

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH, COURT -I
KOLKATA**

**C.P. (CAA)/6/KB/2024
Connected With
C.A. (CAA)/193(KB)2023**

A petition under section 230 read with section 232 of the Companies Act, 2013, read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, and other applicable provisions of law.

In the matter of:

A Scheme of Arrangement (Second Motion):

RDB REALTY & INFRASTRUCTURE LIMITED, a company incorporated under the provisions of the Companies Act, 1956 (CIN: L16003WB2006PLC110039) and having its Registered Office at BIKANER BUILDING 8/1, LAL BAZAR STREET 1ST FLOOR ROOM NO-10 KOLKATA-700001 in the State of West Bengal.

.....DEMERGED COMPANY / PETITIONER NO 1

-And-

In the Matter of:

RDB REAL ESTATE CONSTRUCTIONS LIMITED, a company incorporated under the provisions of the Companies Act, 2013 (CIN: U70200WB2018PLC227169) and having its Registered Office at BIKANER BUILDING, 8/1 LAL BAZAR STREET, 1ST FLOOR, ROOM NO.11 KOLKATA- 700001 in the State of West Bengal.

.....RESULTING COMPANY / PETITIONER NO 2

-And-

In the matter of:

1. RDB REALTY & INFRASTRUCTURE LIMITED
2. RDB REAL ESTATE CONSTRUCTIONS LIMITED

.....PETITIONERS.

Date of pronouncement: 21/5/2024.

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**
Shri Balraj Joshi : **Member (Technical)**

Appearances (via video conferencing/physically)

Mrs. Manju Bhuteria, Adv. : For Petitioner
Ms. Aisha Amin, Adv.

Mr. Alok Tandon, JD : For RD(ER), MCA

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. The instant Company Petition has been filed in the second stage of the proceedings under Section 230(6) read with Section 232(3) of the Companies Act, 2013 (“Act”) for sanction and confirmation of the Scheme of Arrangement for demerger of **Realty Business Undertaking** of RDB Realty & Infrastructure Limited– Demerged Company / Petitioner No 1 by transfer and vesting of the same in RDB Real Estate Constructions Limited– Resulting Company / Petitioner No 2 from the **Appointed Date 01st October, 2022 as defined in the Scheme**, in the manner and on the terms and conditions stated in the said **Scheme of Arrangement** (“Scheme”). A copy of the said Scheme is annexed to the Company Petition marked – **Annexure – A** in VOL I at Page No 36 to 58.
2. It is submitted by Ld. counsel appearing for the Petitioner(s) that the **Appointed Date** as per the **Scheme is 01st October, 2022**.
3. It is submitted by the Ld. Counsel appearing for the Petitioner(s) that **none** of the Petitioner Companies involved in the Scheme are **NBFC Companies**.

4. It is submitted by the Ld. Counsel appearing for the Petitioner(s) that the Demerged Company / Petitioner No 1 is a **Listed Company** and the BSE Ltd (formerly Bombay Stock Exchange Limited) vide letter No DCS / AMAL / TL / R37 / 2858 / 2023-24 / dated 02-08-2023 have offered their comments on the proposed Scheme of Arrangement. Similarly, The Calcutta Stock Exchange Limited vide their letter No CSE / LD / 15869 / 2023 dated 03-08-2023 have offered their comments on the proposed Scheme of Arrangement. Copy of the said letters are all collectively annexed to the Company Petition marked – **Annexure F** in VOL II at page No 215 to 220.
5. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Board of Directors of the Petitioner Companies have at their respective meeting held on 17TH December, 2022 have passed resolution adopting the proposed Scheme of Arrangement. A copy of the Resolution passed by the Board of Directors of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – G** in VOL II at Page No 221to 230.
6. It is submitted by Ld. counsel appearing for the Petitioner(s) that copy of the order dated 31ST October,2023 passed by this Tribunal in Company Application CA(CAA) No 193/KB/2023 is annexed to the Company Petition marked – **Annexure – H** in VOL II at Page No 231 to 239.
7. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the list of Equity Share Holders of the Petitioner Companies as on 30-06-2023duly certified by the statutory auditor of the Company are all collectively annexed to the Company Petition and marked– **Annexure – I** in VOL II at Page No 240 to 362.
8. It is submitted by Ld. Counsel appearing for the Petitioner(s) that the list of Secured Creditors and Unsecured Creditors of the Petitioner No 1 as on 30-06-2023duly certified by the statutory auditor of the Company is annexed to the Company Petition and marked– **Annexure – J** in VOL II at Page No 363 to 365.
9. It is submitted by Ld. Counsel appearing for the Petitioner(s) that NIL Secured Creditors and NIL Unsecured Creditors of Petitioner No 2 as on 30-06-2023duly certified by the statutory auditor of the Company is annexed to the Company Petition and marked– **Annexure – K** in VOL II at Page No 366.

10. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Valuation Report dated 17-12-2022 recommending the Swap Ratio has been prepared by VIKASH GOEL, Director, OMNIFIN VALUATION SERVICES (OPC) PRIVATE LIMITED, IBBI Registered Valuer. A copy of the said Report is annexed to the Company Petition marked – **Annexure – L** in VOL III at Page No 367 to 382.
11. It is submitted by Ld. counsel appearing for the Petitioner(s) that pursuant to the directions contained in the observation made by the BSE in their letter No DCS / AMAL / TL / R37 / 2858 / 2023-24 / dated 02-08-2023 the Petitioner Companies have disclosed the details of all pending litigations. The list of Pending Litigations are all collectively annexed to the Company Petition and marked - – **Annexure – M** in VOL III at Page No 383 to 388.
12. It is submitted by Ld. counsel appearing for the Petitioner(s) that the statutory auditors of the Demerged Company / Petitioner No 1 have by their certificate dated 24-01-2023 and the statutory auditors of the Resulting Company / Petitioner No 2 have by their certificate dated 25-01-2023 have confirmed that the Accounting Treatment proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013 and Rules made there under. A copy of the said Certificate issued by Statutory Auditor of the Petitioner Companies are all collectively annexed to the Company Petition marked – **Annexure – N** in VOL III at Page No 389 to 394.
13. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Petitioner(s) have the following classes of shareholders and creditors:-

PARTICULARS	AS ON 30 TH JUNE, 2023			
	EQUITY SHARE HOLDERS	PREFERENCE SHARE HOLDERS	SECURED CREDITORS	UNSECURED CREDITORS
DEMERGED COMPANY / PETITIONER NO 1	4256**	NIL	4	1287**
RESULTING COMPANY / PETITIONER NO 2	7	NIL	NIL	NIL

**** Meeting Directed**

14. It is submitted by Ld. counsel appearing for the Petitioner(s) that the Petitioner(s) have the following classes of shareholders and creditors as on the **Cut Off Date** as mentioned in the order :-

PARTICULARS	EQUITY SHARE HOLDERS 15-11-2023	UNSECURED CREDITORS 30-09-2023
DEMURGED COMPANY / PETITIONER NO 1	4031**	667##
By Email	3,300	135
By Post	731	532

(**Annexure K Volume III at Page No 321 to 322 of Affidavit of Service . ##
Annexure M Volume III at Page No 372 and Annexure K Volume III at Page No 322
of Affidavit of Service).

15. It is submitted by Ld. counsel appearing for the Petitioner(s) that by an order dated 31STOctober, 2023 in Company Application No. C.A (CAA) NO. 193/KB/2023 this Tribunal made the following directions with regard to meetings of shareholders and creditors under Section 230(1) of the Act:-

a. **Meetings dispensed:**

Equity Shareholders

Meeting of Equity Shareholders of the Petitioner No 2 for considering the Scheme are dispensed with in view of shareholder representing 100% in value of shares of Petitioner No 2 having respectively given their consent to the Scheme by way of affidavits.

Secured Creditors

Meeting of Secured Creditors of the Petitioner No 1 for considering the Scheme are dispensed with in view of consent by 92.10% in value of Secured Creditors of Petitioner No 1 having respectively given their consent to the Scheme by way of affidavits.

b. **No requirement of Meetings**

Secured Creditors

No requirement of Meeting of Secured Creditors of Petitioner No 2 – NIL
Creditors duly verified by auditors certificate.

