

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

C.P. (CAA) No. 263/230/HDB/2017

U/s 232 R/w Section 230 of the Companies Act, 2013 &
other applicable provisions of the Companies Act, 2013

In the matter

M/s. PBEL Property Development (India) Private Limited
Plot No. 69 & 70, Opposite Lane to Madhapur Police Station,
Kavuri Hills, Madhapur
Hyderabad - 500033
Telangana, India

... Petitioner Company No.1/
Demerged Company

And

M/s. Incor Appa Two Projects Private Limited
H. No: 8-2-700, Srida Anushka Pride
4th Floor, Road No. 12, Banjara Hills
Hyderabad- 500034
Telangana, India

...Petitioner Company No.2/
Resulting Company

And

Their respective Shareholders



VERSUS

1. The Official Liquidator
1st Floor, Corporate Bhawan,
GSI Post, Nagole, Bandlaguda
Hyderabad - 500068.
2. The Registrar of Companies, Hyderabad,
For Andhra Pradesh and Telangana
2nd Floor, Corporate Bhawan,
GSI Post, Nagole, Bandlaguda
Hyderabad - 500068.
3. The Regional Director (South East Region)
3rd Floor, Corporate Bhawan,
GSI Post, Nagole, Bandlaguda
Hyderabad - 500068.

...Respondents

S. Appa Two Projects Private Limited



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Date of order: 23.03.2018

Coram:

Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)

Parties / Counsels present:

For the Petitioner: Shri S. Niranjana Reddy, Senior Advocate along with Shri A. Venkatesh Shri Rusheek Reddy, Shri Prithvi Reddy and Shri L. Aravind Reddy, Advocates

For Respondents: Shri B. Jithender, CSGC for RD

Per: Rajeswara Rao Vittanala, Member (Judicial)

ORDER



1. The present joint Company Petition bearing CP (CAA) No. 263/230/HDB/2017, is filed by M/s. PBEL Property Development (India) Private Limited (Petitioner No.1 / Demerged Company) and M/s. Incor Appa Two Projects Private Limited (Petitioner No.2 / Resulting Company) and their respective shareholders, under section 232 read with section 230 of the Companies Act 2013, by inter-alia seeking sanction of the Scheme of Arrangement between M/s PBEL Property Development (India) Private Limited and M/s Incor Appa Two Projects Private Limited and their respective Shareholders.
2. Brief facts, leading to filing of the present Company Petition.
 - (1) M/s. PBEL Property Development (India) Private Limited (**Demerged Company**) having CIN No. U45200TG2007PTC064817, was incorporated under

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the Companies Act, 1956 on 2nd February, 2007. The main objects of the Demerged Company as set out in the Memorandum of Association are to carry on business of builders and contractors for the construction, upgradation, maintenance and repair of roads, bridges, viaducts, buildings, interchangers and other related works and generally to carry on the business of engineers, contractors, consultants etc. At present the Demerged Company is engaged in the business of development and construction of real estate. The authorised, issued, subscribed and paid-up share capital of the Demerged Company as on 31st December, 2016 was as under:



Authorised Share Capital	Rupees
22,500,000 Equity Shares of Rs. 10/- each	225,000,000
Total	225,000,000
Issued, Subscribed and Paid-up Share Capital	
22,500,000 Equity Shares of Rs. 10/- each fully paid up	225,000,000
Total	225,000,000

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Subsequent to the above date and till the date of filing the Scheme, there has been no change in the issued, subscribed and paid up capital of the Demerged Company.

- (2) M/s. Incor Appa Two Projects Private Limited (**Resulting Company**) was incorporated under the Companies Act, 2013 in the name of 'Incor Appa Two Projects Private Limited' having CIN No. U70100TG2017PTC115634 on 3rd day of March, 2017. The Resulting Company is also engaged in the business of development and construction of real estate. The authorized, issued, subscribed and paid-up share capital of the Resulting Company as on the date of incorporation i.e. March 3, 2017 is as under:



Authorised Share Capital	Rupees
10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000
Issued, Subscribed and Paid-up Share Capital	
10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000

There is an increase in the authorized share capital of the Resulting Company. The current authorized, issued, subscribed and paid-up share capital of the Resulting Company is as under:

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Authorised Share Capital	Rupees
50,000 Equity Shares of Rs. 10/- each	5,00,000
Total	5,00,000
Issued, Subscribed and Paid-up Share Capital	
10,000 Equity Shares of Rs. 10/- each	1,00,000
Total	1,00,000



RATIONALE FOR THE PROPOSED SCHEME

By the proposed Scheme, the Demerged Company proposes to transfer the entire business of a project of the Demerged Company located near Telangana State Police Academy (erstwhile Andhra Pradesh Police Academy (APPA)) Hyderabad, more specifically described in the Scheme annexed with the Petition and referred to as 'Demerged Undertaking'.

