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BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH AT HYDERABAD

IN THE MATTER OF SECTION 391 TO 394 OF THE COMPANIES ACT, 1956

AND

IN THE MATTER OF AQUA SPACE DEVELOPERS PRIVATE LIMITED

(DEMERGED COMPANY)

AND

IN THE MATTER OF DIVIJA COMMERCIAL PROPERTIES PRIVATE LIMITED

(RESULTING COMPANY)

AND

THEIR RESPECTIVE SHAREHOLDERS

C.P.No. 391/2016 & C.P.No.392/2016

TPHC/01/HDB/2017 & TPHC/02/HDB/2017

Date of Order: 12.01.2017

Counsel for the Petitioners

Counsel for Central Govt.

Shri. DVAS Ravi Prasad, Advocate

Shri. B. Apparao, CGSC for
Regional Director (SER)

CORAM

Mr. RAJESWARA RAO VITTANALA, MEMBER (JUDL)



COMMON ORDER

(As per Rajeswara Rao Vittanala, Member (Judl))

1. The Company Petitions bearing No.391 & 392 of 2016 are initially filed before Hon'ble High Court of Telangana and Andhra Pradesh, and they are transferred to this bench vide High Court Order dated 02.01.2017, pursuant to the notification of Companies (Removal

of Difficulties) Fourth Order, 2016 and Companies (Transfer of Pending Proceedings) Rules, 2016 by published by the Ministry of Corporate Affairs, New Delhi, in the Gazette of India dated 07.12.2016, which came into force with effect from 15.12.2016. And the National Company Law Tribunal (NCLT), Hyderabad Bench has been constituted for the cases pertaining to the states of Andhra Pradesh and Telangana. Hence, I have taken the cases on record of NCLT, Hyderabad Bench. The Learned Counsel for Petitioners move lunch motion for the above asking before vacation bench on 11th January, 2017 and thus case was taken up for hearing to pass appropriate orders.

2. The present Company Petitions were filed under section 391 and 394 of the Companies Act, 1956 read with Rules, 79, 80, 81 and 9 of the Companies (Court) Rules, 1959, by inter-alia seeking common directions to fix the date of hearing of the petition; to order that notice of hearing of the petitions publication in "The Hindu" dated 03.12.2016 and also notification in "Vartha" dated 06.12.2016 for and to sanction the scheme of arrangement either in the same form or with any modification or modifications as this Tribunal may decide it and certified copy of the order on this petition shall be filed with Registrar of Companies, Hyderabad, within 30 days etc.
3. I have heard Shri DVAS Ravi Prasad, the learned counsel for Petitioners and Shri B. Apparao, CGSC for Regional Director (South East Region), Hyderabad and carefully perused all the material papers filed in their support.



4. The Learned Counsel for Petitioners submits that Aqua Space Developers Private Limited (herein referred to as Demerged Company) was originally incorporated under the name and style of "Alta Builders and Developers Private Limited" pursuant to the provisions of the Companies Act, 1956 on 25.04.2007 vide CIN: U45400HR2007PTC036802 in the office

of Registrar of Companies, NCT of Delhi & Haryana. Its name was changed to "DLF Raidurg Developers Private Limited" in terms of certificate of incorporation consequent upon change of name issued by the Registrar of Companies, NCT of Delhi & Haryana on 09.05.2011 and again to the present from viz; "Aqua Space Developers Private Limited" in terms of certificate of incorporation issued by the Registrar of Companies, NCT of Delhi & Haryana on 08.01.2014. That in terms of the order dated 05.10.2014 passed by the Regional Director, Northern Region, Noida and certificate of registration vide CIN:U45400TG2007PTC096447 dated 21.11.2014 issued by Registrar of Companies, Hyderabad, the registered office of the Demerged Company was shifted to State of Telangana.

5. The authorised, issued, subscribed and paid up capital of the Demerged Company as on the appointed date is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each. The main objects of Demerged Company are set out in the Memorandum of Association are as follows:-

(i) to purchase any land, plot(s) of land or immovable property or any right or interest therein either singly or jointly or in partnership with any person(s) or Body Corporate or Partnership Firm and to develop and Construct thereon residential, commercial complex or complex(es) either singly or jointly or in partnership comprising officers for sale or self use or for earning rental income thereon by letting out individual units comprised in such building(s).



(ii) to purchase any movable or immovable property including industrial, commercial, residential or farm lands, plots, buildings, houses, apartments, flats or areas within or outside the limits of Municipal Corporation or other local bodies, anywhere within the

domain of India, to divide the same into suitable plots, and to rent or sell the plots for building/constructions residential houses, bungalows, business premises and colonies and rent or sell the same and realize cost in lump sum or easy instalments or by hire purchase system and otherwise.

