

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

C.P (CAA) No.29/230/HDB/2017
U/s 230 & 232 of the Companies Act, 2013

In the matter of

Gayatri Projects Limited
Having its registered office at
TSR Towers, B-1, 6-3-1090
Rajbhavan Road,
Somajiguda, Hyderabad - 500 082,
Telangana State

... Petitioner / Demerged
/ Transferee Company.

Versus

The Regional Director
South East Region
Ministry of Corporate Affairs
Hyderabad

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

...Respondent

Order pronounced on 3rd November, 2017

CORAM:

Hon'ble Mr. Rajeswara Rao Vittanala, Member (Judicial)

Parties Present:

Counsels for the Petitioner : Mr. V.S.Raju & V.B.Raju
Advocates

Counsel for Regional Director: Mr. B. Appa Rao, Central
Govt. Standing Counsel

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER

1. The Company Petition bearing C.P (CAA) No. 29/230/HDB/2017 is filed by M/s. Gayatri Projects Limited (Petitioner / Demerged / Transferee Company), under Sections 232 R/w 230 of the Companies Act, 2013, by inter-alia seeking a direction to sanction and confirm the Composite Scheme of Arrangement in question so as to be



binding on all the members, Creditors and employees of the Petitioner / Resulting Company and all the concerned etc.

2. Brief facts of case, which are relevant to the issue in question, as mentioned in the Company petition, are stated as under;

- 1) M/s. Gayatri Projects Limited (The Petitioner / Demerged / Transferee Company) is a Public Limited Company incorporated under the provisions of the Companies Act, 1956 on 15.09.1989. Its Registered Office is situated at TSR Towers, B-1, 6-3-1090, Rajbhavan Road, Somajiguda, Hyderabad, Telangana - 500 082, India. The objects of the Transferee Company is to carry on the trade or business of service contractors and engineers in any branch of industry as also manufacturers; builders and contractors of every and description etc.,

Its present Authorised Share Capital as on 31.03.2016 is Rs.800,000,000/- divided into 80,000,000 Equity Shares of Rs.10/- each. The issued subscribed paid up Capital is Rs. 354,503,800 divided into 35,450,380 equity shares of Rs. 10/- each.

- 2) M/s.Gayatri Infra Ventures Limited (Transferor Company) is a Company incorporated under the provisions of the Companies Act, 1956 on 22.01.2008. Its Registered Office is situated at 1st Floor, TSR Towers, 6-3-1090, Rajbhavan Road, Somajiguda, Hyderabad, Telangana - 500 082. The objects of the Petitioner / Transferor Company is to carry on in India or elsewhere the trade or business of service contractors and engineers in any branch of industry as also builders and contractors of every type and description etc.,

Its Authorized Share Capital as on 31.03.2016 is Rs. 20,000,000/- divided into 2,000,000 Equity Shares



of Rs.10/- each. The issued subscribed and paid up capital is Rs.17,708,330/-divided into 1,770,833 equity shares of Rs. 10/- each full paid up.

- 3) M/s. Gayatri Domicile Private Limited (Resulting Company) is a Company incorporated under the provisions of the Companies Act, 1956 on 28.12.2006. Its Registered Office is situated at 1st Floor, TSR Towers, 6-3-1090, Rajbhavan Road, Somajiguda, Hyderabad, Telangana - 500 082. The objects of the Petitioner / Resulting Company is to construct, let out, furnish and carry on all or any of the functions of proprietors of flats, maisonettes, dwelling houses, shops, offices etc.,

Its Authorized Share Capital as on 31.03.2016 is Rs. 10,000,000/- divided into 1,000,000 Equity Shares of Rs.10/- each. The issued subscribed and paid up capital is Rs.200, 000/- divided into 20,000 equity shares of Rs. 10/- each full paid up.

- 4) In order to achieve the following benefits to all the three Companies involved herein and their respective shareholders and all other concerned, the Companies have framed the Composite Scheme of Arrangement in question U/s 391 to 394 of Companies Act, 1956 and the extant applicable provisions of Companies Act, 2013:

- (i) It will achieve better management and to have clear focus on business operations, the management of Demerged Company has decided to demerge Infrastructure Road BOT Assets Business, thereby transferring Infrastructure Road BOT Assets Business (as defined hereinafter) of GPL to GDPL, in the interests of maximizing overall shareholder value.



