

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

**(CAA)-27/PB/2020  
In  
CA(CAA)-118/PB/2019**

*Under Sections 230 to 232 of the Companies Act, 2013*

In the matter of Scheme of Arrangement  
of

**GLOBAL ENGINEERS LIMITED**

...Demerged/Petitioner Company 1

**And**

**GEL BUILDREAL PRIVATE LIMITED**

...Resulting/Petitioner Company 2

**And**

**THEIR RESPECTIVE SHAREHOLDERS AND CREDITORS**

Order Delivered on: 22.01.2021

**CORAM**

**B.S.V. PRAKASH KUMAR,  
HON'BLE ACTG. PRESIDENT**

**HEMANT KUMAR SARANGI,  
HON'BLE MEMBER (TECHNICAL)**

For the Petitioners : *Mr. P Nagesh, Mr. Ashutosh Gupta  
& Gaurav Rana, Advocates*

For the RD & OL : *Ms. Apoorva Chowdhury, Advocate*

For the I.T. Dept. : *Mr. Kunal Sharma, Ms. Zehra Khan  
& Shreya Choudhary, Advocate*

**ORDER**

**PER- B.S.V PRAKASH KUMAR, ACTNG. PRESIDENT**

**Order Pronounced on: 22.01.2021**

Under consideration is Company Petition **CAA-27/PB/2020**

filed under Sections 230 to 232 of the Companies Act, 2013

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(CAA)-27/PB/2020 In CA(CAA)-118/PB/2019

read with the Companies (Compromises, Arrangements & Amalgamations) Rules, 2016. The purpose of the Company Petition is to obtain sanction of the Scheme of Arrangement (in short, "**Scheme**") which provides for the demerger of the **Real Estate Unit/Division** (herein after referred to as Demerged Undertaking) of **Global Engineers Limited** (herein after referred to as "**Demerged/Petitioner Company-1**") into **GEL Buildreal Private Limited** (herein after referred to as "**Resulting/Petitioner Company-2**").

2. The Demerged/Petitioner Company-1 is an unlisted Limited Company and was incorporated under the Companies Act, 1956 as M/s. Global Engineers Limited, having its registered office at GEL Tower Plot. No. 16, Sector-20, Dwarka, New Delhi-110075 and engaged in the business of engineering and real estate. The Resulting/Petitioner Company-2 is a Private Limited Company and was incorporated under the Companies Act, 2013 on 23.01.2018 as M/s. GEL Buildreal Private Limited, and having its registered office at Plot No. 16 Service Centre, Sector-20, Phase-II, Citywalk, New Delhi-110075 and engaged in the business of consultancy including



technical and engineering consultants, management consultants, education consultants and to provide advice, services and consultancy in various fields, general, industrial, administrative, etc. The Board of Directors of the Demerged and Resulting Company vide Board Resolutions dated 10/05/2019 approved the said Scheme of Arrangement.

3. This Tribunal vide its order dated 29/11/2019 in CA(CAA)-118/PB/2019 directed to dispensed with the respective meetings of the Equity Shareholders, Secured Creditors and Unsecured Creditors of the Petitioner Companies. This Tribunal had further directed the Petitioner Companies to issue notices to the statutory authorities and the notices were issued. Further, the Petitioner Company was directed to effect paper publication in “Business Standard” (English, Delhi Edition) and “Business Standard” (Hindi, Delhi Edition). The same were effected on 12/05/2020 and proof of the same was filed with the Tribunal vide Affidavit. The Petitioner Companies have complied with all the directions passed in the above orders of this Tribunal.



4. The Counsel appearing on behalf of the Petitioner Companies submitted that the proposed scheme of arrangement shall allow the management to lend greater focus on their respective business thereby enabling an independent and optimal growth and development of all the demerged undertaking and remaining business. The Counsel further submitted that the transfer and vesting of the Real estate undertaking into Resulting Company would be in the best interests of the shareholders, creditors and employees of Resulting Company and Demerged Company, respectively, as it would result in enhanced value for the shareholders and allow focused strategy in operation of the Real Estate Division and the remaining business of the Demerged Company. Pursuant to the Scheme of demerger all the shareholders of the Demerged Company will get shares in Resulting Company and there would be no change in the economic interest for any of the shareholders of Demerged Company pre and post implementation of Demerger.