(iii) to purchase, sell and otherwise to carry on the business such as builders, contractors, architects, engineers, estate agents, decorators and surveyors etc.

6. The Demerged Company is presently engaged in the business of developing residential and commercial building.
7. The latest audited and provisional financial position of the Demerged Company as at 31.03.2016 and 30.09.2016 respectively is as follows: _

| S.No | Particulars | As on 31.03.2016 (Audited) | As on 30.09.2016 (Provisional) |
|------|--------------------------------|-------------------------------|-----------------------------------|
| A | EQUITY AND LIABILITIES | Amount in Rs. | Amount in Rs. |
| 1 | Share Holders Funds | | |
| | a) Share Capital | 1,00,000 | 1,00,000 |
| | b) Reserves & Surplus | 2,12,08,988 | 2,13,47,393 |
| 2 | Non-Current Liabilities | | |
| | a) Long Term Borrowings | 5,97,10,00,000 | 6,37,10,00,000 |
| | b) Long term provisions | 2,95,278 | 2,95,278 |
| 3 | Current Liabilities | | |
| | a) Short Term Borrowings | 1,91,76,79,507 | 2,44,93,86,802 |
| | b) Trade Payables | 7,49,20,612 | 11,72,93,019 |
| | c) Other Current Liabilities | 5,09,02,942 | 52,53,02,869 |
| | d) Short Term Provisions | 79,931 | 79,931 |
| | TOTAL | 8,03,61,87,258 | 9,48,48,05,292 |



| B | ASSETS | | |
|----------|--------------------------------|-----------------------|-----------------------|
| 1 | Non Current Assets | | |
| | a) Fixed Assets | | |
| | (i) Tangible Assets | 13,02,536 | 1,51,50,494 |
| | b) Deferred Tax Assets | 42,411 | 42,411 |
| 2 | Current Assets | | |
| | a) Inventories | 7,69,52,36,076 | 8,90,84,46,419 |
| | b) Cash & Cash Equivalents | 56,56,058 | 50,92,841 |
| | c) Short Term Loans & Advances | 33,39,50,177 | 55,60,73,127 |
| | TOTAL | 8,03,61,87,258 | 9,48,48,05,292 |

8. The Learned Counsel further submits that Divija Commercial Properties Private Limited (herein referred to as Resulting Company) was originally incorporated pursuant to the provisions of the Companies Act, 1956 on 11.04.2012 vide CIN: U45209AP2012PTC080238 under the name and style of "My Home Villas & Resorts Private Limited" and its name changed to "Divija Commercial Properties Private Limited" in terms of certificate of incorporation pursuant to change of name issued by Registrar of Companies on 03.10.2016.
9. The Registered office of the Resulting Company is situated at Door No.1-123, My Home Hub, 8th Floor, 3rd Block, Madhapur, Hyderabad -500 081 in the State of Telangana. The authorised share capital of the Resulting Company is Rs.10,00,000/- divided into 1,00,000/- equity shares of Rs.10/- each and its issued, subscribed and paid up capital of the Resulting Company as on the appointed date is Rs.1,00,000/- divided into 10,000 equity shares of Rs.10/- each.
10. The main objects of Resulting Company are set out in the Memorandum of Association are as follows:-



(a) To construct, develop, design, maintain, remodel houses, villas, resorts, flats, apartments, row houses, independent houses and dwelling units, group housing units, gated community complexes, residential complexes, commercial complexes, townships, hotels, restaurants, airports, sea ports, bridges, parks, gardens, either on own or in association or in joint venture with others or in joint development with any person(s) or firm or company and deal in the business of real estates and to do business as dealers in all properties in aits all forms and to purchase, to take on lease or in exchange, or otherwise acquire any lands and buildings in India or elsewhere.

(b) To undertake all kinds of property maintenance services including collection of lease rentals, agency and brokerage services in respect of real estates and real properties and to undertake maintenance services, civil, electrical, electronics, architects, designers, plumbing, security, cleaning, painting, planning in India or elsewhere.

(c) To manufacture, buy, sell, re-sell, refine, import, export, trade or deal in building and construction materials, equipment products and consumables of every description and to do wholesale, retail or commission, own works enter in works contracts and such other contracts for any commercial purpose etc.

