

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, C.P. NO. 15/PB/2017

NEW DELHI BENCH

NEW DELHI

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

C.P. (CAA).15 PB 2017

CONNECTED WITH

COMPANY APPLICATION (MAIN) No.167 OF 2016

(Transferred from the file of Hon'ble High Court of Delhi)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF ARRANGEMENT

BETWEEN

SHOBHA PRINTERS PRIVATE LIMITED

Having its registered office at

F-45, Bhagat Singh Market

New Delhi-110001

.....PETITIONER NO.1/ DEMERGED COMPANY

AND

LAHAR ENTERPRISES PRIVATE LIMITED

Having its registered office at

F-45, Bhagat Singh Market
New Delhi-110001

.....PETITIONER NO.2/ RESULTANT COMPANY

ADVOCATE FOR THE PETITONRS: Mr.Rajeev K Goel, Advocate
Mr.Ajay Garg, Advocate
Mr.Praveen K Bharti, Advocate

FOR REGIONAL DIRECTOR,(NR), MCA: Mr.C.Balooni, Company Prosecutor

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ORDER

1. The above Company Petition is filed by the Petitioner Companies above named and has come up finally before us on 31.05.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of demerging the part of real estate business of Demerged Company into the Resultant Company. A perusal of the petition discloses that initially the application seeking the directions for convening the meeting of equity shareholders, secured and unsecured creditors of the Petitioner Companies for dispensation were filed before the Hon'ble High Court of Delhi in Company Application (Main) 167/2016. The Hon'ble High Court of Delhi vide its order dated 30.01.2017 was pleased to dispense with the requirement of convening of the meetings of the equity shareholders and unsecured creditor of the Demerged Company, in view of consents having been obtained and produced before it and there being no secured creditor in the Demerged Company. Likewise in relation to Resultant Company, the meeting of the equity shareholders were dispensed with and there being no Unsecured and secured Creditors, therefore the necessity of convening of the meeting did not arise.



2. However, in the meanwhile, since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 have been notified w.e.f. 15.12.2016 wherein the power to consider such Schemes have now been vested with the National Company Law Tribunal and ^{hence} the second motion has been filed before us.
3. This Tribunal in the Second Motion petition has inter-alia, given directions for issuance of notice to the Registrar of Companies, Regional Director and the Income Tax Department. The Petitioner herein was also directed to publish the notice of hearing in the newspapers 'Indian Express in English and 'Jansatta' (Hindi) both Delhi edition in relation to the date fixed for hearing on 19.04.2017.
4. The Petitioners have filed an affidavit of compliance dated 31.03.2017 stating that paper publication had been effected on 20.03.2017 in 'Indian Express' and 'Jansatta' keeping in view the date of hearing on 19.04.2017 and it is further stated that notices was sent to the Regional Director and ROC on 6th March, 2017 and to the Income Tax Department on 7th March, 2017,
5. We have heard learned Counsel for the Petitioners as well as the representative of Regional Director, Northern Region, Ministry of Corporate Affairs. A perusal

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of the representation of Regional Director shows that no observation has been made by the Regional director. Further, it is also represented that the jurisdictional ROC from whom report has been sought has not made any adverse comment.

6. Learned Counsel for the Petitioner Companies vide affidavit dated 17th April, 2017 submits that they have not received objections from any quarters in relation to the proposed Scheme coming up for sanction before this Tribunal. Further, it is also represented that Certificate from the Statutory Auditor confirming the share exchange ratio proposed have also been obtained and produced as well as the certificate as mandated under proviso to subsection (7) of section 230/ proviso to sub-section (3) of section 232.
7. Taking into consideration all the above, this Tribunal sanctions the Scheme of Arrangement as set-forth in Annexure-A-1 to the Company Petition and we also grant the prayers made therein.
8. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted



by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners.

9. While approving the Scheme as above, we further clarify that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any, and payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER:

That in terms of the Scheme,

- (1) That the undertaking sought to be demerged of the real estate business, shall pursuant to the provisions contained in Sections 391 to 394 of the Companies Act, 1956 (presently Sections 230-232 of the Companies Act, 2013) and all other applicable provisions, if any, of the Companies Act, 1956, and/or the Companies Act, 2013, and without any further act, deed, matter or thing, stand transferred to and vested in and/or be deemed to be transferred to and vested in the Resulting Company so as to vest in the Resulting Company all rights, titles and interests pertaining to the real estate business as an ongoing concern basis subject nevertheless to all charges now effecting the same; and



(2) That In terms of the Scheme, all the debts, liabilities, contingent liabilities, secured and unsecured loans, duties and obligations of every kind, nature and description of the Demerged Company pertaining to real estate business shall also, under the provisions of Sections 391 to 394 of the Companies Act, 1956 and all other applicable provisions, if any, of the Companies Act, 1956 and/or the Companies Act, 2013, and without any further act, application, instrument, deed matter or thing stand transferred to and assumed by and/or be deemed to be transferred to and assumed by the Resulting Company, so as to become from the Appointed Date the debts, liabilities, contingent liabilities, secured and unsecured loans, duties and obligations of the Resulting Company.

(3) That all proceedings now pending by or against the real estate business of the Petitioner/Demerged Company be continued by or against the Petitioner/Resulting company; and

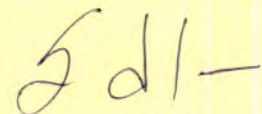
(4) Upon the Scheme becoming effective and in consideration of the demerger including the transfer and vesting of the real estate business of the Demerged Company in the Resulting Company, the Resulting Company shall, without any further act, application, instrument or deed, will issue (one) Equity share of



Rs.100 each, credited as fully paid up, to the shareholders of the Demerged Company for every 3 (three) Equity share of Rs. 10 each held in the Demerged Company as stated in clause 2.2.1 of the scheme.

(5) That Petitioner/Resulting company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration;

(6) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.



(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Date: 06.06.2017.

U.D Mehta