

NATIONAL COMPANY LAW TRIBUNAL
COURT-V, MUMBAI BENCH

2. C.P.(CAA)/63(MB)2022 In C.A.(CAA)/144(MB)2021

IN THE MATTER OF

Ajmera Realty And Infra India Limited

Section 230-232 of the Companies Act, 2013

Order Delivered on 04.07.2024

CORAM:

SHRI. K. R. SAJI KUMAR
MEMBER (J)

MS. MADHU SINHA
MEMBER (T)

Appearance through VC/Physical/Hybrid Mode:

For the Petitioner

For the Respondent:

ORDER

Order pronounced. Scheme is allowed.

SD/-
MADHU SINHA
Member (Technical)

SD/-
K. R. SAJI KUMAR
Member (Judicial)

//Ziyaul//

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

C.P.(CAA)/63(MB)2022

IN

C.A.(CAA)/144(MB)2021

*[Under Section 230-232 read with Section
234 of the Companies Act, 2013 and other
applicable provisions of the Companies Act,
2013 read with the Companies
(Compromises, Arrangements and
Amalgamations) Rules, 2016]*

**Ajmera Realty and Infra India
Limited**

CIN: L27104MH1985PLC035659 ... First Petitioner Company

**Radha Raman Dev Ventures Private
Limited**

CIN: U70109MH2016PTC286540 ... Second Petitioner Company

(hereinafter together known as 'Petitioner Companies')

Order Dated: 04.07.2024

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

Coram:

Hon'ble Member (Judicial): K.R. Saji Kumar

Hon'ble Member (Technical): Madhu Sinha

Appearances:

For the Petitioners: Mr. Hemant Sethi, i/b. Hemant Sethi & Co.

For the Regional Director (WR): Mr. Altap Shaikh ICLS, AD (PH)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 to the said Scheme of Arrangement between Ajmera Realty and Infra India Limited ('Demerged Company') and Radha Raman Dev Ventures Private Limited ('Resulting Company') and their respective shareholders ('Scheme').
2. The Petitioner Companies have approved the Scheme by passing Board Resolution at their respective board meeting held on 13 January 2020 and have approached the Tribunal for sanction of the Scheme.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

3. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies are part of the Ajmera Group. The Learned Counsel for the Petitioner Companies further submits that the First Petitioner Company is principally engaged in real estate business with a strong presence in and around Mumbai, Ahmedabad, Surat, Rajkot and Bangalore and has an international project in Bahrain and the Second Petitioner Company is incorporated to engage, inter alia in the business of real estate.
4. The Learned Counsel for the Petitioner Companies submits that the rationale mentioned in the Scheme is as under:
 - a. ARIIL is engaged in real estate development business. It is proposing to develop a project on a land parcel situated at Plot area of Sub Plot "C" bearing CTS No. 1A/11 and 1A/12 of Village Anik, Wadala (East), Mumbai - 400037 admeasuring 28,113 sq.mts. of area (approximately 6.5 acres), which will be developed into commercial project.
 - b. It is proposed to segregate business of development of commercial project (6.5 acres) into separate company such that it will result in focused approach to exploit the growth potential of the project. It will also help in providing

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

flexibility to attract fresh set of investors / strategic partners to participate in the project.

- c. This Scheme will result in providing flexibility to ARIIL in scouting for and inviting the potential investors and thereby resulting in unlocking the value of each of the project.
5. The Learned Counsel for the Petitioner Companies states that the consideration as provided in the Scheme is as under:
- “1 (One) Equity Share of ARIIL of Rs. 10 each fully paid up to be issued and allotted for every 50 (fifty) Equity Shares of ARIIL of Rs. 10 each fully paid up held in ARIIL in their proportion.”*
6. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder. The said undertaking is accepted.
7. The Regional Director has filed his report dated 10 November 2022 ('Report'). In paragraphs 2 (a) to (l) of the Report, the Regional Director has made certain observations. In response to the

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

observations made by the Regional Director, the Petitioner Companies have also given necessary clarifications and undertakings vide their affidavit. The observations made by the Regional Director and the clarifications and undertakings given by the Petitioner Companies is summarized in the table below:

Sr. No.	Observations in the Report	Response of the Petitioner Companies
2(a)(i)	That on examination of the report of the Registrar of Companies, Mumbai dated 17.02.2022 for Transferor Company and Transferee Company (Annexed as Annexure A-1) that the Petitioner Company falls within the jurisdiction of ROC, Mumbai. It is submitted that no complaint and /or	

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	<p>representation regarding the proposed scheme of Amalgamation has been received against the Petitioner Transferor Company and Transferee Company. Further, the Petitioner Companies has filed Financial Statements up to 31.03.2021. The ROC has further submitted that in his report dated 17.02.2022 which are as under: -</p> <p>i. There is one complaint against the Demerged Company (SRN No. Z00203597). The said complaint was</p>	<p>The First Petitioner Company undertakes that the said complaint has been</p>
--	--	---

