

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH-IV**

**C.P(CAA)/15(MB)2023
IN
C.A(CAA)/227(MB)2022**

In the matter of
The Companies Act, 2013

And

In the matter of
Sections 230 to Section 232 read
with Section 66 and
other applicable provisions of the
Companies Act, 2013

And

In the matter of
Scheme of Arrangement between
**Sheth Developers & Realtors (India)
Limited**

‘Transferor Company’

And

Salsette Developers Private Limited

‘Transferee Company’

and their respective Shareholders
(hereinafter referred to as ‘Scheme’)

Sheth Developers & Realtors (India) Limited

[CIN: U29130MH1993PLC071231]

...First Petitioner Company/
Transferor Company

Salsette Developers Private Limited

[CIN: U45100MH2012PTC226393]

...Second Petitioner Company/
...Transferee Company

(collectively referred to as 'the Petitioner Companies')

Order dated: **07.06.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kuldip Kumar Kareer
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioners:

Mr. Hemant Sethi, Adv.

For the Regional Director:

Ms. Rupa Sutar, Deputy Director,
Office of the Regional Director,
MCA (WR), Mumbai.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Bench is convened by videoconference today.
2. Heard the Counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Scheme and nor have the Petitioner Companies controverted any averments made in the Petition to the said Scheme.
3. The sanction from the Tribunal is sought under Section 232 r/w section 232 of the Companies Act, 2013 and read with Section 66 and other applicable provisions of the Companies Act, 2013 and the rules framed there under for the Scheme of Arrangement between Sheth Developers

& Realtors (India) Limited ('Transferor Company') and Salsette Developers Private Limited ('Transferee Company') and their respective Shareholders (the 'Scheme').

4. The Board of Directors of the Transferor Company and the Transferee Company have approved the said scheme by passing the Board Resolution dated August 22, 2022.
5. The Company Scheme Petition has been filed in consonance with the order dated October 20, 2022 passed in C.A.(CAA)/227(MB)2022 by this Bench.
6. The Petitioner Companies further states that the Petitioner Companies have complied with all the directions in C.A.(CAA)/227(MB)2022 by this Bench and the Petitioner Companies have also filed necessary affidavits of compliance before this Tribunal.
7. The Transferor Company was incorporated with an object to engage in the business of construction, developers, builders, contractors and all types of construction and development work and the Transferee Company was also incorporated with an object to engage in the business of construction, developers, builders, contractors and all types of construction and development work.
8. The equity shares of the Petitioner Companies are not listed on any stock exchanges in India.

9. The Rationale for the Scheme is as under:

“This Scheme provides for the cancellation of shares held by the minority shareholders of the Transferor Company and amalgamation of the Transferor Company into the Transferee Company by way of merger and dissolution of the Transferor Company without winding up, pursuant to Section 230 - 232 read with Section 66 of the Act (defined hereunder) and other applicable provisions of the Act with a view to achieve the following benefits to the stakeholders and the shareholders:

- *Merger shall result in consolidation of the respective operations of the Transferor Company and the Transferee Company which will be served through one platform thereby leveraging the capabilities of the merged entity;*
- *Ensuring a streamlined group structure by reducing the number of legal entities in the group, and thereby eliminating administrative duplications and consequently, reducing the administrative costs of maintaining separate companies including eliminating multiple record-keeping;*
- *Reduction in the multiplicity of legal and regulatory compliances currently required to be carried out by the Transferor Company and the Transferee Company.*
- *Pooling of assets, proprietary information, personnel, financial, managerial and technical resources of both the companies, thereby contributing to the future growth of the merged entity;*
- *Pursuant to the Scheme, as an incidental benefit, the minority shareholders of the Transferor Company have been provided with liquidity option;*
- *The Transferee Company holds 99.99% of the paid-up share capital of the Transferor Company. A consolidation of the Transferor Company and the Transferee Company would lead to enhancement of operational, organisational and financial efficiencies and more efficient utilization of capital and resources.*

- *The amalgamation is in the interest of the Transferor Company and the Transferee Company and their respective shareholders, creditors and all other stakeholders and is not prejudicial to the interests of the concerned shareholders, creditors or the public at large.”*

10. Consideration :

As a result, upon coming into effect of this Scheme, no shares of the Transferee Company shall be allotted on the Record Date in lieu or exchange of its holding in the Transferor Company and the entire issued, subscribed and paid-up share capital of the Transferor Company shall stand cancelled.