11. The Learned Counsel of the Petitioner further submits that Resulting Company presently has no operations and upon the scheme coming into force, it will be engaged in the business of development and construction of commercial space and dealing with the same and other allied construction activities. The latest audited and provisional financial position of the Resulting Company as at 31.03.2016 and 30.09.2016 respective is as follows:



| S.No | Particulars | As on 31.03.2016 (Audited) | As on 30.09.2016 (Provisional) |
|----------|---|-------------------------------|-----------------------------------|
| A | EQUITY AND LIABILITIES | Amount in Rs. | Amount in Rs. |
| 1 | Share Holders Funds a) Share Capital b) Reserves & Surplus | 1,00,000 (1,22,764) | 1,00,000 (1,31,742) |
| 2 | Non-Current Liabilities a) Long Term Borrowings | 50,000 | 50,000 |
| 3 | Current Liabilities a) Other Current Liabilities | 20,000 | 5,000 |
| | TOTAL | 47,236 | 23,258 |
| B | ASSETS | | |
| 1 | Non Current Assets a) Other non-current assets | 4,612 | 4,612 |
| 2 | Current Assets a) Cash & Cash Equivalents | 42,624 | 18,646 |
| | TOTAL | 47,236 | 23,258 |

12. It is further stated that there is no material change in the financial position of the Demerged Company and Resulting Company after 30.09.2016 till date except the change arising on account regular and ordinary course of business.

13. The Demerged Company has essentially two divisions one, the commercial property development division comprising of 10.38 acres of land in Survey Number 83/1 of Raidurgam, Hyderabad with construction work in progress for commercial built up area of 52,58,732 square feet second; Residential property development division comprising of 17.80 acres of land in Survey number 83/1 of Raidurgam, Hyderabad with construction work in progress for residential built up area of 78, 52,785 square feet. Considering each



of the business division of the Demerged Company viz., commercial division and residential division has significant potential for growth and profitability however, with the nature of risks, considerations, factors, commercial parameters, customer base, financial requirements, market strategies, investor perception, valuation and clientele etc. of each of the business divisions are different from each other, the Board of Directors of the Companies in their meeting held on 03.10.2016, have resolved to re-organize and segregate, by way of a Demerger, the commercial division of the Demerged Company and vest it in a separate company, i.e. the Resulting Company with effect from 01.10.2016, being the appointed date. The Scheme of Arrangement along with Minutes of the Board of Directors of the Companies in their meeting held on 03.10.2016 are annexed to the Company Petitions.

14. The Learned Counsel for the Petitioners further submit that proposed Scheme of Arrangement will not affect the Creditors of either the De-merged Company or that of the Resulting Company. The assets of the companies, both Demerged and Resulting, are sufficient to take care of their respective liabilities in all respects. The Scheme of Arrangement is in the interest of both the Demerged and Resulting Companies, their respective shareholders, employees, creditors and each and every description, class and kind and all other concerned. The scheme was also certified by the Statutory Auditor of the Company having gone through the scheme and financial statements of the Companies certified that the Demerged and Resulting Companies are solvent and have sufficient assets to take care of their respective liabilities.



15. The Learned Counsel for the Petitioners submit that there are no investigation or other proceedings are pending under section 235 or 237 or other provisions of the Companies

Act, 1956 or under Chapter XIV or other sections and provisions of the Companies Act, 2013 or any other Act against either of the Company or its Directors. The Scheme will not affect the rights of any of the creditors of Demerged Company or the Resulting Company in any manner what so ever and all the protections have been provided for the interests of creditors of the Companies in the scheme.

16. The Learned Counsel for the Petitioners further submit that the Demerged Company's entire paid up capital of Rs.1,00,000/- is held by Zola Real Estate Private Limited along and thus, the Demerged Company is a wholly owned subsidiary of Zola Real Estate Private Limited. The shareholder gave an affidavit stating that it has no objection for sanction of the proposed scheme of demerger and accordingly, for dispensing with the meeting of the shareholders to approve the scheme. The De-merged Company has four secured creditors all the four secured creditors have given letters conveying their no objection for sanction of the proposed scheme of arrangement. The Petitioner De-merged Company has two unsecured creditors, these unsecured creditors have given affidavits stating therein that they have no objection for the scheme. Accordingly, The Hon'ble Court by an order dated 21.11.2016 made in CA No.1574 of 2016 was pleased to dispense with the meeting of the shareholders, secured creditors and unsecured creditors of the Petitioner- Demerged Company. No objection affidavits of the shareholders, secured creditors and unsecured creditors are as per Annexure 12, 14 to 17 & 18 accordingly.



17. It is further stated that Demerged Company has issued 290 compulsorily convertible debentures carrying 0.1% coupon rate of Rs.1 Crore each amounting to Rs.290 crores to My Home Constructions Private Limited, convertible into equity shares latest by 15.04.2019 and the said debenture holder who for the time being an unsecured creditor has also given an affidavit conveying therein its no-objection for the scheme of arrangement

being approved, is as per Annexure-21. The Directors of the De-merged Company have no material interest in the scheme of arrangement in question.

