

IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

CSA No.1011of 2017

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 and  
other applicable provisions of the Companies  
Act, 2013;

AND

In the matter of Scheme of Arrangement  
between Kapstone Constructions Private  
Limited ('the Transferor Company'/'the  
Demerged Company') and Rustomjee  
Knowledge City Private Limited ('the  
Transferee Company'/'the Resultant  
Company') and their respective Shareholders

Kapstone Constructions Private Limited.....First Applicant Company

(Transferor Company / Demerged Company)

AND

Rustomjee Knowledge City Private Limited .....Second Applicant Company

(Transferee Company / Resulting Company)

Order delivered on 13th December, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Applicant (s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s.

Rajesh Shah & Co., Advocate for the Applicant

**Per: B.S.V. Prakash Kumar**, Member (J)

**ORDER:**

**UPON** the application of the Applicant Companies above named by the First Applicant Company and the Second Applicant Company **AND UPON HEARING** Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co, Advocates for the First Applicant Company and the Second Applicant Company, **AND UPON READING** the Affidavit dated 17<sup>th</sup> day of November, 2017 of Mr. Yojeshkumar Thakor, Authorised

Signatory of both the Applicant Companies, in support of the Application and the Exhibits therein referred to, **IT IS ORDERED THAT:**

1. That the meeting of the Class A and Class B Equity Shareholders of the First Applicant/Demerged Company be convened and held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 10:00A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement between Kapstone Constructions Private Limited and Rustomjee Knowledge City Private Limited and their respective shareholders.
2. That the meeting of the Redeemable Preference Shareholders of the First Applicant/Demerged Company be convened and held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 11:00 A.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement between Kapstone Constructions Private Limited and Rustomjee Knowledge City Private Limited and their respective shareholders.
3. That the meeting of the Equity Shareholders of the Second Applicant/Resulting Company be convened and held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 12:00 noon for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement between Kapstone Constructions Private Limited and Rustomjee Knowledge City Private Limited and their respective shareholders.
4. That the meeting of the 8% Non Cumulative Redeemable Preference Shareholders of the Second Applicant/ Resulting Company be convened and held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 01:00 P.M. for the purpose of considering and, if thought fit, approving with or without modification(s) the proposed Scheme of Arrangement between Kapstone Constructions Private Limited and Rustomjee Knowledge City Private Limited and their respective shareholders.
5. That at least 30 clear days before the said meetings of the Shareholders of the First and Second Applicant Companies to be held as aforesaid, a notice convening the said, meeting at the place date and time as aforesaid, together with a copy of the Scheme of Arrangement and a copy of the statement disclosing all material facts as required under Section 230(3) of the Companies Act 2013 read with Rule 6 of

the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 notified on 14<sup>th</sup> December 2016 and the prescribed Form of Proxy, shall be sent by Courier / Registered Post / Speed Post or through Email (to those Shareholders whose email addresses are duly registered with the First and the Second Applicant Companies for the purpose of receiving such notices by email), addressed to each of the Shareholders of the First and the Second Applicant Companies, at their last known addresses or email addresses as per the records of the First and the Second Applicant Companies respectively.

6. That at least 30 clear days before the meetings of the Shareholders of the First and the Second Applicant Companies to be held as aforesaid, a notice convening the said meetings, indicating the place, date and time of meeting as aforesaid be published and stating that copies of the copy of the Scheme of Arrangement and the statement required to be furnished pursuant to Section 230(3) of the Companies Act 2013 read with Rule 6 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and the Form of Proxy can be obtained free of charge at the offices of the First and the Second Applicant Companies as aforesaid and / or at the office of their Advocates, M/s Rajesh Shah & Co., Oriental Bldg., Office No. 16, 1<sup>st</sup> Floor, 30, Nagindas Master Road, Opp. Welcome Hotel, Flora Fountain, Mumbai - 400001.
7. That the notice of the meetings shall be advertised in two local newspapers viz. "Free Press Journal" in English and "Navshakti" in Marathi, both circulated in Mumbai not less than 30 days before the date fixed for the meeting.
8. The Applicant Companies undertakes to:
  - i. Issue Notice convening meeting of the shareholders as per Form No. CAA.2 (Rule 6) of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
  - ii. Issue Statement containing all the particulars as per Section 230 of the Companies Act, 2013;
  - iii. Issue Form of Proxy as per Form No. MGT-11 (Rule 19) of the Companies (Management and Administration) Rules, 2014; and
  - iv. Advertise the Notice convening meeting as per Form No. CAA.2 (Rule 7) the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The undertaking is accepted.

