

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 845 (MAH) OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO.583 (MAH) OF 2017
Oricon Properties Private Limited....Petitioner / Transferor Company
AND

COMPANY SCHEME PETITION NO. 846 (MAH) OF 2017
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 584 (MAH) OF 2017
Oricon Enterprises Limited Petitioner / Transferee Company

In the matter of the Companies Act, 2013

AND

In the matter of Petition under Sections 230 to 233
of the Companies Act, 2013 and other applicable
provisions of the Companies Act, 2013

AND

In the matter of Scheme of Amalgamation of
Oricon Properties Private Limited ('the
Transferor Company'), WITH Oricon Enterprises
Limited ('the Transferee Company')

Date : 18th October, 2017

CORAM: Hon'ble B.S.V Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

Called for Hearing

Mr. Naser Ali Rizvi i/b Thakore Jariwala & Associates, Advocates for
Petitioners.

Mr. Ramesh Gholap, Deputy Registrar of Companies in the Petitions.

Per: V. Nallasenapathy, Member (T)

1. Heard learned counsel for parties. No objector has come to oppose the
Scheme nor has any party controverted any averments made in the
Petitions.

2. The sanction of the Court is sought under section 230 to 233 of the Companies Act 2013 to an arrangement embodied in the proposed Scheme of Amalgamation of ORICON PROPERTIES PRIVATE LIMITED ("the Transferor Company") with ORICON ENTERPRISES LIMITED ("the Transferee Company").
3. The learned Advocate for the Petitioner Companies states that the Transferor Company and Transferee Company are closely held companies and all the companies are part of the same group and the Transferor Company is a Wholly Owned Subsidiary of the Transferee Company. The Transferor Company is engaged in the business of construction, development of land and real estate activities and the Transferee Company is engaged in the business of manufacture of petro chemical products, Liquid Colorants and trading activities.
4. The Learned Advocate for the Petitioner Companies further states that the Transferor Company is wholly owned subsidiary of the Transferee Company and thus the major objective of the Scheme is consolidation of businesses of the Transferor Company into a single entity which would result in the business activities to be carried out with greater focus and specialization, enable the shareholders of Oricon Enterprises Limited to get direct participation in the businesses of its present wholly owned subsidiary, simplified group and business structure, strengthen leadership in the industry in term of asset base and benefit of synergy, optimum use of human relations, stability of operations, greater and optimal utilization of resources, to increase operations and confer competitive advantage, achieving efficiencies and economies of scale through efficient utilization of resources and facilities and reduction in operational costs, to achieve size, scale, integration and greater financial strength and flexibility. This will result in effective management and utilization of funds for capital expenditure and working capital. The efficiencies generated through cash management of the merged entity and access to cash flow generated by the combined business can be deployed more efficiently to fund organic and inorganic growth opportunities and to maximize shareholders value.

5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the Company Scheme Petitions.
6. The Learned Advocate for the Petitioners states that the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in Company Scheme Application and seeks sanction to the said proposed Scheme of Amalgamation.
7. The Learned Advocate appearing on behalf of the Petitioners have stated that they have complied with all requirements as per directions of this Hon'ble Tribunal and they have filed necessary Affidavits of compliance in the Hon'ble Tribunal. Moreover, Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
8. The Official Liquidator has filed his report on 22nd September, 2017 stating therein that the Affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his Report dated 25th September, 2017, *inter alia*, stating therein that save and except as stated in paragraphs IV (a) to (i) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In the paragraphs of the said Affidavit, the Regional Director has stated that :

"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT as under. -

(a) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 17th April 2017 has served a copy company scheme application no 583 & 584 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 18/09/2017 to IT Department;

- (b) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- (c) *M/S. Oricon Properties Private Limited the Transferor Company is a wholly owned subsidiary of M/S Oricon Enterprises Limited (the Transferee Company). Hence, this Hon'ble Tribunal may kindly direct the companies involved in the scheme to file solvency certificate with the Registrar of companies, Mumbai, as required u/s 233 (1) (c) read with section 233 (12) of Companies Act, 2013 and pass appropriate order (s) as deem fit.*
- (d) *Regarding Part-III clause 3.2.2 (Licenses & Certificate), Clause -3.2.3 (Benefits, entitlements, Incentives and Concessions) Clause -3.2.4 (Contracts) and Clause-3.2.5 (Intellectual property) the petitioner to issue notices to various registering and statutory authorities;*
- (e) *M/S Oricon Properties Private Limited the transferor Company is merging with M/S. Oricon Enterprises Limited the Transferee Company is a public Company and its shares are Listed on BSE Limited and National Stock Exchange of India Limited. in this regard Hon'ble Tribunal may direct the Transferee Company to obtain NOC from Stock Exchange/SEBI.*
- (f) *The Transferor Company is in the Real Estate Business. Hence, the company be directed to clarify the applicability of Real Estate Regulation and Development Act, 2016 with Maharashtra Rules and Regulation 2017 and to submit NOC;*
- (g) *As per Part-I Definitions and Interpretations Clause 1.1.2 the scheme. "Appointed Date " means 1st July, 2016 for Transferor Company or such other date as the National Company Law Tribunal [NCLT] Mumbai may direct, which shall be the date with effect from which this Scheme shall become effective and with effect from which date the Transferor Company shall amalgamate with the Transferee Company in terms of the Scheme, upon the order sanctioning this Scheme becoming effective. In this regard, it is submitted in terms of provisions of section 232 (6) of the Companies Act,2013 it should be 1st July, 2016;*
- (h) *Regarding observations of ROC Mumbai, as mentioned vide para 11 Hon'ble Tribunal may pass appropriate orders/orders as deem fit.*
- (i) *It is submitted that petitioner has to comply with proviso to section 230(7) read with Rule 6(3)(ix)(e) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 the auditor of the company to issue Certificate to the effect that the Accounting Treatment, if any, proposed in the scheme is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013. Hon'ble Tribunal may pass appropriate orders/orders as deem fit.*

