

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

**CP(CAA) No.87/230/HDB/2017**

U/s 230 and 232 of the Companies Act, 2013

In the matter of

GAR Corporation Private Limited,  
8-2-682, Laxmi Cyber Centre,  
Road No.12, Banjara Hills,  
Hyderabad – 34  
Telangana

Petitioner No.1 / Demerged Company

AND

Laxmi Infobahn Private Limited,  
8-2-682, Laxmi Cyber Centre,  
Road No.12,  
Banjara Hills,  
Hyderabad – 34  
Telangana

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

Petitioner No.2 / Resulting Company

Date of order: 23/08/2017

**CORAM**

Hon'ble Shri Rajeswara Rao Vittanala, Member (J)

**Parties present**

Cbunsels for the Joint  
Petitioner Companies

: Shri.D.V.A.S.Ravi Prasad along with Duvva  
Pavan Kumar, Ms.. Sahiti. Gopalajosyula,  
Advocates

Per: Rajeswara Rao Vittanala, Member (J)



**ORDER**

1. The present joint Company Petition bearing CP (CAA) No.87/230/HDB/2017, is filed by GAR CORPORATION PRIVATE LIMITED (herein after referred to as the Petitioner Company No. 1/ Demerged Company) and LAXMI INFOBAHN PRIVATE LIMITED (herein after referred to as the Petitioner Company No. 2 / Resulting Company) U/s 230 and 232 of the Companies Act, 2013 by inter-alia seeking to sanction Scheme of Arrangement in the same form or with any modification etc.

2. Brief facts, of the case, which are relevant to the issue in question, as stated in the Company Petition are as under:-

(a) The Petitioner Companies has earlier filed joint application before this Tribunal vide CA (CAA)/35/230/ HDB/ 2017 (Joint Company Application) for dispensing with the convening of meeting of their respective shareholders and creditors to consider the proposed Scheme of Arrangement. This Tribunal vide its order dated 31<sup>st</sup> May, 2017 allowed the said Application. After fulfilling requisite conditions for sanction of scheme in question, the present Petition is filed before this Tribunal for sanction of the scheme.

(b) Details of the Petitioner No.1 / Demerged Company:

GAR Corporation Private Limited was incorporated as a private limited company on 31<sup>st</sup> March, 2006 under the Companies Act, 1956 with CIN U70102TG2006PTC49672. The Registered Office of the Company is situated at 8-2-682, Laxmi Cyber Centre, Road No. 12, Banjara Hills, Hyderabad – 500034 and the Authorized Share Capital of the Company is as follows:



<b>Liabilities</b>	<b>Amount(Rs)</b>
Paid Up Share Capital	4,59,41,020
Share Capital Suspense a/c	11,23,550
Reserves & Surplus	19,14,33,929
Share application money pending allotment	29,76,600
Non-Current Liabilities	5,34,99,637
Current Liabilities	31,65,33,614
<b>Total</b>	<b>61,15,08,350</b>
<b>Assets</b>	
Non-Current Assets	48,64,57,460
Current Assets	12,50,50,890
<b>Total</b>	<b>61,15,08,350</b>

(c) The Main objects of Petitioner No.1 Company / Demerged Company are as follows:

- (i) To provide all infrastructural facilities and services for setting up of information Technology parks in India and abroad etc.
- (ii) To undertake, carry on business of land development, deal in real estates, construction and building activities in India or abroad as real estate developers, builders, contractors etc.
- (iii) To organize, undertake, carry on in all or any kind of their branches in India or outside India of the business of builders, earth masonry and general construction. Contractors and haulers and among other things to construct, execute, carryout, equip, improve, work and repair, sanitary, water, gas, electricity and any other supply of work of every kind.





**(d) Details of the Petitioner No.2 / Resulting Company:**

Laxmi Infobahn Private Limited was incorporated as a private limited company on 05/01/ 2017 under the Companies Act, 2013 with CIN: U70100TG2017PTC113892, Registered Office of the Company is situated at 8-2-682, Laxmi Cyber Centre, Road No.12, Banjara Hills, Hyderabad - 500034.