- (ii) The Resulting Company proposes that the Infrastructure Road BOT Assets Business of the Demerged Company be transferred to and vested in the Resulting Company on a going concern basis to be undertaken through this Scheme under the provisions of Sections 391 to 394 read with relevant provisions of the Companies Act, 1956 and the Companies Act, 2013, for such consideration and in such manner as provided for in this Scheme (as defined hereinafter). Accordingly, it is proposed to transfer of Infrastructure Road BOT Assets Business of the Demerged Company by way of demerger to the Resulting Company.
- (iii) Upon the sanction of the Scheme by the High Court (as defined hereinafter) and the Composite Scheme becoming effective on the Effective Date (as defined hereinafter), the Infrastructure Road BOT Assets Business of the Demerged Company shall stand transferred to, and be vested in, the Resulting Company on and from the Appointed Date for all intent and purposes.

- 5) In view of the above object involved in the scheme , the Board of Directors of the Resulting Company, Transferor and Demerged/Transferee Companies at their respective meetings even held on 16th day of July, 2016 approved the Composite Scheme of Arrangement with effect from April 1, 2016 (Appointed date) for the amalgamation of the Transferor Company with the Transferee Company, and 31st March, 2017 (Appointed Date) for the demerger of Infrastructure Road BOT Assets Business from the Demerged Company to the Resulting



Company, subject to the approval of the shareholders, creditors and confirmation by Hon'ble Tribunal

- 6) Accordingly, the Petitioner / Demerged / Transferee Company has filed Company Application No. 1620 of 2016 under Section 391 of the Companies Act, 1956 before the Hon'ble High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh by seeking a direction to convene the meetings of Equity Shareholders, Secured Creditors and Unsecured / Trade Creditors of the Petitioner / Demerged / Transferee Company for consideration of the proposed Composite Scheme of arrangement between Petitioner / Demerged / Transferee Company and M/s. Gayatri Infra Ventures Limited (Transferor Company) and M/s. Gayatri Domicile Private Limited (Resulting Company) as detailed in the Scheme.
- 7) The said Company Application No. 1620 of 2016 was disposed of by Hon'ble High Court vide its Order dated 05.12.2016 directing the petitioner / Demerged / Transferee Company to convene the meetings of Equity Shareholders, Secured Creditors and Unsecured / Trade Creditors. Accordingly, meetings were duly convened by the Chairman and the scheme in question was approved unanimously by the Equity Shareholders and Secured Creditors and by requisite majority in case of Unsecured / Trade Creditors. The respective Chairpersons appointed for meetings of Equity Shareholders, Secured and Unsecured / Trade Creditors have filed their reports on 6th February, 2017. After fulfilling requisite conditions for sanction of scheme in question, the present petition is filed for sanction of the scheme.
- 8) The following are further brief terms of Proposed Composite Scheme of Arrangement:



a) Transfer and Vesting of Undertaking of Transferor Company:

with effect from the Appointed Date i.e. 01.04.2016, the whole of the Undertaking shall be transferred to and vested in or be deemed to be transferred to and vested in the Demerged / Transferee Company as a going concern with all the rights, title, interest or obligations of the Transferor Company thereto and with effect from the appointed date and subject to the provisions of this scheme, the entire infrastructure road BOT assets business shall be transferred to and vested in or be deemed to be transferred to and vested in the Resulting Company as a going concern with all the rights, title, interest or obligations of the Demerged Company thereto.

b) Legal proceedings:

All suits, actions and proceedings of whatsoever nature by or against the Transferor Company or Demerged / Transferee Company on the Appointed Date and till the Effective Date shall be transferred to the name of the Transferee Company / Resulting Company as the case may be and the same shall be continued and enforced by or against the Demerged / Transferee and Resulting Company, to the exclusion of the Transferor Company / Demerged Company as the case may be, etc

c) Transferor Company Staff, Workmen and Employees:

All the staff, workmen and other employees in the service of the Transferor Company in case of merger and Demerged Company in case of Demerger, immediately before the Appointed Date, under this Scheme shall become the staff,



workmen and other employees of the Transferee / Resulting Company as the case may be, on the basis that their services shall have been continuous and shall not have been interrupted by reason of such transfer as if such transfer is effected under Section 25FF of the Industrial Disputes Act, 1947, etc.

d) **Saving of concluded transactions:**

The transfer of Undertaking under Clause 8 and Clause 27 of the Scheme, the continuance of the effectiveness off contracts and deeds under Clause 9 and Clause 23 of the scheme and legal proceedings by or against the Transferor Company or Demerged / Transferee Company under Clauses 10 and 22 shall not affect any transaction or proceedings or contracts or deeds already concluded by the Transferor Company or Demerged Company (a) on or before the Appointed Date and (b) after the Appointed Date till the Effective Date, to the end and intent that the Transferee Company and Resulting Company accepts and adopts all acts, deeds and things done and executed by the Transferor Company and Demerge Company in respect thereto as done and executed on behalf of itself.