- (2) The Demerged Company and the Resulting Company are engaged in the similar business and the demerger of the said Undertaking to the Resulting Company would inter alia be expected to have the following benefits:
 - a) The nature of risks and competition involved in relation to each of the on-going projects are different and this arrangement will enable differentiated management approach and focus in relation to the Demerged undertaking to tackle /address the same efficiently/effectively, as appropriate.

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- b) Provide opportunities for creating strategic partnerships and flexibility of fund raising for future growth (as the investors/lender would prefer to have the company in which they invest or lend to, to own only the project which they are backing) and expansion and to create a business structure, which is geared to gain benefits from possible growth opportunities.
 - c) Each real estate project in the Demerged Company addresses independent business opportunities attracting different sets of investors, strategic partners, lenders and stake holders.
 - d) Enables dedicated management focus and to accelerate growth of the Demerged Undertaking.
 - e) Greater levels of decentralized empowerment to enhance competitiveness, increase accountability and strengthen performance culture.
 - f) To monetize/unlock value of the Demerged Undertaking, for all the stakeholders.
 - g) Will lead to the formation of a dedicated/focused special purpose vehicle i.e., the Resulting Company having greater capacity of monetizing the Hyderabad project and conducting its operations more effectively and competitively.
 - h) The Scheme shall not in any manner be prejudicial to the interests of concerned shareholders, creditors and/or general public at large.
4. In view of the aforesaid advantages, the Board of Directors of the Demerged Company vide its resolution dated May 5, 2017 approved the Scheme between PBEL Property Development (India) Private Limited and Incor



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Appa Two Projects Private Limited and their respective shareholders. Similarly, the Board of Directors of the Resulting Company have also approved the Scheme at their meeting held on May 5, 2017.

5. Some of the salient / material features of the proposed Scheme i.e., demerger of the Undertaking of the Demerged Company into the Resulting Company are as under:



- a. Upon the Scheme becoming effective, the Demerged Undertaking of the Demerged Company shall be transferred to and vested in and/ or be deemed to have been transferred to and vested in the Resulting Company, as a going concern and shall include all its properties and assets, whether movable or immovable, tangible or intangible, balance in bank, cash or investments and other assets of whatsoever nature such as approvals, quotas, rights, consents, entitlements, licenses, and other certificates and permits issued by the Government, and tenancies, privileges and benefits of all contracts, agreements and all other rights, including, lease rights of every kind and description whatsoever, letter of intent, permissions, permissions under Income-tax Act, 1961 and/or any other applicable statutes, incentives if any without any further act or deed, all debts including debentures, liabilities, contingent liabilities, loans, duties, obligations and other Liabilities, losses, liabilities, actions and claims, charges, costs, damages, fines, penalties, interest and expenses (including those resulting from or

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otherwise related to actions, proceedings or claims, and all legal and other professional fees and expenses) and all other Damages, and all related taxes arising out of, related to, or with respect to the Demerged Undertaking etc, so as to become the business, properties and assets of the Resulting Company. The Demerged Company and Resulting Company shall file necessary particulars and/or modification(s) of charge, with the Registrar of Companies to give formal effect to the above provisions, if required.

- b. The Demerged Company has issued [330,351,591] compulsorily convertible debentures, having a face value of INR 10 each aggregating to INR 3,303,515,910, out of which [135,950,000] compulsorily convertible debentures pertain to the Demerged Undertaking (hereinafter referred to as "Project Debentures" and for the purposes of the Scheme shall include any other debentures / securities in lieu thereof). Upon the Scheme becoming operative, the Project Debentures shall be duly transferred to and assumed by the Resulting Company whereby such Project Debentures shall be issued and allotted by the Resulting Company to such holders of the Project Debentures as appearing in the records of the Demerged Company on the Record Date and such Project Debentures existing in the books of Demerged Company shall stand automatically cancelled without any act or deed of the Demerged Company, the Resulting Company or any other Person, with the Demerged Company



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being simultaneously released from, and having no Liability in relation to such Project Debentures.