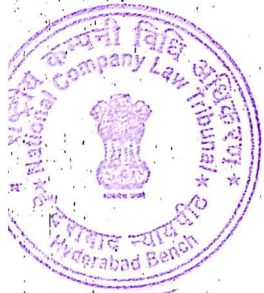
The Authorized Share Capital of the Company as on the Appointed Date mentioned in the Scheme and as per the Balance Sheet as on 15/03/2017 is Rs. 5,00,00,000/- (Rupees Five Crores only) divided into 50,00,000 Equity Shares of Rs. 10/- each. The issued, subscribed and paid up capital of Petitioner No. 2 Company is Rs. 2,000/- (Rupees Two Thousand only) divided into 200 Equity Shares of Rs. 10/- each. The Company is recently incorporated on 0/01/2017, therefore, the audited balance sheet of the Company is not available.

The unaudited financial statement of Petitioner No. 2 Company as on 15/03/2017 is given below:

<b>Liabilities</b>	<b>Amount(Rs)</b>
Paid Up Share Capital	2,000
Current Liabilities	5,85,070
<b>Total</b>	<b>5,87,070</b>
<b>Assets</b>	
Current Assets	5,87,070
<b>Total</b>	<b>5,87,070</b>

**(e) The Main Objects of Petitioner No.2 Company are:**

1. To carry on in India or abroad the business of developing, constructing, establishing, commissioning, setting up, operating, maintaining, alteration, pulling



down and restore either alone or jointly with any other companies or persons, Government, firms, associations authorities, bodies, trusts, agencies, societies or any other person or persons engaged in or in connection with either directly or indirectly etc.

2. To carry on in India or elsewhere the business of civil contractors, Engineers, consulting engineers in all its branches and to undertake market survey and undertake job works such as planning outlay of lands, drawing and also obtain necessary permissions, clearances, sanctions, approvals from governments or other agencies etc.
3. To carry on the business of builders of commercial & residential complexes, flats, prefabricated and precast buildings, lodging houses, resorts, hotels, go downs, hospitals, cinema houses & other recreation buildings including multiplex, malls, roads, bridges, tanks, drains, dams, culverts, canals, irrigation projects, thermal projects etc."

3. Object of Scheme of Arrangement:

The main object is to demerge the Transferred Undertaking of the Petitioner No.1 Company with all the necessary approvals into the Petitioner No.2 Company and retain the Retained Undertaking in the Petitioner No.1 Company, to make available the benefits to the members and creditors of the Petitioner No.1 and No.2 Companies.

4. The following are the Main benefits of Scheme of Arrangement:

- (i) The Scheme of Arrangement provides for demerger and vesting of Transferred Undertaking of Petitioner No.1 Company into Petitioner No.2 Company along with all the assets and liabilities of the Transferred Undertaking as a going





concern and for various other matters which are consequential and integrally connected thereto. The Petitioner No.1 & No.2 Companies are into similar business, thereby the transfer will expand, and increase presence in the business thereby streamlining of management focus and pruning the operational and administration costs.

- (ii) The business division (SEZ, Non-SEZ, investment in land banks, operation and maintenance etc.) of the Petitioner No.1 Company has significant potential for growth and profitability. This, demerger enhance the shareholder value, de-risk the businesses and for effective management and operation of SEZ division of the Petitioner No.1 Company.
- (iii) The Petitioner No.2 Company and the Petitioner No.1 Company are closely held private limited companies and the Petitioner No.2 is a wholly-owned subsidiary of the Petitioner No.1 Company. Even after the proposed demerger, Petitioner No.1 & No.2 Company will continue to be closely held private limited companies and hence, there is no public interest involved in either of the company either pre or post demerger pursuant to this Scheme.
- (iv) Considering the size of the Petitioner No.1 Company and significant growth in its business operations and for greater focus in various activities of the said Company to ensure accelerated growth and improved profitability, it is advantageous to demerge the company by vesting the Transferred Undertaking of the Petitioner No.1 Company into the Petitioner No.2 Company. The reorganization ensure better operational management and focus on accelerated growth of individual undertakings which in turn will ensure higher returns to the shareholders, investors, creditors and employees alike.