e) **Issue of shares by the Resulting Company to shareholders of Demerged Company:**

Upon this Scheme coming into effect, the Resulting Company shall, without any further application or deed, issue and allot to every member of the Demerged Company, holding fully paid up equity shares in the Demerged Company and whose names appear in the Register of Members of the Demerged Company



on the Record Date, in the following ratio (the "Share Exchange Ratio"):

In respect of every 1 (One) equity shares of Rs.10/- each fully paid up held by such member in the Demerged Company, 1 (One) equity share in the Resulting Company of Rs 10/- each credited as fully paid up.

f) **Fractional entitlement:**

If any shareholder of the Demerged Company becomes entitled to any fractional shares, entitlements or credit on the issue and allotment of equity shares by the Resulting Company in accordance with Clause 24.1 of this Scheme, the Board of Directors of the Resulting Company shall consolidate all such fractional entitlements and shall, without any further application, act, instrument or deed, issue and allot such consolidated equity shares directly to an individual trust or a board of trustees or a corporate trustee nominated by the Resulting Company (the "Trustee"), who shall hold such equity shares with all additions or accretions thereto in trust for the benefit of the respective shareholders, to whom they belong and their respective heirs, executors, administrators or successors for the specific purpose of selling such equity shares in the market at such price or prices and on such time or times, as the Trustee who shall hold the same as a trustee for and on behalf of such shareholders of Demerged Company, and shall dispose of the same and distribute the proceeds thereof to such shareholders in proportion to and in lieu of their respective fractional entitlements.

g) **Approvals:**



Approval of the Scheme by the shareholders of Resulting Company shall be deemed to be due compliance with the provisions of Section 62 of the Companies Act, 2013 and other relevant and applicable provisions of the Act for the issue and allotment of shares by Resulting Company to the shareholders of the Demerged Company, as provided in this Scheme.

h) **Accounting treatment:**

Upon the Scheme coming into effect the Demerger Company shall reduce the book values of assets & liabilities relating to the Infrastructure Road BOT Assets Business transferred pursuant to the Scheme from the Demerged Company to the Resulting Company from the total book value of assets & liabilities as appearing in the books of the Demerged Company at the close of business of the day immediately preceding the Appointed Date ;The excess of book value of assets over liabilities of the Infrastructure Road BOT Assets Business, if any, shall be adjusted against the balance in the Securities Premium / Capital Reserve / General Reserve / Balance in the statement of profit or loss of the Demerged Company. In case of a shortfall of book value of assets over book value of liabilities, if any, shall be credited to the Capital Reserve Account of the Demerged Company. The expenses pertaining to the demerger, except those mentioned in Clause 25.2.3 shall be debited to the Securities Premium Account.

i) **Modifications/amendments to the Scheme:**

The Demerged Company and the Resulting Company by their respective Board of Directors or such other person or persons, as the



respective Board of Directors may authorize including any committee or sub-committee thereof, may make and/or consent to any modifications/amendments to the Scheme or to any conditions or limitations that the court or any other authority may deem fit to direct or impose or which may otherwise be considered necessary, desirable or appropriate by them, provided however, the Demerged Company and the Resulting Company or such other person or persons, as the respective Board of Directors may authorize (including any committee or sub-committee thereof) shall not make and/or consent to any modifications/ amendments to the condition set out at Clause 31.4 of this Scheme and this Scheme shall always be conditional upon completion of the condition as set out at Clause 31.4 of this Scheme. The Demerged Company and the Resulting Company by their respective Board of Directors or such other person or persons, as the respective Board of Directors may authorize including any committee or sub-committee thereof, shall be authorised to take all such steps as may be necessary, desirable or proper to resolve any doubts, difficulties or questions whether by reason of any directive or orders of any other authorities or otherwise howsoever arising out of or under or by virtue of the Scheme and/or any matter concerned or connected therewith.



j) **Scheme conditional on approvals / sanctions:**

This Scheme is conditional on and subject to the sanction or approval under any of law of the Central Government, State Government, or any other agency, department or authorities concerned being obtained and granted in respect

of any of the matters in respect of which such sanction or approval is required etc.

