
(2023) 05 NCLT CK 0006

In the National Company Law Tribunal

Case No : CP(CAA)2/MB-IV/2023 C/W CA(CAA) 209/MB-IV/2022

Imprint Constructions Private Limited Vs

Date of Decision : 02-05-2023

Acts Referred:

Companies Act, 2013 — Section 230, 232, 232(3)(i)

Citation : (2023) 05 NCLT CK 0006

Hon'ble Judges : Kishore Vemulapalli, Member (J); Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Gaurav Joshi, Peshwan Jehangir, Himanshu Vidhani, Amit Panwar, Jash Shah, Rupa Sutar

Final Decision : Disposed Of

Judgement

Prabhat Kumar, Member (Technical)

1. The Court convened through videoconferencing.
2. Heard Learned Counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Company Scheme Petition and nor has any party controverted any averments made in the Company Scheme Petition.
3. The sanction of this Tribunal is sought under Sections 232 r/w section 230 and other applicable provisions of the Companies Act, 2013 ("Act") to the Scheme of Arrangement of Imprint Constructions Private Limited (Demerged Company) Matrubhumi Construction Private Limited (Resulting Company 1) Fortune Acres Private Limited (Resulting Company 2) and Jangid Construction Private Limited (Resulting Company 3) and its shareholders and creditors ("Scheme"). The said Scheme provides for demerger, transfer and vesting of the Demerged Undertaking 1 (as defined in the Scheme) from the Demerged Company into the Resulting Company 1 on a going concern basis; demerger, transfer and vesting of the Demerged Undertaking 2 (as defined in the Scheme) from the Demerged Company into the Resulting Company 2 on a going concern basis; and demerger, transfer and vesting of the Demerged Undertaking 3 (as defined in the Scheme) from the Demerged Company into the Resulting Company 3 on a going concern

basis.

4. The petitioner companies are engaged in the business of real estate developments.

5. The Rationale for the scheme is hereinunder: -

RATIONALE FOR THE SCHEME

a) The Demerged Company is engaged in development and construction of real estate projects. It is contemplated to develop a premium commercial office space and / or residential towers on plots bearing C.T.S. No. 179/A (admeasuring 11,569.90 square meters) and 179/B (admeasuring 16,947.00 square meters) of village Magathane at Borivali East admeasuring 28,516.90 square meters.

b) It is proposed to segregate the above plots along with related assets and liabilities into separate companies such that it will result in focused approach to exploit the growth potential of each of the projects. It will help in providing flexibility to attract fresh set of investors / strategic partners to participate in each of the projects."

6. The consideration for the Scheme is as set out below:

For demerger of the Demerged Undertaking 1 (as defined in the Scheme) into the Resulting Company 1:

"1 Preference Share of the Resulting Company 1 of INR 10 each full paid up to be issued and allotted to all the shareholders of the Demerged Company (except the Resulting Company 1) for every 30 Equity shares of the Demerged Company in proportion of their holdings in the Demerged Company as on the Effective Date."

For demerger of the Demerged Undertaking 2 (as defined in the Scheme) into the Resulting Company 2:

"1 Preference Share of the Resulting Company 2 of INR 10 each full paid up to be issued and allotted to all the shareholders of the Demerged Company (except the Resulting Company 2) for every 30 Equity shares of the Demerged Company in proportion of their holdings in the Demerged Company as on the Effective Date."

For demerger of the Demerged Undertaking 3 (as defined in the Scheme) into the Resulting Company 3:

"1 Preference Share of the Resulting Company 3 of INR 10 each full paid up to be issued and allotted to all the shareholders of the Demerged Company (except the Resulting Company 3) for every 30 Equity shares of the Demerged Company in proportion of their holdings in the Demerged Company as on the Effective Date."

7. The resolutions passed by the Board of Directors of the Petitioner Companies in their respective meetings held on August 4, 2022 approved the Scheme. The Appointed Date fixed under the Scheme is April 1, 2022.

8. The Company Scheme Petition is filed in consonance with Section 232 read with Section 230 and other applicable provisions of the Companies Act, 2013 and the order dated 10th November 2022 passed in the CA (CAA) No. 209/MB/2022 ("said Order") by this Tribunal.

9. The Petitioner Companies stated that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and have filed necessary affidavits of compliance with the Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory/regulatory requirements, if any, as required under the Act and the Rules made thereunder.

10. The Regional Director has filed his Report dated 20.02.2023 making certain observations. The Petitioner Companies have submitted/undertaken that :-

a. the petitioner companies hereby submits that Section 232(3)(i) of the Companies Act, 2013 is not applicable in the present scheme;

b. The interest of the creditors shall be protected;

c. The Scheme enclosed to the Company Scheme Application and Company Scheme Petition are one and same and there is no discrepancy or deviation;

d. The sanction of the Scheme by this Tribunal will not deter any authorities to deal with any of the issues arising after giving effect to the Scheme and that such issues arising out of the Scheme will be met and answered in accordance with the law;

e. The Petitioner Companies undertake to protect the interest of home buyers who have invested in their under-construction projects, if any; and

f. There are no secured / unsecured loans raised by the Resulting Company 3 i.e. Jangid Constructions Private Limited.

11. Ms. Rupa Sutar, Deputy Director, Office of Regional Director (WR), Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.

13. The claims of creditors of demerged company or Statutory Authorities, including proceedings against it shall be enforceable against the demerged company in relation to period prior to implementation of this scheme and the demerged company shall not take the plea that such claims stands transferred to the resulting company. However, the demerged company shall be entitled for indemnification from the resulting company, in case such claim or proceedings resulting into claim pertain to the undertaking having been transferred to the Resulting company in pursuance of the scheme.

14. From the material on record, the appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. Since all the requisite statutory compliances have been fulfilled, the said Company Scheme Petition is made absolute in terms of the prayer clauses (a) to (e) thereof.

15. The Scheme is hereby sanctioned, with the Appointed Date fixed as April 1, 2022.

16. The Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Company, within 30 days from the date of receipt of the certified copy of this Order by the Petitioner Company.

17. The Petitioner Company to lodge a copy of this Order along with the Scheme duly authenticated / certified by the Deputy Registrar/Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified order from the Registry of this Tribunal.

18. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

19. Ordered accordingly. File to be consigned to records.