 was increased by 60,000 Equity Shares of Rs. 10/- each. The capital structure of the Demerged Company 2 post the above increase in authorized share capital and as on the date of filing this Scheme is as below:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
70,000 Equity Shares of Rs. 10/- each	7,00,000
Total	7,00,000
<u>Issued, Subscribed and Paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each, fully paid up	1,00,000
Total	1,00,000

6. The authorized, issued, subscribed and paid-up share capital of the Amalgamating Company 1 as on March 31, 2016 is as under:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
TOTAL	1,00,000
<u>Issued, subscribed and paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each, fully paid up	1,00,000
TOTAL	1,00,000

Signature

7. The authorized, issued, subscribed and paid-up share capital of the Amalgamating Company 2 as on March 31, 2016 is as under:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
TOTAL	1,00,000
<u>Issued, subscribed and paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each, fully paid up	1,00,000
TOTAL	1,00,000

8. The authorized, issued, subscribed and paid-up share capital of the Amalgamating Company 3 as on March 31, 2016 is as under:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each	1,00,000
TOTAL	1,00,000
<u>Issued, subscribed and paid-up Share Capital</u>	
10,000 Equity Shares of Rs. 10/- each, fully paid up	1,00,000
TOTAL	1,00,000

9. The authorized, issued, subscribed and paid-up share capital of the Resulting Company / Amalgamated Company as on March 31, 2016 is as under:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
30,06,40,440 Equity Shares of Rs. 5/- each	150,32,02,200
2,08,00,000 Preference Shares of Rs. 5/- each	10,40,00,000
Total	160,72,02,200
<u>Issued, Subscribed and Paid-up Share Capital</u>	

M. P. Sharma:

21,62,16,000 Equity Shares of Rs. 5/- each, fully paid up	108,10,80,000
2,00,00,000 Zero Coupon Optionally Convertible Redeemable Preference Shares of Rs. 5/- each, fully paid up	10,00,00,000
Total	118,10,80,000

Subsequent to the above date, the authorized share capital of the Resulting Company / Amalgamated Company was increased by 80,000 Equity Shares of Rs. 5/- each and 2,40,000 Preference Shares of Rs. 5/- each. The capital structure of the Resulting Company / Amalgamated Company post the above increase in authorized share capital and as on the date of filing this Scheme is as below:

Share Capital	Amount in Rupees
<u>Authorized Share Capital</u>	
30,07,20,440 Equity Shares of Rs. 5/- each	150,36,02,200
2,10,40,000 Preference Shares of Rs. 5/- each	10,52,00,000
Total	160,88,02,200
<u>Issued, Subscribed and Paid-up Share Capital</u>	
21,62,16,000 Equity Shares of Rs. 5/- each, fully paid up	108,10,80,000
2,00,00,000 Zero Coupon Optionally Convertible Redeemable Preference Shares of Rs. 5/- each, fully paid up	10,00,00,000
Total	118,10,80,000

10. 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.

M. P. Rohan.

- b) The Regional Director, Western Region, Mumbai in his Report dated 2nd day of January, 2018 stating therein that save and except as stated in para IV (a) to (f) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Para IV (a) to (f), of the said Report read as follows:

- a) *" In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.;*
- b) *Regarding the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Reserves / Profit & Loss Account of the Transferee/ Resulting Company;.*
- c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation/ Arrangements to the Income Tax Department for their representation. It appears that the company vide letter dated 23/08/2017 has served a copy of Company Application No. 788, 798 to 801 of 2017 along with relevant orders etc.;*
- d) *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.*
- e) *As regards Part-III-Clause 24 & Part-IV Clause 36 of the Scheme (Reorganisation of Authorised Share Capital Transferor Companies and the Transferee Company mentioned in the said clauses), The fee payable by the Transferee Company shall be in compliance with the provisions of Section 232(3)(i) of the Companies Act, 2013.*

Apurva Chaudhary:

