

**THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH**

Order Delivered on: 12.02.2018

CO. APPL.(M) 15(ND)/2018

IN THE MATTER OF:

Pinokio Entertainment Private Limited
Applicant No.1/Transferor Company

AND

HSG Propmart Private Limited
Applicant No.2/Transferee Company

AND

Baba Ventures Private Limited
Applicant No.3/ Demerged Company

AND

Appreciate Fincap Private Limited
Applicant No. 4/ Resulting Company

Through: Mr. Mahesh Agarwal, Advocate

CORAM:

MS. INA MALHOTRA, MEMBER (JUDICIAL)

MS. DEEPA KRISHAN, MEMBER (TECHNICAL)

ORDER

PER SMT. INA MALHOTRA, MEMBER (J)

This is a joint petition filed by way of a 1st Motion under Sections 230-232 of the Companies Act, 2013 (hereinafter referred to as 'the Act') by Pinokio Entertainment Private Limited (Applicant No. 1/ Transferor Company), HSG Propmart Private Limited (Applicant No.2/Transferee Company), Baba Ventures Private Limited (Applicant No.3/ Demerged Company) and Appreciate Fincap Private Limited (Applicant No. 4/ Resulting Company) in connection with the Scheme of Arrangement (hereinafter referred to as 'the Scheme') for demerging the business of the Transferor Company with the Transferee Company.

2. As per averments, the registered offices of both the Applicant Companies are situated in the National Capital Territory of Delhi, falling within the jurisdiction of this Court.

3. The Applicant No. 1 / Transferor no. 1 Company was initially incorporated under the Act on 06th January, 2010 under the name and style of "Adhunik Barter Private Limited". Subsequently the name of the company was changed to its present name and style as "Pinokio Entertainment Private Limited" under certificate of incorporation dated 14th August, 2015. Its authorized share capital is Rs. 37Lakhs divided into equity shares of Rs. 10/- each. Its issued, subscribed and paid up capital is Rs. 36,10,000/-.



4. The main objects of Applicant No. 1 Company/Transferor Company was to carry on the business of building and maintaining amusement parks, to promote, organize and manage all kinds of entertainments, sports, recreation and amusements, whether indoor or outdoor including funfairs, exhibitions, ride shows and games, competitions, pamphlets and other things to the prospective customers and clients.

5. The Applicant No. 2 Company / Transferee Company was incorporated under the Act on 1st October, 2014. Its authorized share capital is ^{Rs.} 1,61,00,000/- divided into equity shares of Rs. 10/- each while its paid up capital of 1,59,00,000/- divided into 15,90,000/- equity shares of Rs. 10/- each.

6. The object of the Transferee Company is to carry on the business of real estate promoters, developers and project management association including civil, mechanical, electrical, and all other type erection, commissioning projects trading as well as consultant for execution of projects on turkey basis.

7. The Applicant No. 3 / Demerged Company was initially incorporated under the Act on 14th September, 2004 under the name and style of "Gurutaran Auto Engineering Private Limited". Subsequently the name of the company was changed to its present name and style as "Baba Ventures Private Limited" under certificate of incorporation dated 3rd September, 2007. Its authorized share capital is Rs. 11,62,50,000/- divided into

1,16,25,000 equity shares of Rs. 10/- each. Its issued, subscribed and paid up capital is Rs. 88,51,850/-.

8. The object of the Demerged Company is to carry on the business of sell, lease, hire, let, sub-let, give on rent, manage, supervise, dispose off or, otherwise deal in real estate, land, buildings, civil works, movable and immovable properties of any nature or description either as owners or on collaborations and to otherwise deal in all kinds of building materials, equipments, plant and machinery used in connection therewith.

9. The Applicant No. 4 Company / Resulting Company was incorporated under the Act on 21st March, 1996. Its authorized share capital is Rs. 5,95,00,000/- equity shares of Rs. 1/- each while its paid up capital of 4,41,20,300/- equity shares of Rs. 1/- each.

10. The object of the Resulting Company is to carry on the business of financing the industrial enterprise or other persons by way of lending and advancing money with or without security and upon such terms and conditions as the company may think fit and to guarantee or become sureties for the performance of any agreement or contract entered into by any enterprise with any financial institution, banks or other parties for obtaining finance whether for its long term capital, working capital or for any deferred payment finance or for any other purpose.