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	received from Mr. Damoder Vithal Patil regarding non receipt of new shares in lieu of old shares. Status of complaint is closed as on date.	closed and the same has been acknowledged by the Registrar of Companies ('ROC') in its report. Since the matter is closed, there is no further action required on this matter.
2(a)(ii)	ii. Four prosecutions u/s.211,217,212 of Companies act 1956 and u/s. 148 of Companies act 2013 are pending against demerging company.	The First Petitioner Company submits that contravention of provisions of section 211, 217 and 212 of the Companies Act, 1956 have been compounded vide orders dated 20 May 2015 of the Company Law Board, Mumbai Bench. The First Petitioner Company has paid the penalties mentioned in the respective orders. The First Petitioner Company submits that it has provided

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		<p>a response on 19 September 2016 to the show cause notice issued on 29 August 2016 under Section 148 of Companies Act, 2013 stating that it was not liable to cost audit and hence, the question of violation of provisions of Section 148 of Companies Act, 2013 does not arise. There has been no further communication from the ROC / Ministry of Corporate Affairs in this regard.</p>
2(a)(iii)	<p>iii. The Demerged Company has huge number of open charges.</p>	<p>The Petitioner Companies submit that the charges have been opened in the normal course of business. The First Petitioner Company undertake to file</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		necessary forms regarding the charges as and when applicable.
2(a)(iv)	iv. Interest of creditors should be protected.	The Petitioner Companies submit that no compromise and / or arrangements have been called with the creditors. Further, the Petitioner Companies submit that the Scheme is not prejudicial to the interest of the creditors and undertake that interest of all the creditors will be protected. As per the order of Hon'ble NCLT dated 22 September 2021, the First Petitioner Company undertakes to submit No Objection Letters in respect of the Scheme, from the Secured Creditors

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		<p>before the date of final hearing of the petition. There are no Secured Creditors in the Second Petitioner Company, and hence, the question of obtaining consent does not arise. Further, the Hon'ble NCLT vide its order dated 22 September 2021 has dispensed the meetings of the Unsecured Creditors of the Petitioner Companies.</p>
2(b)	<p>Resulting company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act, 2013 through appropriate affirmation in respect of</p>	<p>The Petitioner Companies submit that the Scheme does not provide for combination of authorised share capital and hence, the question of set-off of fees payable on authorised share capital does not arise.</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	fees payable by Resulting Company for increase of share capital on account of demerger companies.	
2(c)	In compliance of Accounting Standard-14 or IND-AS 103, as may be applicable, the resulting company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards including AS-5 or IND AS-8 etc.	The Petitioner Companies undertake that the accounting treatment for the purpose of this Scheme shall be in accordance with Indian Accounting Standards (Ind AS) notified under the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time comply and shall be accounted from the date as determined in accordance with the requirements of applicable Ind AS.
2(d)	The Hon'ble Tribunal may	The Petitioner Companies

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	kindly direct the Petitioner Companies to file an affidavit to the extent that the Scheme enclosed to the Company Application and Company Petition are one and same and there is no discrepancy, or no change is made.	undertake that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or deviation.
2(e)	The Petitioner Companies under provisions of section 230(5) of the Companies Act 2013 have to serve notices to concerned authorities which are likely to be affected by the Amalgamation or arrangement. Further, the approval of the	The Petitioner Companies submit that the Petitioner Companies have served notices under the provisions of section 230(5) of the Companies Act, 2013 to concerned authorities as directed by the Hon'ble Tribunal which are likely to be affected by the Scheme. Further, the approval of the

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	<p>scheme by the Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving effect to the scheme. The decision of such authorities shall be binding on the petitioner companies concerned.</p>	<p>Scheme by the Hon'ble Tribunal would not deter such 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 addressed in accordance with law.</p>
2(f)	<p>As per Definition of the Scheme, "Appointed Date " - 01st April 2020 "Effective Date" means the later of the dates on which certified copy of the order sanctioning the scheme, passed by NCLT, is filed by APRIL and RRDVPL with Registrar of</p>	<p>The Petitioner Companies submit that the Appointed Date i.e., 1st April 2020 has been clearly indicated in the Scheme in accordance with provisions of section 232(6) of the Companies Act, 2013 and the Scheme shall be effective from the Appointed Date. Hence, the Petitioner Companies undertake that it</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	<p>Companies, Mumbai, Maharashtra.</p> <p>It is submitted that the Petitioners may be asked to comply with the requirements as clarified vide circular no. F. No. 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate Affairs.</p>	<p>is in compliance with the applicable requirements of the Circular no. F. No. 7/12/2019/CL-1 dated 21-08-2019 issued by the Ministry of Corporate Affairs.</p>
2(g)	<p>Demerged Company shall undertake to comply with the directions of SEBI and Stock Exchanges as per LODR and SEBI Regulations by a listed Company.</p>	<p>The First Petitioner Company has served notice to BSE Limited and National Stock Exchange of India Limited on 22 October 2021 and 20 October 2021 respectively under Section 230(5) of Companies Act, 2013 as per directions issued by the Hon'ble NCLT</p>