Unsecured Creditors

No requirement of Meeting of Unsecured Creditors of Petitioner No 2 – NIL
Creditors duly verified by auditors certificate.

c. **Meetings to be held**
Equity Shareholders

Meeting of Equity Shareholders of Petitioner No 1

Unsecured Creditors

Meeting of Unsecured Creditors of Petitioner No 1

16. It is submitted by Ld. counsel appearing for the Petitioner(s) that Minutes of the meeting of the Equity Shareholders of the Petitioner No 1 convened and held under the supervision of the Chairperson appointed by this Tribunal on 29THDecember, 2023 is annexed to the Company Petition marked – **Annexure – Pin** VOL III at Page No 442 to 447.
17. It is submitted by Ld. counsel appearing for the Petitioner(s) that Minutes of the meeting of the Unsecured Creditors of the Petitioner No 1 convened and held under the supervision of the Chairperson appointed by this Tribunal on 29THDecember, 2023 is annexed to the Company Petition marked – **Annexure – Qin** VOL III at Page No 448 to 452.
18. It is submitted by Ld. Counsel appearing for the Petitioner(s) that, the Petition has now come up for final hearing. Counsel for the Petitioners submits as follows:-
- (a) The circumstances which justify and/or have necessitated the Scheme and the benefits of the same are, inter alia, as follows:-
- a) The Demerged Undertaking and the Remaining Undertaking have their own set of strengths and dynamics in the form of nature of risks, competition, challenges, opportunities and business methods, leading to different growth potentials. Hence, segregation of the two undertakings would enable a focused management to explore the potential business opportunities effectively and efficiently.
- b) The demerger would result in achieving efficiency in operational processes by designing and implementing independent strategies specifically designed for the two businesses and in optimizing profitability. This would in turn enhance the shareholders' wealth.

- c) Targeting and attracting new investors with specific focus and expertise in the two businesses, thereby providing the necessary funding impetus to the long-term growth strategy of the two businesses.

19. Consequently, the Petitioner(s) presented the instant petition for sanction of the Scheme. By an order dated 06TH February,2024 the instant petition was admitted by this Tribunal and fixed for hearing on 07TH March,2024 upon issuance of notices to the Statutory / Sectoral Authorities and advertisement of date of hearing. In compliance with the said order dated 06TH February,2024 the Petitioner(s) have duly served such notices on the Regulatory Authorities viz

NAME OF THE REGULATORY AUTHORITY	DATE OF SERVICE	AFFIDAVIT OF SERVICE	
		ANNEXURE NO	PAGE NO
THROUGH SPEED POST			
Principal Commissioner of Income Tax - 1	15-02-2024	C	18
Income Tax Officer –Ward – 1 (2)	15-02-2024	C	19
Income Tax Officer – Central Circle- 1 (2)	15-02-2024	C	20
Upon GST Authorities ,	27-02-2024	G	34
THROUGH SPECIAL MESSENGER (BY HAND DELIVERY)			
Principal Commissioner of Income Tax - 1	20-02-2024	C	17
Regional Director , Eastern Region , Ministry of Company Affairs	13-02-2024	D	27
Upon Registrar Of Companies, West Bengal	13-02-2024	E	30
Upon Calcutta Stock Exchange Limited	13-02-2024	F	33
Upon Official Liquidator , High Court Calcutta	13-02-2024	H	35
BY ELECTRONIC MAIL			
Principal Commissioner of Income Tax - 1	16-02-2024	C	21 to 22
Income Tax Officer –Ward – 1 (2)	16-02-2024	C	23 to 24
Income Tax Officer – Central Circle- 1 (2)	16-02-2024	C	25 to 26
Regional Director , Eastern Region , Ministry of Company Affairs	16-02-2024	D	28 to 29
Upon Registrar Of Companies, West Bengal	16-02-2024	E	31 to 32
PAPPER PUBLICATION OF NOTICE CONVENING MEETING			
Financial Express – In English	17-02-2024	B	13 to 14
AAjkal – In Bengali Translation thereof	18-02-2024	B	15 to 16

- An affidavit duly affirmed on 01ST March,2024 has also been filed with the Registry.
20. All statutory formalities requisite for obtaining sanction of the Scheme have been duly complied with by the Petitioners. The Scheme has been made bona fide and is in the interest of all concerned.
21. Pursuant to the said advertisements and notices the Regional Director, Ministry of Corporate Affairs, Kolkata (“RD”), Official Liquidator, High Court have filed their representations before this Tribunal.
22. The Official Liquidator has filed his report dated 06-03-2023 and concluded as under:-

Para 2

This office has to report that the Scheme annexed to the Company Petition is a Scheme of Arrangement where the Demerged Company as well as the Resulting Company would continue to exist. Hence this office has nothing to report to the Hon’ble Tribunal.