11. Copies of the Memoranda of Association and Articles of Association along with their audited Balance Sheets, as on 31.03.2017 and reports of the auditors of all the Applicant

Companies have been filed on record. Further, the latest Provisional Accounts of the Applicant Companies for the period ended December 15, 2017 filed on record.

The Memorandum and Articles of Association of each company provide for a entering into a Scheme of such Arrangement.

12. It has been stated on behalf of the Applicant Companies that the Scheme of Arrangement is necessitated and justified on grounds of:-

a. The Applicant Companies are held by the same promoter group. The proposed reorganization will help in simplification and rationalization of the holding structure and reduction in corporate/legal entities of the group;

b. Enable focused management orientation to each of the business undertakings of the Demerged Company due to individual specialization and leadership vision, which would provide greater visibility on the performance of the said businesses;

c. Attribution of appropriate risk and valuation to different business undertakings based on their respective risk return profile and cash flow;

d. Would provide independence to management in decision making regarding the use of the cash flows, capital expenditure and other reinvestment in respective businesses'

e. Would have beneficial results for the said companies, their shareholders, stakeholders and all concerned.

13. With a view to achieve greater management focus and keeping in mind the paramount and overall interest of the shareholders, the Board of Directors of the Transferor Company/ Applicant No. 1 held a meeting on 2nd January, 2018 and unanimously approved the proposed Scheme of Arrangement. The Transferor Company No. 1 has 2 shareholders who have given their consent affidavits to the proposed Scheme of Arrangement. The Transferor Company No.1 does not have any secured creditor. The Transferor Company No.1 has 1 unsecured creditor who has given its consent vide an affidavit.

14. Similarly, the Board of Directors of the Applicant No. 2/Transferee Company in their separate meeting held on 2nd January 2018 has unanimously approved the proposed Scheme. The Transferee Company has 2 shareholders and 6 Unsecured creditors who have given their consent vide their affidavits. The Transferee Company does not have any secured creditor.

15. The Demerged Company/ Applicant No.3 has 9 shareholders, consent of shareholders constituting 99.33% in value has been given by way of Affidavits.

The Demerged Company has 2 Unsecured creditors, who have given their consent vide their affidavits. The Demerged Company does not have any secured creditor.

16. The Resulting Company/ Applicant No.4 has 8 shareholders, consent of shareholders constituting 99.99% in value has been given by way of Affidavits. There is only 1 preference shareholder who has given the consent vide their affidavit.

The Resulting Company has 1 secured creditor, who has given the consent vide an affidavit. The Resulting Company does not have any Unsecured Creditor.

17. The details pertaining to the Secured/ Unsecured Creditors have been duly certified by the Chartered Accountants.

The Transferee Company shall account for the amalgamation of the Transferor Company in its books of accounts as per the "Pooling of interest method as prescribed in Accounting Standard 14 issued by the ICAI.

Copies of the separate Resolutions dated 2nd January, 2018 by the Board of Directors of each of the Applicant Companies, approving the scheme have been filed with the application and the same are on record.

The salient features of the Scheme are:-

1. The appointed date shall be 1st April, 2018.
2. The Scheme covers amalgamation of the Transferor Company with the Transferee Company, and demerger of the Treasury Business of the Demerged Company into the Resulting Company.
3. The Scheme provides that upon coming into effect and with effect from the Appointed date, the entire business and whole of the Undertaking of the Transferor Company shall, pursuant to the provisions of Section 230 to 232 of the Act, and other applicable provisions of the law for the time being in force and sanction of this Scheme by NCLT,

New Delhi Bench, without any further act or deed, stand transferred to and vested in the Transferee Company on the Appointed date, on a going concern, so as to become as from the Appointed Date the assets and liabilities of the Transferee Company and to vest in the Transferee Company all the rights, title, interest or obligations of the Transferor Company therein. The authorized share capital of the Transferor Company (being Rs. 37,00,000/- comprising of 3,70,000 equity shares of Rs. 10/- each) shall stand consolidated and vested in and be merged with the authorized share capital of the Transferee Company.