- f) *M/s. Jineshwer Real Estate And Farms Private Limited, (Amalgamating Company-1) M/s Marutinandan Real Estate Dovelopers Private Limited (Amalgamating Company-2) M/s. Lodha Impression Real Estate Private Limited, (Demerged Company-1) M/s. Shree Sainath Enterprises Construction and Developers Private Limited (Demerged Company-2) and M/s Lodha Developers Private Limited (Resulting/ Transferee Company) respectively are Company engaged in the business of constructing, developing and dealing in real estate. Hence, the petitioner may be directed to comply/clarify the applicability of (RERA) Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulation 2017."*
- c) Apropos observations made in paragraph (a) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel clarifies that adjustment on account of differences in accounting policy, if any, between the Transferor Companies and the Transferee Company is already covered in Clause 6.5 in Part-II of the Scheme and Clause 16.7 in Part-III of the Scheme. Further, Transferee Company through its Counsel also undertakes that it shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.
- d) Apropos observations made in paragraph (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that the surplus, if any, arising out of the Scheme shall be credited to Capital Reserves and deficit, if any, arising out of the same shall be debited to Goodwill in the books of accounts of the Resulting Company / Transferee Company.
- e) Apropos observations made in paragraph IV (c) & (d) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all the applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
- f) Apropos observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel clarifies that there are no such Clause 24 in Part-III & Clause 36 in Part-IV in the present Scheme which provides for Reorganization of Authorized Share Capital

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Transferor Companies and the Transferee Company. However, the Petitioner Companies through its Counsel clarifies that there is Clause 15 in Part-III of the Scheme on 'Aggregation of Authorized Capital' which is in compliance with the provisions of Section 232(3)(i) of the Companies Act, 2013.

- g) Apropos observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that the notices to RERA authority were already served on 13th day of September, 2017 by the Demerged Company 1 and the Resulting / Transferee Company. The copy of notices served upon RERA are annexed to the affidavit of service filed by the Demerged Company 1 and the Resulting / Transferee Company and are also annexed to the respective Company Scheme Petitions. Further, the Petitioner Companies through their Counsel undertakes that there are no on-going construction projects in the Amalgamating Company 1, the Amalgamating Company 2 and the Demerged Company 2 as mentioned by the Regional Director. In view of the same, RERA provisions shall not apply to these Companies.
- h) The Official Liquidator has filed his Report dated 27th day of November, 2017 stating 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.
- i) No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Arrangement.

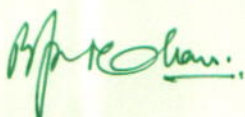
11. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**

- a) All the assets and liabilities including taxes and charges if any, and duties of the respective demerged undertaking of the Demerged Company 1 and the Demerged Company 2 and vesting of the same with the Resulting Company / the Amalgamated 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 liabilities and duties of the Resulting Company; and
- 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

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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) The entire issued, subscribed and paid-up share capital of the Demerged Company 1, the Demerged Company 2, the Amalgamating Company 1, the Amalgamating Company 2 and the Amalgamating Company 3 is directly or indirectly held by the Resulting Company / the Amalgamated Company. Upon the Scheme becoming effective and in consideration of the transfer and vesting of the Demerged Undertaking 1 of the Demerged Company 1, the Demerged Undertaking 2 of the Demerged Company 2, the Amalgamating Company 1, the Amalgamating Company 2 and the Amalgamating Company 3 in the Resulting Company / the Amalgamated Company in terms of the Scheme, no shares of the Resulting Company / Amalgamated Company shall be allotted in lieu or exchange thereof to shareholders of the Transferor Companies since all the Transferor Companies are wholly owned subsidiary or step-down subsidiary of the Resulting Company / the Amalgamated Company.
- d) The Petitioner Companies to lodge a copy of this order and the Scheme of Arrangement and Amalgamation duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, of the 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.
- e) The Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to 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) Each Petitioner Companies to pay costs of ₹ 25,000/- to the Regional Director, Western Region, Mumbai. The cost is to be paid within four weeks from the date of the receipt of Order.



- g) All concerned authorities to act on a certified copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- h) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- i) Any concerned authority is at liberty to approach this Bench to seek any clarification/direction hereinafter under this Scheme.
- j) The Scheme is sanctioned hereby on the above terms and directions. The appointed date for the Merger of 1st and 2nd Amalgamating Company is fixed as 1st October, 2016. Further, the appointed date for the Merger of 3rd Amalgamating Company and for the Demerger of 1st and 2nd Demerged Company is fixed as 1st April, 2016.

12. Ordered Accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 02.02.2018

Avinash