10. It is further submitted that the Transferor Company and Transferee Company have filed a joint affidavit dated 6th October, 2017 in response to the various observations made by the Regional Director and the Registrar of Companies, Mumbai, Maharashtra in their respective reports to the effect with the Registry on 6th October, 2017 and with a copy of affidavit to the Hon'ble Regional Director and Registrar of Companies, Mumbai, Maharashtra on 9th October, 2017. The Petitioner Company has also given necessary undertakings in response to the observations of the Regional Director & Registrar of Companies.
11. So far as the objection of the Regional Director as stated in paragraph IV (a) & (b) of his Affidavit is concerned, the Petitioner Companies submit that they have complied with the directions given by this Hon'ble Tribunal by giving notice to the concerned Income Tax Department. However, the Income tax Department has not filed any representation as contemplated under Section 230 of the Companies Act 2013. The Petitioner Companies further submits that the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. So far as the objection of the Regional Director as stated in paragraph IV (c) of his Affidavit is concerned, it is submitted that in due compliance of Section 233 (1) (c) read with Section 233 (12) of the Companies Act, 2013 the Petitioner Companies have voluntarily filed the necessary Solvency Certificate with the office of the Registrar of Companies on 4th October, 2017 and copy of which is also attached along with the Affidavit dated 6th October 2017 filed with this Tribunal.
13. So far as the objection of the Regional Director as stated in paragraph IV (d) of his Affidavit is concerned, it is submitted that the Petitioner Companies have issued necessary notices to all the concerned sectoral and regulatory authorities in compliance with Section 230 (5) under the Companies Act, 2013. The Learned Counsel for the Petitioner Companies further submits that, the Petitioner Companies have in their Affidavit dated 6th October 2017 stated that with reference to Clauses 3.2.2, 3.2.3,

3.2.4 and 3.2.5 of the scheme is concerned, we say and submit that the Transferor Company does not have any Licenses and Certificates except No Objection Certificate (NOC) from Maharashtra Housing And Area Development Authority (MHADA) for redevelopment of property which is issued on yearly basis and approval from Municipal Corporation of Greater Mumbai (MCGM). The MHADA and MCGM are not the sectoral regulator or authorities or are likely to be effected by the Scheme. Further the Transferor Company does not enjoy any benefits, entitlements, Incentives and concessions and have no Contracts with any statutory authorities / party and does not own any intellectual property. The Petitioner Companies however undertakes to issue notices and /or make necessary applications to various registering and statutory authorities from time to time after sanctioning of the scheme of amalgamation by this Hon'ble Tribunal.

14. So far as the objection of the Regional Director as stated in paragraph IV (e) of his Affidavit is concerned, Counsel for Petitioner submits that as stated in Paragraph 32 to the Petition filed by the Transferee Company, the BSE Limited and the National Stock Exchange of India Limited (NSE) have already granted their respective No Objection Letter dated 18th April, 2017 and 19th April, 2017 to the scheme of amalgamation between the Petitioner Companies, Copies of which are already annexed as Exhibit- 'K' & 'L' to the Petition by the Transferee Company filed before this Hon'ble Tribunal. The Petitioner Companies further clarifies that BSE and NSE have given their NOCs after receipt of observations from Securities and Exchange Board of India (SEBI). The Petitioner Companies further submits that the observations made by SEBI, BSE and NSE have already been incorporated in the Scheme, which is already approved by the Equity shareholders of the Petitioner Companies.
15. So far as the objection of the Regional Director as stated in paragraph IV (f) of his Affidavit is concerned, the Petitioner Companies states that as on date, the Transferor Company is not engaged in any real estate development activity nor there is any ongoing project commenced or pending or any construction activity is undertaken by the Transferor

Company. The Transferor Company at present does not have any project that is registered or registrable under Real Estate Regulatory Authority (RERA). Accordingly, it is clarified that the provisions of Real Estate Regulation and Development Act, 2016 or the provisions of Maharashtra Rules and Regulations, 2017 made thereunder are not applicable to the Transferor Company and the sectoral approval under RERA, is not applicable in the facts and circumstances of present case.