4. The Scheme provides that the Transferor Company shall dissolved on the Effective date in terms of the Scheme, without the process of winding up;

18. So far as the Share Exchange Ratio is concerned, in terms of scheme, it has been determined in accordance with the Report on Valuation of Shares & Share Exchange Ratio dated 2nd January, 2018, issued by NPRA & Associates, Chartered Accountants, New Delhi, as per the settled principles of valuation.

19. All the employees of the Transferor Company employed in the activities relating to the Demerged Business, in service on the Effective Date shall become the employees of the Transferee Company on and from such date without any break or interruption in service and upon terms and conditions not less favorable than



those applicable to them in the Demerged Business of the Transferor Company, from the Effective Date.

The copy of the Scheme has been filed along with the application.

20. That the Applicants submits that the provisions relating to the accounting treatment for the proposed Arrangement, as contained in the Scheme is in conformity with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013. The Statutory Auditors of the Transferor and Transferee Company have certified the same.

21. The aforementioned written consents Affidavits placed on record of all the Shareholders and the Secured / Unsecured Creditors of the Applicant Companies and have been examined and found to be in order.

22. The prayer of the applicants is for dispensing with the requirement of convening the meetings of the equity shareholders, secured and unsecured creditors of all the Applicant Companies for approving the proposed Scheme, as well as for effecting any publication.

22. In view of the aforesaid facts, it directed:-

A. In respect of the Transferor Company/ Applicant No.1:-

- As the 2 shareholders have accorded their consent vide affidavits placed on record, the requirement for convening meetings of the equity shareholders of the Transferor Company is hereby dispensed with.
- There are no secured creditor of the Transferor Company. Therefore, the requirement of convening their meeting does not arise.
- There is only one Unsecured creditor of the Transferor Company whose consent Affidavit is on record. Therefore the convening a meeting for the secured creditor is dispensed with.

B. In respect to the Transferee Company/ Applicant No.2:-

- Consent of its 2 Shareholders is on record. Convening their meeting is therefore dispensed with.
- Further there are no secured creditor of the Transferee Company. Therefore, the requirement of holding the meeting does not arise.
- There are 6 Unsecured creditors of the Transferee Company whose consent Affidavits are on record. Accordingly the convening of the meeting of unsecured creditors is dispensed with.

C. In respect to the Demerged Company/ Applicant No.3:-



- In view of the consent accorded by more than 90% in value of the 9 Shareholders, the convening of their meeting is also dispensed with.
- Further there are no secured creditor of the Demerged Company. Therefore, the requirement of holding the meeting does not arise.
- There are 2 Unsecured creditors of the Demerged Company whose consent Affidavits are on record. Accordingly the convening of the meeting of unsecured creditors is dispensed with.

D. In respect to the Resulting Company/ Applicant No.4:-

- In view of the consent affidavit of its 1 Preference Shareholder having been filed, the convening of meeting for approval of the Scheme is dispensed with.
Further in view of the consent accorded by more than 90% in value of the 8 Shareholders, the convening of their meeting is also dispensed with.
- There are no Unsecured creditors of the Resulting Company. Therefore, the requirement of holding the meeting does not arise.

- There is 1 secured creditor of the Resulting Company whose consent Affidavit is on record. Accordingly the convening of the meeting of secured creditor is dispensed with.

2. The companies shall individually send notices to the Central Government, through the Regional Director, the Income Tax Authorities and Registrar of Companies NCT Delhi & Haryana, OL and the Sectoral Regulator along with copy of the Scheme and other required documents and as disclosures required under the provisions of 'The Act', read with 'The Rules'.

23. The applicant company shall further furnish a copy of the Scheme, free of charge within one day of any requisition made by any creditor or member of all the companies.

24. The authorized representative of the Applicant Companies shall furnish an affidavit of service of notice on all concerned.

25. All the aforesaid directions are to be complied with strictly in accordance with the applicable law including forms and formats contained in the 'The Rules' as well as the provisions of the 'The Act' by the Applicants.

The application stands allowed in the aforesaid terms.

Sd-

(Deepa Krishan)
Member Technical

-Sd-

(Ina Malhotra)
Member Judicial