9. That Mr. Percy Chowdhry, Managing Director of First Applicant Company, failing him Mr. Boman Irani, Director of First Applicant Company, failing him Mr. Chandresh Mehta, Director of First Applicant Company, failing him Mr. Vishal Kokadwar, Chief Financial Officer of First Applicant Company, failing him Mr. Yojesh Thakor, Company Secretary of First Applicant Company, failing him Mr. Sajal Gupta, Authorized Signatory of First Applicant Company, failing him Mr. Bimal Nanda, Authorized Signatory of First Applicant Company, failing him Mr. Sushil Parab, Authorized Signatory of First Applicant Company and failing him Mr. Johnson Almeida, Authorized Signatory of First Applicant Company shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the First Applicant Company to be held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 10:00 A.M., or any adjournment or adjournments thereof.
10. That Mr. Percy Chowdhry, Managing Director of First Applicant Company, failing him Mr. Boman Irani, Director of First Applicant Company, failing him Mr. Chandresh Mehta, Director of First Applicant Company, failing him Mr. Vishal Kokadwar, Chief Financial Officer of First Applicant Company, failing him Mr. Yojesh Thakor, Company Secretary of First Applicant Company, failing him Mr. Sajal Gupta, Authorized Signatory of First Applicant Company, failing him Mr. Bimal Nanda, Authorized Signatory of First Applicant Company, failing him Mr. Sushil Parab, Authorized Signatory of First Applicant Company and failing him Mr. Johnson Almeida, Authorized Signatory of First Applicant Company shall be the Chairman of the aforesaid meeting of the Preference Shareholders of the First Applicant Company to be held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 11:00 AM or any adjournment or adjournments thereof.
11. That Mr. Boman Irani, Director of the Second Applicant Company, failing him Mr. Percy Chowdhry, Director of the Second Applicant Company, failing him Mr. Sajal Gupta, Authorized Signatory of Second Applicant Company, failing him Mr. Bimal Nanda, Authorized Signatory of Second Applicant Company, failing him Mr. Vishal Kokadwar, Authorized Signatory of Second Applicant Company, failing him Mr. Yojesh Thakor, Authorized Signatory of Second Applicant Company, failing him Mr. Sushil Parab, Authorized Signatory of Second Applicant Company and failing him Mr. Johnson Almeida, Authorized Signatory of Second Applicant Company, shall be the Chairman of the aforesaid meeting of the Equity Shareholders of the Second Applicant Company held at 702, Natraj,

MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 12:00 noon or any adjournment or adjournments thereof.

