

On Campus : March 7th - March 9, 2025

Moot Proposition

**BEFORE THE HON'BLE NATIONAL COMPANY LAW TRIBUNAL
AT BENGALURU**

IA No. 1 of 2024

in

CA (CAA) No. 100 of 2024

Bengaluru Celebrity Builders India Pvt. Ltd.

Bengaluru

... Applicant

vs.

1. *Celebrity Builders India Pvt. Ltd.*

Bengaluru

2. *Registrar of Companies*

Bengaluru

3. *District Registrar*

Stamps and Registration Department

Bengaluru

4. *Commissioner of GST*

State Goods and Services Tax Office

Bengaluru

5. *Commissioner of Income-tax*

Income-tax Department

Bengaluru

... Respondents

-
1. Celebrity Builders India Pvt. Ltd. (Celebrity Builders/ the Parent company/ CBIPL) is a company registered under the Companies Act, 1956 on 01.09.2000 and had its registered office in Bengaluru. The parent company was into construction of several multistoried commercial complexes in Bengaluru and other parts of the country. The parent company was registered under construction services during the erstwhile service tax regime and then migrated to the prevalent Goods and Services Tax Act, 2017 (GST) regime. The parent company was also paying applicable income-tax on the sale of the buildings.

On Campus : March 7th - March 9, 2025

2. The parent company constructed high-end and state of the art commercial complexes for its customers and sold them either as independent units in a building or the entire building itself as per the requirements of its customers. In cases where there were agreements with the customers before the beginning of the construction, the parent company will construct the building as per the requirements of the customers. In other circumstances, the parent company would have already completed the constructions and would wait for customers to purchase the constructed complexes as such. Therefore, the modus operandi of the parent company was construction and sale of commercial complexes and individual units in them on bespoke as well as ready-to-sell models.
3. The parent company was functioning thus since its inception where all the projects were under one umbrella i.e. CBIPL. As its business expanded exponentially over period of time and because the parent company was focusing more on all the tier one and major tier two cities in the country, it started to aggregate all the projects, both constructed as well as ongoing, for each city as one undertaking. In the sense, for example, in Bangalore, all the constructions which have been completed and yet to be sold and ongoing projects were also put under one undertaking, namely the Bangalore undertaking. Likewise, similar undertakings were created for each of the major cities in the country.
4. In January 2019, therefore, the parent company thought it fit to create new companies as its subsidiaries for each city and hive off all its assets and liabilities of all the undertakings relating to that particular city to such new subsidiary created for that city. To start with, the parent company created a subsidiary in Bengaluru namely, Bengaluru Celebrity Builders India Private Ltd. (Bengaluru Celebrity Builders/ the Subsidiary company/ BCBIPL) on 02.01.2020. Soon after the subsidiary company was created, the parent company on 01.03.2020 filed an application before the National Company Law Tribunal (NCLT), Bengaluru for a 'Scheme of Arrangement by way of a Demerger' by which all the projects in Bengaluru were to be demerged/hived off to the subsidiary company. In the event of the scheme being approved by NCLT, the situation was such that the parent company will not have any assets or liabilities left with it in so far as the Bengaluru city was concerned as the parent company did not want any assets to remain in its name after demerger. One of the prime objectives for the demerger was to focus on the projects in Bengaluru without consolidating the profits and losses of other undertaking in other cities under one balance sheet of the parent company. The parent

On Campus : March 7th - March 9, 2025

company also wanted to infuse more capital into the subsidiary company and wanted to bring in new members to the board of directors so that the projects in Bengaluru city can be conducted in a more efficient and focused manner.

5. In the above said application, it was mentioned in the scheme that the ‘Appointed Date’ for the scheme as 01.04.2020 and the ‘Effective Date’ would be as and when directed by the NCLT after the scheme would be approved. Along with the application, all the required supporting documents and annexure were filed by the parent company and the subsidiary company for the quick and smooth approval of the scheme. The approval of the scheme was required at the earliest because as on the date of the application read with the appointed date as mentioned in the scheme, there were several immovable and movable properties in the name of the parent company i.e. the demerged company, including both completed and ongoing projects, which were to be demerged to the resulting company i.e. subsidiary company for the subsidiary company to takeover along with all the assets and liabilities.
6. As luck would have it as the entire planet encountered, Covid-19 pandemic struck the country from early March 2020 and its severity increased within days and the functioning of all the institutions had to be halted from 15.03.2020 due to stringent lockdowns. Therefore, the company petition filed by the parent company could not be taken up by the NCLT and was pending since then. Due to the disarray created by the pandemic, some of the prime properties in Bengaluru city were available for sale including vacant lands which were sold by corporates and individuals affected by the pandemic. The parent company saw opportunities for its businesses and some time in January 2021, it purchased couple of vacant lands adjacent to each other so that it could construct a multistoried commercial complex with huge investment. This was the only project undertook by the parent company after filing of the scheme for demerger.
7. The parent company therefore advertised about the project and invited prospective customers to make their offers to purchase the units which will be constructed as per their desire and needs. The parent company received several offers based on which the parent company started the construction of several units as per the needs of the customers. There were some units which were constructed on routine and standard ‘ready-for-sale’ basis also. The ready-to-sell units were completed by December 2022. However, the customized units as per the needs of

On Campus : March 7th - March 9, 2025

the customers were not completed by the parent company and were half constructed. The proportion of constructed and under constructed units were like 50-50 percentage of the total units in the multistoried building. No transfer in the name of any buyers was completed for any of the units. Totally there were 50 units which were each worth around 3 crores.