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		in its order dated 22 September 2021. Further, the First Petitioner Company undertakes to comply with the directions of SEBI and Stock Exchanges as per LODR and SEBI Regulations, as may be applicable.
2(h)	Petitioner Companies shall undertake to comply with the directions of Income tax department, if any.	The Petitioner Companies have served notices to the respective Income tax authorities on 21 October 2021 under Section 230(5) of Companies Act, 2013 as per directions issued by the Hon'ble NCLT in its order dated 22 September 2021. Further, the Petitioner Companies undertake to comply with the directions of Income-tax department, if

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		any.
2(i)	The Hon'ble Tribunal may kindly direct the Petitioner Companies to obtain NOC from RERA as companies are engaged in Real Estate.	The Petitioner Companies have served notices to the Maharashtra Real Estate Regulatory Authority on 21 October 2021 under Section 230(5) of Companies Act, 2013 as per directions issued by the Hon'ble NCLT in its order dated 22 September 2021. The First Petitioner Company submits that the Demerged Undertaking (as defined in the Scheme) does not have any projects and hence, approval from Maharashtra Real Estate Regulatory Authority is not required. The Second Petitioner Company submits that it

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		<p>does not have any projects and hence, the question of approval does not arise.</p> <p>Further, in addition to the above, the Petitioner Companies state that the approval of the Maharashtra Real Estate Regulatory Authority shall not be required in reference to Circular No. 24/2019 dated 4 June 2019 issued by Maharashtra Real Estate Regulatory Authority stating the following, “if the amalgamation or merger or demerger of the companies, which is not regarded as transfer under section 47 of the Income Tax Act, 1961 or where 75% of the</p>
--	--	---

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		shareholders remain same in the resultant company, the same shall not require the aforesaid approvals of Allottee(s) under section 15 of the Act.”
2(j)	The Hon'ble NCLT may kindly direct the Petitioner Company to disclose the pending projects & issue notices to investor who have booked in their commercial projects/flats.	The First Petitioner Company submits that the Demerged Undertaking (as defined the Scheme) does not have any projects and hence, the question of disclosing details of pending projects or issuing notices to the investors does not arise. The Second Petitioner Company also submits that it does not have any projects and hence, the question of disclosing details of pending projects or issuing notices to

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

		the investors does not arise.
2(k)	The Petitioner Companies have not filed Form BEN-2 for declaring the name of the significant beneficial owner for its Corporate shareholder holding more than 10% shares in the Petitioner Companies, hence Petitioner Companies shall undertake to comply with the provisions of section 90 of Companies Act 2013 r/w. Companies (Significant Beneficial Owners) Amendment Rules, 2019, thereunder and file Form BEN-2 for declaring name of the significant beneficial	The Petitioner Companies have filed Form BEN-2 with the concerned ROC for declaring the name of significant beneficial owner for its corporate shareholder holding more than 10% shares in the Petitioner Companies and have complied with the provisions of Section 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Amendment Rules, 2019.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

	owner with concerned ROC.	
2(1)	The Hon'ble NCLT may kindly direct the Petitioner Companies to submit statement of Assets and liabilities of Demerged Company.	The First Petitioner Company submits a statement of assets and liabilities of the Demerged Undertaking to be transferred pursuant to the Scheme is enclosed as Annexure A with this affidavit.

8. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 above. Further heard, Authorised Representative of Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai, who was present at the time of final hearing, has stated that they have no objection for approving the Scheme by this Tribunal.
9. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

10. Since all the requisite statutory compliances have been fulfilled, Company Petition C.P.(CAA)/63(MB)2022 connected with C.A.(CAA)/144(MB)2021 is made absolute in terms of prayer in the Petition.
11. The Scheme is sanctioned hereby, and the Appointed Date of the Scheme is fixed as 01 April 2020.
12. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies, electronically along with e-Form INC-28, within 30 days from the date of receipt of the order by the Registry, duly certified by the Deputy/ Assistant Registrar of this Tribunal.
13. The Petitioner Companies are directed to lodge a certified copy of this Order along with a copy of the Scheme with the concerned Superintendent of Stamps for adjudication of stamp duty payable, if any, within 60 working days from the date of receipt of certified copy of the certified order from the Registry of this Tribunal, duly certified by the Deputy/ Assistant Registrar of this Tribunal.
14. All concerned regulatory authorities to act on a copy of this Order duly certified by the Deputy Registrar/Assistant Registrar of this Tribunal along with copy of the Scheme.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – V

C.P.(CAA)/63(MB)2022
IN
C.A.(CAA)/144(MB)2021

15. Any person interested is at liberty to apply to this Tribunal in the above matters for any directions that may be necessary.
16. Any concerned Authorities are at liberty to approach this Tribunal for any further clarification as may be necessary.
17. Ordered accordingly. C.P.(CAA)/63(MB)2022 is allowed and disposed of.

SD/-

MADHU SINHA

MEMBER (TECHNICAL)

//VLM//

SD/-

K.R. SAJI KUMAR

MEMBER (JUDICIAL)