12. That Mr. Boman Irani, Director of the Second Applicant Company, failing him Mr. Percy Chowdhry, Director of the Second Applicant Company, failing him Mr. Sajal Gupta, Authorized Signatory of Second Applicant Company, failing him Mr. Bimal Nanda, Authorized Signatory of Second Applicant Company, failing him Mr. Vishal Kokadwar, Authorized Signatory of Second Applicant Company, failing him Mr. Yojesh Thakor, Authorized Signatory of Second Applicant Company, failing him Mr. Sushil Parab, Authorized Signatory of Second Applicant Company and failing him Mr. Johnson Almeida, Authorized Signatory of Second Applicant Company, shall be the Chairman of the aforesaid meeting of the Preference Shareholders of the Second Applicant Company to be held at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 on January 29, 2018 at 01:00 P.M. or any adjournment or adjournments thereof.
13. The Chairperson appointed for the aforesaid meeting of Shareholders of the respective Applicant Companies to issue the notices of the Meeting referred to above. The said Chairperson shall have all powers under the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 in relation to the conduct of the meeting(s), including for deciding procedural questions that may arise or at any adjournment thereof or any other matter including an amendment to the Scheme or resolution, if any, proposed at the meeting by any person(s).
14. That the quorum of the aforesaid meetings of the Shareholders of the respective Applicant Companies shall be as prescribed under Section 103 of the Companies Act, 2013.
15. That voting by proxy or authorized representative in case of body corporate be permitted, provided that a proxy in the prescribed form/ authorization duly signed by the person entitled to attend and vote at the meetings, are filed with the respective First Applicant Company at its Office at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 and with the Second Applicant Company at its Office at Rustomjee Business School, Rustomjee Acres, Jaywant Sawant Road, Opp. Rustom Irani Marg, Dahisar (West), Mumbai – 400068, not later than 48 hours before the aforesaid meeting, as per the provisions of the Companies (Compromises, Arrangements and Amalgamations) Rules 2016.

16. That the value and number of the shares of each Shareholder shall be in accordance with the books / registers of the First and the Second Applicant Companies or depository records and where the entries in the books / register / depository records are disputed, the Chairmen of the meetings shall determine the value for the purpose of the aforesaid meetings and his decision in that behalf would be final.
17. That Ms. Ria Kunal Ahuja, Practicing Company Secretary (Membership Number: 29556 & Certificate of Practice: 16838), is hereby appointed as Scrutinizer of the meetings of the Shareholders of the First Applicant Company and the Second Applicant Company proposed to be held on January 29, 2018 at 702, Natraj, MV Road Junction, Western Express Highway, Andheri (East), Mumbai – 400069 and the fees shall be Rs. 5,000/- each for each meeting of shareholders of the respective Applicant Companies.
18. That the Chairmen of each of the aforesaid meetings shall file an affidavit not less than seven (7) days before the date fixed for the holding of the respective meetings and to report to this Tribunal that the directions regarding the issue of notices and the advertisement have been duly complied with as per Rule 12 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
19. That the Chairmen of each of the aforesaid meetings to report to this Tribunal, the results of the aforesaid meetings within thirty days of the conclusion of the meetings, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
20. The respective Applicant Companies to serve the notice upon the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai Maharashtra, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from Regional Director within 30 days of the date of receipt of the notice it will be presumed that Regional Director and/ or Central Government has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
21. The respective Applicant Companies to serve the notice upon the concerned Registrar of Companies, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Registrar of

Companies within 30 days of the date of receipt of the notice it will be presumed that Registrar of Companies has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

22. The respective Applicant Companies to serve the notice on the concerned Income Tax Authorities, within whose jurisdiction the Applicant Companies assessment are made, pursuant to Section 230(5) of the Companies Act, 2013 as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016. If no response is received by the Tribunal from the Income Tax Authority within 30 days of the date of receipt of the notice it will be presumed that Income Tax Authority has no objection to the proposed Scheme as per Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

23. The Counsel for the First and the Second Applicant Companies further submits that since the Scheme is an arrangement between the Applicant Companies and their respective shareholders, only a meeting of the Equity and Preference Shareholders is proposed to be held in accordance with the provisions of Section 230(1)(b) of the Companies Act 2013. This Bench hereby directs the First and the Second Applicant Companies to issue notice to all its Secured and Unsecured Creditors to whom the amounts are due and payable as required under Section 230(3) of the Companies Act, 2013 with a direction that they may submit their representations, if any, to the Tribunal and copy of such representations shall simultaneously be served upon the respective Applicant Company.

24. The respective Applicant Companies to file an affidavit of service of the directions given by the Tribunal not less than seven days before the date fixed for the holding of the meetings and do report to this Tribunal that the direction regarding the issue of notices have been duly complied with.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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