

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

BELLISSIMO CROWN BUILDMART PRIVATE LIMITED
...Petitioner 1/ Transferor Company
AND
LODHA DEVELOPERS PRIVATE LIMITED
...Petitioner 2/ Transferee Company

In the matter of the Companies Act, 2013;

AND

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

AND

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

Judgment/Order delivered on 4th January, 2018

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
Mr. S Ramakantha, Joint Director in the office of Regional Director
Mr. Parvez Naikwadi Assistant Registrar of Companies, Mumbai

Per: **V. Nallasenapathy, Member (T)**

ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Bellissimo Crown Buildmart

Private Limited and Lodha Developers Private Limited and their respective shareholders and creditors.

3. Learned Counsel for the Petitioner Companies states that the Transferor Company was incorporated with the main object of real estate development and construction activities and is presently engaged in the business of real estate development and construction activities. The Transferee Company was incorporated with the main object of real estate development and construction activities and presently it is engaged into real estate activities, trading of building material and dealing in transferable development rights.
4. The proposed Scheme of Amalgamation will achieve the following primary benefits:
 - To enable better realization of potential of the business, yield beneficial results and enhanced value creation for the companies and their respective shareholders, lenders and employees;
 - Reducing operational and compliance cost;
 - 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.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition.
6. The Learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.
7. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed an Report dated 1st January 2018 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that

the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

- (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) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the Companies vide letter dated 14th August 2017 have served copy a copy of Company Scheme Application No. 783 and 784 of 2017 along with relevant orders etc.*
- (c) 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 Companies.*
- (d) M/s Lodha Developers Private Limited, the Transferee Company and M/s Bellissimo Crown Buildmart Private Limited are primarily engaged in real estate development and construction activities. Hence, the petitioners may be directed to obtain NOC of (RERA) Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulations 2017.*
- (e) As regards Part II Clause 7 of the Scheme, (Aggregation of Authorized Share Capital), and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013*
- (f) In view of Part II Clause 5 of the Scheme, since the Transferor Company is the wholly owned subsidiary of the Transferee Company, on amalgamation, neither any consideration will be paid, nor any shares shall be issued by the Transferee Company to any person in consideration thereof or consequent upon the amalgamation the shares shall stand cancelled upon the Scheme becoming effective. The adjustment as proposed vide Part-II Clause 6.3 of the Scheme,*

“The difference between the share capital of the Transferor Company and investment in the Transferee Company shall be adjusted in the reserves” is not permissible. Accordingly, Part- II Clause 6.3 of the Scheme needs to be deleted.

9. In so far as observations made in paragraph IV. (a) of the Report of Regional Director are concerned, the Petitioner Companies through its Counsel undertakes that in addition to compliance of 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., as may be applicable.
10. In so far as observations made in paragraph IV. (b) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel confirms that the Petitioner Companies have served notice of Scheme on the income tax authorities.
11. In so far as observations made in paragraph IV. (c) of the Report of Regional Director is concerned, the Petitioner Companies through its 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.
12. In so far as observations made in paragraph IV. (d). of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel confirm that the Transferor Company and the Transferee Company have served notice of Company Scheme Application upon the RERA authority vide letters dated 7th September 2017.
13. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, Transferee Company may be allowed to set-off fees paid by the Transferor Company on their Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
14. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Transferee Company through its Counsel submits that there is no accounting treatment prescribed for accounting for cancellation of investments held by the Transferee Company in the Transferor Company (which is its wholly owned subsidiary). Further, a certificate dated 13th July, 2017 issued by the Company's auditor has been filed with the Tribunal which confirms that the accounting treatment as specified in Clause 6 of Part II of the Scheme is in conformity with the Indian Accounting Standards prescribed by the Central Government in accordance with section 133 of the Act and the rules made thereunder as applicable.

15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
16. The Official Liquidator has filed his report stating therein that the Affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
17. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 956 of 2017 and Company Scheme Petition No. 957 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (b) of the respective Petitions.
19. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
20. Petitioner Companies are directed to file a 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 the physical copy, within 30 days from the date of issuance of the order by the Registrar.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition No 956 & 957 of 2017 to pay sum of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of Order.
22. All authorities concerned to act on a copy of this order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)
4.1.2018

Sd/-

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