5. The Official Liquidator has filed its report wherein no specific objection has been raised against the approval of the



Scheme. It is submitted in the report that, as per clause 1 of part C of the Scheme and Share Valuation Report submitted by M/s. Shanti Prashad & Co., Chartered Accountant, the share exchange ratio is as follows:

***“The Resulting Company- Gel Buildreal Pvt. Ltd. will issue an allot Equity Shares (hereinafter also referred to as the “New Equity Shares” on a proportionate basis to each member of the demerged company in the ratio of 55,13,756 shares will be allotted in resulting company to the shareholders of the Demerged Company for every 1,00,000 shares held in demerged company”.***

the Official Liquidator has further submitted that he has not received any complaint against the proposed Scheme from any person/ party interested in the Scheme in any manner and that affairs of the Petitioner Companies do not appear to have been conducted in a manner prejudicial to the interest of its members or to public interest as per the provisions of the Companies Act, 1956/2013 whichever is applicable. It was further submitted that Clause 6 of the Scheme, all the staff, workmen, officers and employees in service of the Demerged



Undertaking of the Demerged Company who are on their respective payrolls shall become the staff, workmen, officers and employees of the Resulting Company with effect from the effective date, on such terms and conditions as are no less favourable than those on which they are currently engaged by the Demerged Undertaking of the Demerged Company without any interruption of service as a result of this Arrangement and transfer.

6. The Regional Director, MCA has filed his report/affidavit, along with the report of the Registrar of Companies, New Delhi and stated that both the Petitioner Companies have filed the Annual Return and Balance Sheet up to 31/03/2019. No prosecution has been filed & no inspection or investigation has been conducted in respect of the Petitioner Companies. The office of Registrar of Companies (RoC) has not received any complaint/objection from any shareholder, creditor or other stakeholders of the captioned companies with regard to the proposed Swap Ratio. The Petitioner Companies have also filed rejoinder affidavit regarding replying to the observations of the RD.



7. As per Para 32 of the RoC Report dated 16.06.2020, following observations have been made:

- i. *The statement of individual assets and liabilities of the Demerged Undertaking has not found appended with the petition.* In response to it, the Petitioner Companies have submitted that the said requirement was under High Court Rules, 1990 read with erstwhile Companies Act, 1956 not under Companies Act, 2013, but the same is filed as required by the RD. The list of assets liability of the Demerged undertaking is filed with Affidavit dates 09.12.2020 as Annexure 1 at page 4.
  
- ii. *In terms of the provisions of section 117(3) r/w 179(3) of the Companies Act, 2013, Demerged Company is required to file Board resolutions (e-form MGT-14) with regard to approval of the proposed Scheme of Arrangement with this office within thirty days of passing the resolution whereas the said company has not yet filed such resolution thereby prima facie violated the provisions of section 117(3) of the Companies Act, 2013.* In response to it, the Petitioner Companies have submitted that non-filing of Form MGT-14 was committed due to inadvertence and that it was without any willful or mala fide motive and was purely unintentional and we will file the same after taking approval from the Central Government to condone the delay and application before Central Government is already filed, same is admitted by



the RD in its II affidavit dated 15.10.2020. Petitioner Companies have further submitted that RoC vide its affidavit dated 14.10.2020 has directed the Demerged Company to comply with the Section 117(3) r/w 179(3) of the Act after approval of scheme.

8. As per Para 10 (a), (b), (c) & (d) of the RD Report dated 27.07.2020, following observations have been made:

a) *Demerged Company has no real estate unit/business undertaking.*

In response to it, the Petitioner Companies have submitted that the Demerged Company does not hold land and commercial Buildings, which the demerged company wish to transfer this into the Resulting Company. That the said undertaking or units are sufficiently disclosed in the Balance Sheet of the Demerged Company attached with the petition. Further Demerged Company is also receiving rental income from these commercial properties and that income is also duly disclosed in the balance sheets of the Demerged Company under other income head.

b) *MOA of the Demerged Company is silent about the Real Estate business.* In response to it, the main business activity of the Company is engineering business and the real estate business is other business which is mentioned in Para 48 of other objects of MOA. RoC vide its affidavit dated 14.10.2020 has sought amendment of main objects of the Demerged Company. Its further





submitted by the Petitioner Companies that post approval of this Scheme Demerged Company will not carry any real estate activities, thus amendment is not required.

c) *Appointed date is future date i.e. 01.04.2020.* In response to it, the Petitioner Companies have submitted that neither Act or any circular or notification of the Ministry of Corporate Affairs prohibits appointed date to be subsequent to the filing date of the Application with Hon'ble Tribunal. Only certain embargos are related to cases when appointed date precede the date of filing of application with NCLT by more than a year. However, in the instant case Appointed date is subsequent to filing date (i.e. 21.08.2019) and specific calendar date i.e. 01.04.2020. Objective of the said date is ease of business to the Petitioner Companies post approval of the Scheme, in terms of filing and compliance of various fiscal laws including GST and Income Tax Act. RoC vide its affidavit dated 14.10.2020 objected appointment date to be a future date as the same would prejudice the interest of shareholder and creditors as the assets and liabilities of future cannot be accessed by them. Valuation has not been objected by any shareholder or creditor of the Company and same has been unanimously approved by the shareholder and creditors. Further no objection has been received from any person, company or by RoC.