18. The Hon'ble High Court by an order dated 30.11.2016 ordered notice to the Regional Director, SER and the petitioners were also directed to get the notice published in "Hindu" English daily, Hyderabad edition and "Vartha", Telugu daily, Hyderabad edition. In pursuant to the said order, the Learned Counsel has filed a Memo dated 19.12.2016 complying with said order. He served the copy of the notice along with the annexures to Regional Director (SER), Hyderabad and Registrar of Companies, Hyderabad in 02.12.2016, and the notice was also published in newspaper i.e. The Hindu" dated 03.12.2016 and also notification in "Vartha" dated 06.12.2016 and proof of the same is filed.

19. The Learned Counsel has produced a letter dated 11.01.2017 stating that in order to get the application of the Company to the committee meeting and the application has to be first made to the Development Commissioner, SEZ, for the States of Telangana and Andhra Pradesh and the DC has to process the same and forward it to the Director, SEZ to carry the matter forward and place it before the Committee. The agenda, has to be finalized at least 21 days before the meeting and requested to post the matter for hearing on 11.01.2017 before the Hon'ble Bench.

20. Sh. B. Apparao, Learned Counsel representing Regional Director (SER) has filed an affidavit dated 30.12.16 of Regional Director (SER). The Regional Director, in his affidavit, has inter-alia stated that in pursuant to the General Circular No.1.2014 dated 15.01.2014 issued by the Ministry of Corporate Affairs, New Delhi, wherein comments of



Income Tax Department is required to be sought under section 391 or 394 of the Companies Act, 1956, a letter dated 02.12.2016 was issued to the Income Tax Department for submitting their comments/objections, if any, within 15 days. The Deputy Commissioner of Income Tax, Circle-1(1), Hyderabad vide his letter dated 16.12.2016 has conveyed no objection for the scheme of arrangement. It is further stated that Registrar of Companies, Hyderabad has reported that the Demerged Company and the Resulting Company in question in the present petitions are regular in filing the statutory returns and no complaints, no investigation and no inspections are pending against the petitioner companies. And he submit that the Company petitions can be considered on merits.

21. The Learned counsel for petitioners submit that in pursuant to the paper notifications published in "The Hindu" dated 03.12.2016 and "Vartha" dated 06.12.2016, he has not received any complaint, objection and public deemed to have no objection about the issue in question.

22. The above facts disclose that the Scheme of Arrangement in question do not involve any material change affecting the interest of third parties, and the same is in the interest of the business of the Petitioners to run the business affectively. The documents filed by the Regional Director (SER) and letter of Income Tax Department also show that there are no adverse material findings against the Petitioners Company's in respect of the proposed scheme of arrangement in question.

23. It is also on record (Annexure-8, page 145 & 146) that the Board of Directors of Divija Commercial Properties Private Limited (formerly My Home Villas & Resorts Private Limited) held on 03.10.2016 at 12: 00 noon at the registered office of the company, has duly approved the demerger of commercial construction division of Aqua Space



Developers Private Limited along with all the assets, liabilities, rights, approvals, obligations of the said division and to transfer and vest the same with Divija Commercial Properties Private Limited, with effect from 01.10.2016 being the appointed date. The scheme of arrangement is also enclosed as Annexure-09, page 147 to 170. A certificate dated 03.10.2016 issued by Shri. Ramana Reddy & Associates, Chartered Accountants by certifying that the post demerger undertaking into resulting company, the assets and financial position of the de-merger and resulting companies is sufficient and these companies are solvent enough to take care of their respective liabilities and obligations.

24. Shri B. Apparao, Central Government Standing Counsel (CGSC) for Regional Director (SER) submits that he has appeared on several occasions before the Hon'ble High Court and twice before this Tribunal. He therefore, requested the bench to award some cost for the same. Accepting his request, the Learned Counsel for Petitioner is directed to pay Rs.10,000/- to him towards cost and other incidental expenses incurred by him.

25. In view of the above circumstances, and in the interest of justice, I allow both the Company Petitions bearing No. 391 & 392 of 2016 by sanctioning the Scheme of Arrangement as filed at Annexure-09, page 147 to 170, as approved by the Board of Directors of the Companies in their meeting held on 03.10.2016, and the Petitioners are directed to strictly to adhere to the terms and conditions of the Scheme, without any deviations.



V. Annapoorna
V. ANNA POORNA
 Asst. DIRECTOR
 NCLT, HYDERABAD - 68

Sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)