- c. Upon the Scheme becoming operative and in consideration of transfer and vesting of the Demerged Undertaking, the Resulting Company shall, without any further application or deed, issue and allot equity shares having face value of ₹ 10 (Rupees Only) credited as fully paid-up to the extent indicated below, to the equity shareholders of the Demerged Company as on the Record Date holding fully paid-up equity shares and whose name appear in the register of members or to such of their respective heirs, executors, administrators or other legal representatives or other successors in title, as may be recognized by the Board of Directors of the Demerged Company as provided in the Scheme. 1 equity share in the Resulting Company of the face value of ₹ 10 (Rupees Only) each credited as fully paid-up for every 22,500 equity share of ₹ 10 /- (Rupees Only) each fully paid-up held in the Demerged Company.
- d. Upon the Scheme becoming operative, all Employees of the Demerged Undertaking in service at the end of the Transition Period shall be deemed to have become Employees of the Resulting Company with effect from the Appointed Date or the date of joining whichever is later, without any break or interruption in their service and on the basis of continuity of service, and the terms and conditions of their employment with the Resulting Company (i.e. cost-to-company basis, in monetary terms) shall not be



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less favourable than those applicable to them with reference to their employment with the Demerged Company at the end of the Transition Period.

- e. Both the Petitioner Companies are private and unlisted Companies.
- (6) The Petitioner Companies had earlier filed joint Company Application before this Tribunal vide C.A. (CAA) No. 50/230/HDB/2017 and Tribunal vide order dated October 18, 2017 has dispensed with the meetings of equity shareholders, in the case of both the Petitioner Companies and further dispensed with the meeting of unsecured creditors in the case of 1st Petitioner Company as prayed for by the Petitioner Companies. Vide the same order the Petitioner companies were also directed to serve the copies of the order to the Income Tax Authorities, Central Government, Registrar of Companies and all concerned authorities. The notices were served on the Statutory Authorities on 27.11.2017 by the Learned Counsel of the Petitioner Companies.
- (7) A copy of the certificate issued by the statutory auditors of the 1st Petitioner/Demerged Company and the 2nd Petitioner/Resulting Company to the effect that the accounting treatment specified in the Scheme is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 is also annexed to the Petition as **Annexure - I**.
- (8) Heard Shri S. Niranjan Reddy, Learned Senior Counsel, Shri Rusheek Reddy K.V, Shri Prithvi Reddy for the



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Petitioner Companies and Shri B. Jithender, CGSC for RD.

- (9) The Regional Director (SER), Hyderabad has filed an affidavit dated 29.11.2017, by inter-alia confirming the averments made by the Petitioner Companies, has further stated the Demerged Company has filed statutory returns up to Financial Year 31.03.2016 and the Resulting Company is registered in the year 2017 and is not yet due for filing the statutory Returns and no complaints and investigation and no inspections are pending against the Companies. It is further stated that notice was sent to the income tax authorities on 02.11.2017 followed by reminder dated 17.11.2017 , requesting to submit their comments / objections, if any, in the present scheme. But no reply is received from the Income Tax Department so far.



- (10) I have carefully perused all the pleadings, reports of the Regional Director and also extant provisions of Companies Act, 2013. I am convinced that the Petitioner Companies have complied with all statutory requirements as required under section 230 to 232 and other relevant provisions of Companies Act, 2013 as detailed supra. The Board of Directors of the Petitioner Companies at its respective Board Meetings held on 5th May 2017 have duly approved the Scheme in question. I am satisfied that the Scheme of Arrangement in question, is for bonafide reasons meant for the benefit of all concerned parties of Petitioner Companies in particular and public in general. It is also on record that the Scheme is not opposed by any authorities and the Petitioner Companies are

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admittedly following the rules / regulations of Companies Act, 2013, as stated by Regional Director as Supra. Hence I am convinced that the Company Petition deserved to be allowed as prayed for.

11. In the result, the CP (CAA) No.263/230/HDB/2017 is allowed with following directions:-

(a) Sanctioned the Scheme of Arrangement as proposed (which is at page 95-130 along with material papers enclosed with Petition) and it is ordered that the same is binding on Petitioner Companies and their respective shareholders, creditors and Employees;

(b) The Petitioner Companies are directed to take appropriate steps to submit the said scheme to Registrar of Companies within 30 days from the date of receipt of Copy of this order.



The Petitioner Companies are directed to issue newspaper publication with respect to approval of scheme, in the newspapers, in which previous publication 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 companies are further directed to take all consequential and statutory steps required in pursuance of approved Scheme of Arrangement under provisions of Act;

(e) Liberty is granted to any party / parties, who is aggrieved by this order, to seek any directions by

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way of filing a miscellaneous application in the present Company Petition.

- (f) The Petitioner Companies are directed to strictly adhere to the above directions and comply with terms and conditions as mentioned in the Scheme to all extant provisions of Companies Act, 2013.

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RAJESWARA RAO VITTANALA
MEMBER (JUDICIAL)

G. Anandha Kumar
Dy. Regl. Assn. Regr/ Court Officer
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER *CP(CAA) NO. 263/230/HDB/2017*
निर्णय का तारीख
DATE OF JUDGEMENT *23.03.2018*
प्रति तैयार किया गया तारीख
COPY MADE READY ON *15/5/2018*