5. Approval of the Board of Directors of the Petitioner Companies:

The Board of Directors of Petitioner No.1 Company have at the meeting conducted on 04<sup>th</sup> March,2017 approved the said Scheme of Arrangement, subject to the approval of their shareholders and creditors. The Board of Directors of Petitioner No.2 Company have at the meeting conducted on 14<sup>th</sup> March,2017 approved the said Scheme of Arrangement, subject to the approval of their shareholders and creditors.

6 (a) Consent of the Shareholders of the Petitioner No.1 & 2 Companies for the Scheme of Arrangement:

The Petitioner No.1 Company has two Shareholders who hold 37,64,657 shares and 9,41,800 shares respectively, they have given their consent to the Scheme of Arrangement by way of affidavits. The Petitioner No.2 Company has two shareholders, Petitioner No.1 Company held 199 shares and another share is held by another shareholder, they have their consent for the Scheme of Arrangement by way of affidavits.



(b) Consent of the Secured Creditors of the Petitioner No.1 & 2 Companies for the Scheme of Arrangement:

- (i) The Petitioner No. 1 Company has 3 secured creditors, viz., ICICI Bank Limited, HDFC Bank Limited and Kotak Mahindra Bank Limited. Out of three secured creditors, two i.e. ICICI Bank Limited and HDFC Bank Limited, to whom 95.06% of the total value of the secured debt is owed by the Petitioner No.1 Company have given their consent affidavit and letter dated 06<sup>th</sup> May 2017.
- (ii) Further the third creditor i.e., Kotak Mahindra Bank Limited was issued an email dated 10 April 2017 informing regarding the proposed Scheme of Arrangement and requested for its



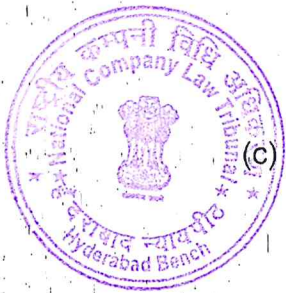
consent to the same by way of an affidavit. However, the consent affidavit was not furnished by Kotak Mahindra Prime Limited and the same was not enclosed. During the course of hearing of the Joint Company Application, this Tribunal directed the Petitioner No.1 Company to serve a copy of scheme to the said creditor, pursuant to the same, the Petitioner No.1 Company had issued a letter dated 01<sup>st</sup> June 2017 along with a copy of the Scheme of Arrangement through registered post acknowledgment due, to the said secured creditor and informed about the disposal of Joint Company Application filed by the Petitioner Companies and the order passed by this Tribunal dispensing with the meetings of the shareholders and creditors of the Petitioner Companies. The Petitioner No. 2 Company has no secured creditors.

Consent of the Unsecured Creditors of the Petitioner No.1 & 2 Companies for the Scheme of Arrangement:

The Petitioner No. 1 Company has 229 unsecured creditors as on 15<sup>th</sup> March 2017. Out of the said 229 unsecured creditors, 57 unsecured creditors to whom 96.02% of the total value of the unsecured debt is owed by the Petitioner No. 1 Company have given their consent to the Scheme of Arrangement by way of affidavits. Further the Petitioner No. 2 Company has 2 unsecured creditors as on 15<sup>th</sup> March 2017. The 2 unsecured creditors to whom 100% of the total value of the secured debt is owed by the Petitioner No. 2 Company have given their consent to the Scheme of Arrangement by way of affidavits.

7. Meetings of Shareholders and Creditors:

This Tribunal by its order dated 31<sup>st</sup> May, 2017 was pleased to dispense with the meetings of the shareholders and the creditors of the Petitioner Companies.





8. Details about investigation proceedings:

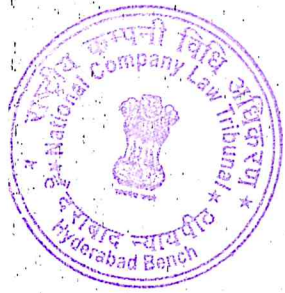
There are no proceedings pending under Sections 210 to 220 and 223 to 229 of the Companies Act, 2013 against the Petitioner No.1 & 2 Company. The Scheme of Arrangement is in the interest of the Petitioner Companies, and the assets of the Petitioner Companies are sufficient to meet all their liabilities. The Scheme does not involve any compromise with any creditors of the Petitioner Companies. The Board of Directors of either of the Petitioner Companies have no material interest in the proposed Scheme of Arrangement. The Scheme would not affect the employees of the Petitioner No.1 & 2 Companies.