11. The Regional Director has filed his report dated May 9, 2023 making certain observations. The Petitioner Companies have submitted/undertaken that:

- (i) The provisions of Section 232(3)(i) of the Companies Act, 2013, in respect of fees and stamp duty payable by Transferee Company shall be complied with, if required, after set-off of fees and stamp duty already paid by the Transferor Company on such authorized share capital.
- (ii) Any increase in the authorized share capital of Transferor Company and/ or Transferee Company before the Effective Date⁶ shall be given effect to while aggregating the authorized share capital of the Transferee Company.
- (iii) The Transferee Company shall be in compliance with provisions of Section 2(1B) of the Income Tax Act, 1961 and the Petitioner Companies shall ensure compliance of all other provisions of the Income Tax Act and Rules thereunder.

- (iv) Both the Petitioner Companies are engaged in the business of construction, development and maintenance of retail assets (Retail Malls) and are not engaged in the business of sale of plots, buildings or apartments and have not taken any registration under the RERA Act and Rules framed thereunder. Hence, requirement of compliance under the relevant provisions of the RERA Act is not applicable to the Petitioner Companies. Further, the Hon'ble Tribunal may note that the Petitioner Companies have already sent the notices to RERA authorities in accordance with directions of this Hon'ble Tribunal, for which no representation has been received by the Petitioner Companies to the best of the knowledge and belief of the Petitioner Companies.
- (v) The Petitioner Companies will comply with provisions of Section 90 of the Companies Act, 2013 read with the Companies (Significant Beneficial Owners) Rules, 2018, amended from time to time and make necessary filings with Registrar of Companies, if applicable, or comply with directions, if any issued by the concerned Registrar of Companies in this regard.
- (vi) The approval of the Scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issue arising after giving effect to the Scheme and the decision of such authorities is binding on the Petitioner Companies.
- (vii) The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company; and

- (viii) The interest of creditors will be protected, and the Petitioner Companies shall continue to protect the interest of the creditors.
12. Ms. Rupa Sutar, Deputy Director from the Office of Regional Director of Western Region, 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.
13. The Official Liquidator has filed its report on May 9, 2023 in the C.A.(CAA)/227(MB)/2022, *inter-alia*, stating therein that the affairs of the Transferor Company have been conducted in a proper manner not prejudicial to the interest of the shareholders of the Transferor Company and that the Transferor Company may be ordered to be dissolved by this Tribunal.
14. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
16. Since all the requisite statutory compliances have been fulfilled, C.P.(CAA)/15(MB)/2023 is made absolute in terms of prayer in the Company Scheme Petition.

17. The Transferor Company will be dissolved, without winding-up.
18. The Petitioner Companies are directed to file a certified copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Company, electronically in e-Form INC-28 within 30 days or an extended timeline with payment of additional fees, as may be applicable, from the date of receipt of the Order duly certified by the designated Registrar of this Tribunal. The Scheme will become effective on filing of the copy of this order with the concerned Registrar of Companies.
19. The Petitioner Companies shall lodge a copy of this Order along with the Scheme duly certified by the designated Deputy Registrar or Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, within a period of 60 working days from the date of the receipt of the certified copy of the Order from the Registry of this Tribunal.
20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly certified by the designated Registrar of this Tribunal.
21. The Appointed Date of the Scheme is February 10, 2022.
22. Ordered Accordingly.

Sd/-

Prabhat Kumar
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)

SVR/07.06.2023