23. The RD has filed his reply affidavit dated 06-03-,2024 (“RD affidavit”) which has been dealt with by the Petitioner(s) by their Rejoinder affidavit dated 06th March,2024 (“Rejoinder”).The observations of the RD and responses of the Petitioner(s) are summarized as under:-

Paragraph 2 (a) of RD Affidavit

That it is submitted that on examination of report of Registrar of Companies, West Bengal, it appears that no complaint and/or representation has been received against the proposed Scheme of Arrangement. Further, both the applicant companies are up-dated in filing their Financial Statements and Annual Returns for the financial year 31/03/2023.

Paragraph 2 (a) of the Rejoinder

The Deponent has to say that no adverse comments made by the Registrar of Companies, West Bengal in his report to the Regional Director. Further the Registrar of Companies, West Bengal has not received any Complaint and / or representation from any person on the proposed Scheme. Hence no reply is made for the same.

Paragraph 2 (b) of RD Affidavit

That it is submitted that Demerged Company namely RDB REALTY & INFRASTRUCTURE LIMITED is listed on the Bombay Stock Exchange Limited (BSE) and the Calcutta Stock Exchange Limited (CSE). The BSE vide its letter No. DCS/AMAL/TL/R37/2858/2023-24 dated 02.08.2023 issued its 'No adverse observations' to the proposed Scheme of Amalgamation. Further, in the said letter, it is stated that the validity of this Observation letter shall be six months from the date of this letter, within which the Scheme shall be submitted to the NCLT. Similarly, the CSE has also vide its letter No. CSE/LD/15869/2023 dated 03.08.2023 issued its 'No Observation Letter' and the validity of the said letter is six months from the date of that letter, within which the Scheme shall be submitted to the NCLT. However, the Exchanges reserves its rights to withdraw its 'No Adverse Observation' at any stage if the information submitted to the Exchange is found to be incomplete/incorrect/ misleading/false or for any contravention of Rules, Bye- laws and Regulation of the Exchange, Listing Regulation, Guidelines/Regulations issued by Statutory Authorities. (Copies of such letters collectively marked as Annexure- I are enclosed herewith for perusal and ready reference).

Paragraph 2 (b) of the Rejoinder

The Deponent has to say that the averments made by the Regional Director are all matter of records , hence no reply is made in this regard .

Paragraph 2 (c) of RD Affidavit

It is further submitted that the Petitioners to undertake with appropriate affirmation that after the effectiveness of the Scheme, the share capital of the Resulting company i.e RDB Real Estate Constructions Limited, consisting of fully paid up new equity shares of the Resulting Company issued to the Shareholders of the Demerged Company (RDB Realty & Infrastructure Limited) as consideration in terms of the proposed Scheme shall be listed on the BSE Limited and the Calcutta Stock Exchange Limited in accordance with the provision of SEBI Master Circular/guidelines as amended from time to time.

Paragraph 2 (c) of the Rejoinder

The Deponent duly authorised hereby confirms that the shares that will be allotted by the Resulting company i.e RDB Real Estate Constructions

Limited, will be listed on BSE and CSE were the shares of the Demerged Company are listed . The letter issued by the BSE and CSE also mentions the same. Further Paragraph 16.8 (Page No 53, Vol. I of Company Petition) to the Scheme explicitly deals with the listing of shares that will be allotted by the Resulting Company.

Paragraph 2 (d) of RD Affidavit

The Petitioner Companies should be directed to provide list / details of Assets, if any, to be demerged / transferred from the Demerged Company to the Resulting Company upon sanctioning of the proposed Scheme.

Paragraph 2 (d) of the Rejoinder

The Deponent duly authorised hereby confirms that the Petitioner Resulting Company undertakes to file list / details of assets that will be demerged by the Demerged Company upon sanction and confirmation of the Scheme by the Hon'ble Tribunal.

Paragraph 2 (e) of RD Affidavit

That the Petitioner company should undertake to comply with the provisions of section 232(3)(i) of the Companies Act,2013 through appropriate affirmation.

Paragraph 2 (e) of the Rejoinder

The Deponent duly authorised hereby submits that the Scheme submitted for sanctioning and confirmation is a Scheme of Arrangement and hence there will be no amalgamation of Authorised Share Capital. Accordingly, the provisions of section 232(3)(i) of the Companies Act,2013 will not apply to it.

Paragraph 2 (f) of RD Affidavit

That the Resulting Company should be directed to pay applicable stamp duty on the demerge / transfer of the immovable properties from the Demerged Company to the Resulting Company .