- (a) No petition under section 397 or 398 of the Companies Act, 1956 (or under Sections 241 and 242 of the Companies Act, 2013) has been filed against the Petitioner Companies and there has been no material change in the affairs of the Petitioner Companies.

9. I have heard Mr. D.V.A.S. Ravi Prasad, the learned Counsel for the Petitioner and have carefully perused all the pleadings along with material papers.

10. The Learned Counsel for the Petitioner companies further submits that, in pursuant to the Orders dated 21.06.2017 of this Bench, notices were also issued to the Registrar of Companies, Regional Director (SER), and The Income Tax Department.

11. The Regional Director (SER), Hyderabad has filed an affidavit dated 13.07.2017 by inter alia stating that the Petitioner Companies are regularly in filing statutory returns and no complaints, no investigations and no inspections are pending against them and the Resulting company was registered on 05.01.2017 and it is not due for filing returns.



12. The Learned Counsel for the Petitioner had filed a Memo dated 27.07.2017 intimating that they have not received any objections, pursuant to the above mentioned newspaper publications. The Petitioner Company has also served notice on the Income Tax Department on 27.06.2017, and in reply Income Tax Department vide their letter No. F.No.CC-1(3)/2017-18 dated 20.07.2017, another letter No.F.No.Ward-16(1) 2017-18 dated 24<sup>th</sup> July, 2017 conveyed no objection for the proposed demerger of the Companies.
  
13. I have carefully gone through all the pleadings, Report of the Regional Director (SER), and also relevant provisions of Companies, 2013. I am convinced that the Petitioner Companies has complied with all statutory requirements as required under Section 230 & 232, and other relevant provisions of Companies Act, 2013 as detailed supra. The Board of Directors of the Petitioner Company, at its meeting held on 04.03.2017 and 14.03.2017, have duly considered the pros and cons of demerger in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its members, and all other concerned parties of the Company, and thus it was approved. I am satisfied that the demerger in question is beneficial to the Resulting Company in particular and public in general. It is to be mentioned herein that the Scheme in question is not opposed by any authorities and the Petitioner Companies have admittedly followed all rules / regulations of Companies Act as stated by Regional Director. Hence, I am of considered view that the Company Petition deserved to be allowed as prayed for.





12. In the result, the Company Petition bearing CP(CAA) No.87/230/HDB/2017 is hereby allowed with the following directions:

- (a) Sanctioned the Scheme of Arrangement (enclosed at Page No. 183 to 214 of the Petition) with appointed date as 01.04.2017 and it is ordered that the same is binding on all the Equity Shareholders/Members and Creditors (Secured & Unsecured) of the Petitioner Transferor Company/Transferee Company.
- (b) The Petitioner Companies are directed to take appropriate steps to submit the said scheme to Registrar of companies within 30 days from the date of receipt of Copy of this order.
- (c) The Petitioner Companies are directed to issue newspaper publication with respect to approval of scheme of arrangement, in the same newspapers in which previous publications were issued in order to ensure transparency/dissemination of complete information to all concerned parties about the approval granted by the Tribunal for the Scheme as proposed.
- (d) The Petitioner/Transferee Company is further directed to take all consequential and statutory steps required in pursuance of the approved Scheme of Arrangement under the Provisions of the Act.
- (e) Liberty is granted to any party/parties, who are aggrieved by this order to seek any direction(s) by way of filing miscellaneous application in the present CP

No order as to costs.

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OF THE ORIGINAL

V. Annapoorna  
V. ANNAPOORNA  
Asst. DIRECTOR  
NCLT, HYDERABAD.

*Sd/-*  
RAJESWARA RAO VITTANALA  
Member (Judicial)

प्रमाणित प्रति  
CERTIFIED TRUE COPY  
केस संख्या  
CASE NUMBER: CP(CAA) No. 87/230/HDB/2017  
निर्णय का तारीख  
DATE OF JUDGEMENT: 23.8.2017  
प्रति तैयार किया गया प्रमाण