d) *Valuation is done as per financial as on 30.12.2018 instead as on appointed date and moreover, valuation is done by CA instead Registered Valuer.* In response to this, Petitioner Companies have submitted that Valuation report is submitted in March, 2019, hence statement of asset and liabilities as on closing of business as on 31.03.2020 for valuation is not feasible at that time. Further if that construction is assumed to be true then Legislature must have said so under Section 232(6) of the Act or recent circular of the MCA dated 21.08.2019, however fact is that said provision and circular use phrase “any calendar date” or “event” as agreed between parties. Thus, such question would lead to sever ambiguity and even lead to annulment of the said intention of the legislature and MCA. It is relevant to note that valuation as on 31.12.2018 or 31.03.2020 will not have much difference as the same would be done on the demerged undertaking (as stated in the list of assets and liabilities) which have had remain static from 2018 till date. Furthermore, Valuation report categorically states that assets and liability were evaluated as appearing in the financials (i.e. book value) in accounting terms it is pooling method. That the said mechanism /method is affirmed and confirmed by the statutory auditor of the petitioners in his certificate and further Ind AS 103 categorically allows such arrangement in group companies as in the present case by following pooling method.



Petitioner Companies further submitted that Registered valuer provisions were not applicable when valuation report was obtained. RoC vide its affidavit dated 14.10.2020 objected and relied on Companies (Registered Valuers and Valuation) Rules, 2017 which was notified w.e.f 18.10.2017 and stressed that from said date valuation from registered valuer was required.

As per Rule 11 of the Companies (Registered Valuers and Valuation) Rules, 2017 any person providing Valuation services under the Companies Act, 2013 was allowed to provide said services till 31.01.2019. Further the said period was extended to 3 months (i.e. till 31.04.2019) for pending assignment only on 07.01.2019 and same was finished by the Valuer on 28.03.2019. So the reliance on the 2017 rules does not apply.

9. In view of above the objection of the RD does not survive and the petition stands to be allowed. The Official Liquidator, Ministry of Corporate Affairs, New Delhi has also submitted his report through a representation, wherein it has not raised any objection against the Scheme of Amalgamation.

10. The Income Tax Department raised three demands vide its report dated 10.08.2020. In respect to this Petitioner has already made payment qua one of the demands, without prejudicing the right and contention of the Petitioner



Company. IT Department further submitted that, this office has no objection to the proposed scheme of arrangement only if the interest of the Revenue in the form of outstanding demand against M/s. Global Engineers Limited be safeguarded.

11. We have gone through the reports of the Ld. Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi and Ld. Official Liquidator, Ministry of Corporate Affairs, New Delhi and after perusing the same, we are of the view that the sanction of the present Scheme is not in violation of any provision of Companies Act as well as not against public policy, nor it would be prejudicial to the public interest at large.

12. A certificate of Statutory Auditor of the Petitioner Companies have been placed on record to the effect that Accounting Treatment proposed in the Scheme of Arrangement is in conformity with the Accounting Standard notified by the Central Government as specified under the provisions of Section 133 of the Companies Act, 2013. The Appointed date of the said Scheme is 01.04.2020.



13. There is no requirement for any modification and the said Scheme of Arrangement appears to be fair and reasonable and is not contrary to public policy and not violative of any provisions of law. All the statutory requirements of sections 230 to 232 of the Companies Act, 2013 are complied with. Taking into consideration the above facts, the Company Petition is allowed and the Scheme of Arrangement annexed with the Petition is hereby sanctioned which shall be binding on the members, creditors and shareholders of the Petitioner Companies.

14. While approving the scheme as above, we further clarify that this order will not be construed as an order granting exemption from payment of stamp duty or taxes or any other charges, if payable, as per the relevant provisions of law or from any applicable permissions that may have to be obtained or, even compliances that may have to be made as per the mandate of law. The Companies to the said Scheme or other person interested shall be at liberty to apply to this Bench for any direction that may be necessary with regard to the working of the said Scheme.



15. The Petitioner Companies are directed to file the certified copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act, 2013 within 30 days of receipt of the order.

16. The Order of sanction to this Scheme shall be prepared by the Registry as per the format provided under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14<sup>th</sup> December, 2016.

17. Accordingly, the Scheme **stands sanctioned** and **CAA-27/PB/2020** stands disposed of.

- Sd -

**(B.S.V PRAKASH KUMAR)**

**ACTG. PRESIDENT**

- Sd -

**(HEMANT KUMAR SARANGI)**

**MEMBER (TECHNICAL)**

22.01.2021

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