Paragraph 2 (f) of the Rejoinder

The Deponent duly authorised hereby submits that the Resulting Company undertakes that it shall pay applicable stamp duty on the transfer of the immovable properties by the Demerged Company to it.

Paragraph 2 (g) of RD Affidavit

The Hon'ble Tribunal may kindly direct the Petitioners 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.

Paragraph 2 (g) of the Rejoinder

The Deponent duly authorised by the Petitioner Companies hereby affirms 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.

Paragraph 2 (h) of RD Affidavit

It is submitted that as per instructions of the Ministry of Corporate Affairs, New Delhi, a copy of the scheme was forwarded to the Income Tax Department on 20/12/2023 for their views/observations in the matter. However no such views/observations in the matter from the Income Tax Department has been received yet. Hon'ble Tribunal may peruse the same and issue order as deemed fit and proper .

Paragraph 2 (h) of the Rejoinder

The Income Tax authorities have not made any observations on notice served by the office of the Regional Director.

Further the Petitioner Companies have also complied with the directions contained in the order passed by the Hon'ble Tribunal and have effected service upon the Income Tax Department. However the said department have not made/ filed observation pursuant to the said notices filed by the Petitioner Companies.

24. Heard submissions made by the Ld. Counsel appearing for the Petitioner, submissions made by the RD. Mr. Alok Tandon JD(ER) appearing for the RD(ER) submits that the office of RD does not have any objection if the scheme is sanctioned. This statement was taken on record on the date of hearing. Upon perusing the records and documents in the instant proceedings and considering the submissions, we allow the petition and make the following orders:-

SANCTION OF THE SCHEME

- a. The **Scheme of Arrangement** mentioned in this Petition being **Annexure "A"** hereto be sanctioned by this Tribunal to be binding with effect from 1st day of

October, 2022 on DEMERGED COMPANY and RESULTING COMPANY and their respective shareholders;

TRANSFER OF ASSETS

- b. All the properties, rights and interest of the **REALTY BUSINESS UNDERTAKING** of the **DEMERGED COMPANY** be transferred to and vested in without further act or deed in **RESULTING COMPANY** and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and vested in **RESULTING COMPANY** for all the estate and interest of **DEMERGED COMPANY** but subject nevertheless to all charges, now affecting the same;

TRANSFER OF ASSETS

- c. All the liabilities and duties in relation to **REALTY BUSINESS UNDERTAKING** of the **DEMERGED COMPANY** be transferred to without any further act or deed to **RESULTING COMPANY** and accordingly the same shall pursuant to Section 232 of the Companies Act, 2013 and read with Companies (Compromises, Arrangements and Amalgamation) Rules, 2016 be transferred to and become the liabilities and duties of **RESULTING COMPANY**;

TRANSFER OF LEGAL PROCEEDINGS

- d. That all the proceedings and/or suit appeals now pending by or against or in relation to **REALTY BUSINESS UNDERTAKING** of the **DEMERGED COMPANY** shall be transferred to and continued by or against the **RESULTING COMPANY**;

ALLOTMENT OF SHARES

- e. The **RESULTING COMPANY** do issue and allot shares to the shareholders of the **DEMERGED COMPANY** as envisaged in the Scheme of Arrangement and for that, if necessary, to increase the authorized share capital;

FILING SCHEDULE OF ASSETS

- f. The schedule of assets in respect of the **REALTY BUSINESS UNDERTAKING** of the **DEMERGED COMPANY** transferred to and vested in the **RESULTING COMPANY** shall be filed jointly by the **RESULTING COMPANY** and **DEMERGED COMPANY** within a period of 60 days from the date of the order to be made herein ;

FILING OF CERTIFIED COPY

- g. The **RESULTING COMPANY** and the **DEMERGED COMPANY** shall within 30 days after the date of obtaining the Certified Copy of the order to be made herein cause certified copies of this order to be delivered to the Registrar of Companies, West Bengal for registration respectively;
- h. Any person interested be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary;
25. The Petitioner(s) shall supply legible print out of the scheme and schedule of assets and liabilities in acceptable form to the department and the department will append such printout, upon verification to the certified copy of the order.
26. The Company Petition **C.P (CAA)/6(KB)2024** connected with Company Application **C.A(CAA)/193(KB)2023** is disposed of accordingly.
27. Urgent certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Order signed on 21st of May, 2024.

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