8. In the meantime, the demerger scheme was finally heard by the NCLT on 31.01.2023 including all the concerned departments which are now respondents in the current application and the same was approved by fixing the appointed date as prayed for from 01.04.2020 and the effective date was fixed by the NCLT as 01.04.2023. All the assets and liabilities of the parent company were transferred to the subsidiary company by virtue of this scheme. There was a finding in the NCLT order that the assets and liabilities as it stands in the name of the parent/demerged company would get transferred to the subsidiary/resulting company as on the appointed date. It so happened that the construction of the new project between the appointed date and the effective date was not brought to the notice of the NCLT during the pendency of the application.
9. The subsidiary company after the scheme was approved undertook all the formalities with the relevant authorities like the Registrar of Companies, etc. in order to ensure that the scheme comes into force from 01.04.2023. After completing all the formalities, the company planned to sell the completed units to the respective buyers and also to complete the under constructed units to the respective buyers. This however took some time as the subsidiary company was focusing on other projects. Eventually, sometime in April 2024, when the subsidiary company wanted to effect the transfer of the units to the customers by way of sale deeds, some of the customers were given legal opinions that the subsidiary company cannot be said to be the owner of the entire building constructed between the appointed date and the effective date as the scheme which was approved by the NCLT does not specifically include properties which came into existence between the appointed date and effective date but instead covers only properties and liabilities as on appointed date.
10. The above situation created difficulty to the subsidiary company since both the parent company and the subsidiary company were of the view and intention to include this new construction also as part of the scheme though not informed to the NCLT during the pendency of the application which was an oversight. Therefore, in order to address this issue, both the

On Campus : March 7th - March 9, 2025

parent and a subsidiary companies passed necessary resolutions on 01.06.2024 resolving that the construction of the new commercial complex and its units during the pendency of the application for sanctioning the scheme before the NCLT was for the benefit of the subsidiary company alone and therefore, the ownership of the said entire building should belong to the subsidiary company. Apart from passing this resolution on the ownership of the said building, both the companies also resolved to approach the NCLT by filing a modification/clarification application to modify the scheme sanctioned by the NCLT dated 31.01.2023 to the limited extent to modify the said order to include the above commercial building also in the name of the subsidiary company as a part of the demerger scheme.

11. With the passing of the above resolution, the subsidiary company filed the modification application on 30.06.2024 before the NCLT, praying *inter alia* that the Hon'ble Tribunal may be pleased to modify its order dated 31.01.2023 by including the above commercial complex within the ambit of the scheme sanctioned by it so that the said immovable property will belong to the subsidiary company from the appointed date itself i.e. 01.04.2020.
12. The NCLT after hearing the case felt it apropos to order notice to four important departments such as (i) the Registrar of Companies to analyze on the maintainability of such an application and whether the NCLT has powers to do so and whether there has been any delay in filing the application which is uncondonable, (ii) the Department of Stamps and Registration to see if the above application was an attempt to avoid any applicable stamp duty and registration charges, (iii) the Goods and Service Tax Department to see if the transfer from the parent company to the subsidiary company of the under-constructed and ready-to-sell units would attract GST based on any deemed sale and valuation, and (iv) the Income-tax Department to see if the transfer from the parent company to the subsidiary company of the under-constructed and ready-to-sell units would attract any income-tax liability.
13. The larger issue before the NCLT was whether the subsidiary company is entitled to get the scheme modified and should be liable only to pay the applicable stamp duty for the registration of such modified scheme and not at the rate applicable for sale/conveyance rate which will make the concept of demerger impractical especially because the subsidiary felt that the parent is no more the owner of the building after passing the necessary resolutions which clearly revealed the intention of transferring its ownership to the subsidiary at the time of construction

On Campus : March 7th - March 9, 2025

itself and mere non-inclusion in the scheme during the interregnum cannot be fatal to its transfer by way of demerger. Regarding GST, the issue was whether GST will be applicable on demergers and if the scheme is not modified whether it can be treated as supply of under constructed units by the parent to the subsidiary thereby attracting GST to that extent. On the income tax front, the issue was whether since subsidiary company was entitled to complete the remaining under constructed units, there is said to be ‘transfer’ under Income-tax Act, 1961 read with section 53A of the Transfer of Property Act, 1882 and on the completed units whether capital gains would be applicable for transferring from the parent to the subsidiary. Therefore, whether there was an attempt to avoid goods and service tax, income tax and transfer tax (stamp duty) in the guise of a modification application or whether the applicant can be compelled to undergo these burdens which otherwise it is not liable to pay merely on account of oversight and inadvertence in not amending the scheme by including the new building constructed between the appointed and effective date.

14. The NCLT gave liberty to the applicant counsels and the respective four departments (to be addressed jointly as respondents) counsels to cover the above broad legal issues and such other issues as the parties feel necessary. Based on the submissions of the counsels, the NCLT would consider allowing the application without any tax liability or modify the scheme with such conditions or reject the application if it was an attempt to avoid legitimate Caesar’s dues.