16. So far as the objection of the Regional Director as stated in paragraph IV (g) of his Affidavit is concerned, the Petitioner Companies undertake that the Appointed date under Clause 1.1.2 of the Scheme will be 1st July 2016 and in terms of the provisions of Section 232(6) of the Companies Act 2013, the scheme will be given effect from such date i.e. 1st July, 2016 accordingly.
17. So far as the objection of the Regional Director as stated in paragraph IV (h) of his Affidavit is concerned, read with Paragraph 11 of the Report and Paragraph 32 the ROC Report dated 13th September 2017, the Petitioners submit as under:
 - 17(i) With Reference to clause (i) of Paragraph 32 of the ROC Report, the same is already addressed by us in Paragraph 15 above and hence the same be treated as dealt accordingly.
 - 17(ii) With Reference to clause (ii) of Paragraph 32 of the ROC Report, we say and submit that the Clause No 32 of Memorandum of Association of Oricon Enterprises Limited, the Transferee Company (OEL) permits the Transferee Company (OEL) to carry on the business of construction activities.
 - 17(iii) With Reference to clause (iii) of Paragraph 32 of the ROC Report, it is submitted that the Transferee Company (OEL) is not a Non-Banking Financial Company (NBFC) as the Transferee Company is presently engaged in the business of manufacture of petro chemical products, Liquid Colorants and trading activities and its principal business is manufacturing. Further the Transferee Company does not accept deposits from public and is not engaged in business of

assets finance, loans and not in business of acquiring securities and hence not involved in finance activities. As per the notification /Press Release No. 1998-99/1269 dated April 8, 1999 issued by Reserve Bank of India (RBI), a company will be treated as an NBFC as its principal business, if its financial assets are more than 50 per cent of its total assets (netted off by intangible assets) AND income from financial assets should be more than 50 per cent of the gross income. Thus for the purpose of fulfilling criteria of "Principal Business" both the conditions are to be satisfied. Further the investment made in subsidiaries is to be excluded while calculating NET OWNED FUNDS (NOF) as defined under Section 45 IA of Reserve Bank of India Act, 1934. Out of the total amount of Non-Current Investment, investment made in subsidiary companies is 99.96%, which value of investment is to be excluded for the purpose of calculating NOF. The Petitioner Companies, vide their Affidavit dated 6th October 2017, have demonstrated and clarified that the income from financial assets of the Transferee Company is not more than 50% of its total income. In view of the same the Transferee Company is not a NBFC and accordingly registration with or notice to Reserve Bank of India (RBI) is not required and in turn NOC from RBI is also not required to be obtained.

- 17(iv) With Reference to clause (iv) of Paragraph 32 of the ROC Report, the same is complied as stated above in paragraph 12 and hence the same be treated as dealt accordingly.
- 17(v) With Reference to clause (v) of Paragraph 32 of the ROC Report, it is submitted that the Petitioner Companies has filed with the office of the Registrar of Companies their respective annul returns and Audited Balance sheet for the financial year ending 31st March 2016. Further it is submitted that there no change in the capital structure or financial position of the Petitioner Companies as on the proposed Appointed date i.e. 1st July 2016 as compared to the position as on 31st March, 2016. The Petitioner Companies have however filed their respective balance sheets stating their financial position as on 30th June 2016, which are annexed as Exhibit-'E' & 'F'

to their Joint Affidavit dated 6th October 2017 filed with this Tribunal.

- 17(vi) With Reference to clause (vi) of Paragraph 32 of the ROC Report, the Transferee Company undertakes to pass accounting entries in compliance with Accounting Standard AS-14 or other applicable Accounting Standard. Further the Petitioner Companies confirms and undertakes that the Board of Directors of the Petitioner Companies shall not exercise any power to alter or deviate from such accounting treatment without prior approval and order of the Hon'ble Tribunal.
18. With respect to the observation of the Regional Director as contained in Paragraph IV (i) of the Report, it is submitted that the Petitioner Companies has filed the Auditors Certificate issued by M/s. Khandelwal Jain & Co. Chartered Accountants certifying that the scheme is in compliance with the provision of Section 133 of the Companies Act, 2013, which is annexed as Exhibit-'H' to the respective Petition.
19. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 11 to 18 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
20. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to Public Policy.
21. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petitions filed by the Petitioner Companies are made absolute in terms of prayer clauses (a) and (b).
22. The Petitioner Companies to lodge a copy of this order duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of receipt of this order.
23. Petitioner Companies are directed to file/lodge a copy of this order and Scheme with the concerned Registrar of Companies, electronically, along

with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 2013, whichever is applicable, in addition to the physical copy within 30 days from the date of issuance of the order by the registry.

24. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of receipt of order.
25. All concerned regulatory authorities to act on copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V.Prakash Kumar, Member (J)