9. The case was listed before this Bench on 29.03.2017, 28.04.2017, 09.05.2017, 22.06.2017, 05.07.2017, 19.07.2017 and finally on 28.07.2017.
10. I have heard Mr.V.S.Raju and V.B.Raju, Learned Counsels for the Petitioner / Demerged / Transferee Company, Mr. B. Appa Rao, Central Government Standing Counsel and also have carefully perused all pleadings along with material papers filed in its support.
11. Shri V.B.Raju, the learned counsel for petitioner, while reiterating various contentions raised in the Company petition by advertizing relevant material papers filed in their support , have further submitted that as per the directions of the Tribunal, the Petitioner got published "Notice of Petition" in Newspapers namely Business Standard, English Daily, Hyderabad Edition, and Telugu Daily (Andhra Bhoomi - Hyderabad Edition) on 03.04.2017 and also and filed a proof of the same vide memo dated 20.04.2017. The learned counsel further confirmed that in pursuance to said notifications, no objections / oppositions were received from anybody, about the scheme in question.

He further submits that in pursuant to the Orders dated 29.03.2017 of the Tribunal; notices were also issued to the Registrar of Companies, Regional Director (SER), and the Income Tax Department. Since there is no objection from anybody and the Scheme in question is for the benefit of all concerned as detailed in it, the learned counsel urged the Tribunal to sanction the scheme as prayed for.

- 12.. The Regional Director (SER), Hyderabad has filed a common affidavit dated 3rd July, 2017 in C.P. Nos. 29/ 230 / HDB / 2017, 30 / 230 / HDB / 2017 and



31/230/HDB/2017, by inter alia stating that in pursuant to direction of Hon'ble High court passed in CA No. 1620 of 2016 5th December, 2016, meetings of equity shareholders, secured creditors convened and the report of Chairperson was also filed. Similarly, meetings of equity shareholders and un-secured creditors filed other two Companies were also dispensed with by separate orders passed in CA Nos. 1621 and 1622 of 17; authorised share capital of Resulting Company may be insufficient to meet the requirement of shares as consideration to the members of the Demerged Company. So, the Resulting Company may suitably increase its authorised capital to meet the said requirement by filing necessary e-forms along with requisite fees along with requisite fees with Registrar of Companies. He has further stated that the Companies involved in the scheme are regular in filing statutory returns and no complaints, no investigations and no inspections are pending against them. He, therefore, submit that the Tribunal can consider the case as per merits.



13. I have carefully gone through all the pleadings including the Composite Scheme of Arrangement in question, Report of the Regional Director (SER) along with extant provisions of Companies Acts, 1956/2013. I am convinced that the Petitioner / Resulting Company has complied with all statutory requirements as required under Sections 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 16.07.2016 have duly considered the pros and cons of Composite Scheme of Arrangement in question, after perusing various reports on the issue, and found it is advantageous and beneficial to the Company, its members, the Secured Creditors and all other concerned parties of the

Company, and thereafter, it was approved. I am also convinced that the Composite Scheme of Arrangement in question is advantageous to all concerned parties of the Company and also and public in general. The Scheme in question is duly approved by shareholders, creditors all other concerned and interested parties in the affairs of the Company involved. And it is also not opposed by any authorities as detailed supra, and the Petitioner Company is admittedly following all rules / regulations of Companies Act as stated by Regional Director. Therefore, the Company Petition deserved to be allowed as prayed for.

14.. By exercising powers conferred on the Tribunal under sections 232 R/w 230 of Companies Act, 2013, the Company petition bearing C.P (CAA) No.29/230/HDB/2017 is allowed with the following directions:-

- a) Hereby sanctioned the Composite Scheme of Arrangement between Gayatri Projects Limited and Gayatri Infra Ventures and Gayatri Domicile private Limited (enclosed at Page No. 306 to 342 of the Petition) with a further declaration that the same is binding on all the members, Creditors and employees of the Petitioner / Resulting Company and all concerned;
- b) The Petitioner / Demerged/Transfer Company is permitted to cause a certified copy of this order along with all necessary documents including Scheme of Arrangement to be delivered to Registrar of Companies within 30 days from the date of receipt of Copy of this order;
- c) The Petitioner / demerged Company is directed to issue newspaper publication with respect to approval of Composite 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 / Demerged Company is further directed to take all consequential and statutory steps required in pursuance of the approved Composite 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.



sd/-
RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

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OF THE ORIGINAL

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For Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER C.P.C.A.A. No. 59/230/HDB/2017
निर्णय का तारीख
DATE OF JUDGEMENT 3-11-2017
प्रति तैयार किया गया तारीख
COPY MADE READY ON 6-11-2017