

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, at MUMBAI

CSP NO 623 OF 2017

AND

CSP NO 575 OF 2017

AND

CSP NO 582 OF 2017

AND

CSP NO 583 OF 2017

KISMAT DEVELOPERS PRIVATE LIMITED

... Transferor Company 1

AND

RAIGAD INDUSTRIAL & BUSINESS DEVELOPERS LIMITED

... Transferor Company 2

AND

TOPICAL BUILDERS PRIVATE LIMITED

... Transferor Company 3

AND

MAHINDRA WORLD CITY (MAHARASHTRA) LIMITED

... Transferee Company

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 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation of Kismat Developers Private Limited having CIN U45200MH1994PTC079544 ("Transferor Company 1") and Raigad Industrial & Business Park Limited having CIN U70102MH2009PLC193399 ("Transferor Company 2") and Topical Builders Private Limited having CIN U45200MH1997PTC108695 ("Transferor Company 3") with Mahindra World City (Maharashtra) Limited having CIN U45309MH2005PLC156225 ("Transferee Company") and their respective Shareholders and Creditors

Called for Hearing

Judgment/Order delivered on 27th September, 2017

Coram:

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

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

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioner Companies

Mrs. P Sheela, Deputy Director in the office of Regional Director .

Per: **V. Nallasenapathy**, Member (T)

Order

1. Heard the learned counsel for the Petitioner Companies.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013, to the Scheme of Amalgamation of Kismat Developers Private Limited ("the Petitioner / Transferor Company 1") and Raigad Industrial & Business Park Limited ("the Petitioner / Transferor Company 2") and Topical Builders Private Limited ("the Petitioner / Transferor Company 3") with Mahindra World City (Maharashtra) Limited ("the Petitioner / Transferee Company") and their respective Shareholders and Creditors ("Scheme").
3. Learned Counsel for the Petitioner Companies states that the Petitioner / Transferor Company 1 is engaged in the business of builders, engineers, developers, realtors and contractors. The Petitioner / Transferor Company 2 is engaged in the business of real estate developers, integrated cities and industrial parks. The Petitioner / Transferor Company 3 in the business of builders, engineers, developers, realtors and contractors. The Petitioner / Transferee Company is engaged in the business of real estate developers, integrated cities and industrial parks.

4. The circumstances justifying the aforesaid Scheme of Amalgamation are *inter alia* as follows:

To consolidate and streamline the shareholding for the following reasons:

- i. *Reducing number of entities, particularly those where there is no business for a long time, thereby reducing managerial overlaps, which are necessarily involved in running multiple entities; and*
 - ii. *Reduce regulatory and legal compliances / filings including accounting, reporting requirements, statutory and internal audit requirements, tax filings, etc. and consequential reduction in administrative costs.*
5. The Transferor Companies and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the respective Petitioner Companies.
6. Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble National Company Law Tribunal, Mumbai bench and has filed necessary affidavits of compliance with the National Company Law Tribunal, Mumbai bench. Moreover, the Petitioner Companies through its Counsel undertakes to comply with all statutory requirements if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever is applicable. The said undertaking given by the Petitioner Companies is accepted.
7. The Regional Director ('RD') has filed a Report dated 21st September 2017 stating therein, that the Tribunal may take into consideration the observations and pass such other order or orders as deemed fit and proper in the facts and circumstances of the case post considering the observations made at Sr. No. IV(1) to (6) mentioned in his report.

In paragraphs IV(1) to (6), of the said Report it is stated that:-

"..IV

(1) 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 Tribunal 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.

(2) It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 12.04.2017 and 13.04.2017 for comments. The office of the Directorate also has issued reminder dated 08.09.2017.

(3) It is submitted that, petitioner companies are inter alia into the business of real estate developers etc. In this regard, petitioner companies have to undertake to serve notice under section 230(5) of the Companies Act, 2013 and to comply with the provisions of the Real Estate (Regulation And Development) Act, 2016.

(4) it is submitted that the petitioner companies have to undertake that in addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5.

(5) it is submitted that petitioner in clause 17 of the scheme has inter alia mention that Upon coming into effect of this Scheme, the resolutions of the Amalgamating Companies as are considered necessary by the Board of Directors of the Amalgamated Company which are validly subsisting be considered as resolutions of the Amalgamated Company.

In this regard, petitioner companies have undertaken to file separate form for every combined limit such as borrowing and investments under various sections of the Act as applicable to the company in accordance with the law.

(6) Petitioner in clause 8 of the scheme has inter alia mentioned that the 8.5% Non- cumulative Redeemable Preference share will be issued as mentioned in point 3 of the above.

In this regard, petitioner, have to undertake to submit schedule of terms and conditions for issue of 8.5% Non-cumulative Redeemable Preference share.

8. So far as the observation in paragraph IV(1) &(2) of the RD Report is concerned, the Petitioner Companies through its Counsel states that the tax implication if any arising out of the Scheme is subject to final decision of the Income Tax Authorities and that the Petitioner/Transferee Company shall comply with the applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be answered in accordance with law.
9. In so far as observations set out in paragraph IV(3) of the RD Report, the Petitioner Companies through its Counsel states that none of the Transferor Companies and the Transferee Company as on the date of this order, have any project that is registrable under the provisions of the Real Estate (Regulation and

Development) Act, 2016 and hence the requirement of compliance with provisions of the Real Estate (Regulation And Development) Act, 2016 do not apply to the any of the Petitioner Companies.

10. In so far as observations set out in paragraph IV(4) of the RD Report, the Petitioner Companies through its Counsel states that the Transferee Company undertakes that in addition to compliance of AS-14 (IND AS-103), the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.,
11. In so far as observations set out in paragraph IV(5) of the RD Report, the Petitioner Companies through its Counsel states that the Transferee Company undertakes to file separate form for every combined limit such as borrowing and investments under various sections of the Act as may applicable to the Transferee Company in accordance with the law.
12. In so far as observations set out in paragraph IV(6) of the RD Report, the Petitioner Companies through its Counsel states that the Transferee Company has already submitted the schedule of terms and conditions for issue of 8.5% Non-cumulative Redeemable Preference shares to the office of Regional Director.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. The Official Liquidator has filed his report 1st September 2017 inter alia, stating therein that the affairs of the Petitioner /Transferor Company 1, Petitioner/ Transferor Company 2 and Petitioner/ Transferor Company 3 have been conducted in a proper manner and that the said Petitioner / Transferor Company 1, Petitioner/ Transferor Company 2 and Petitioner/ Transferor Company 3 may be ordered to be dissolved without winding up.
15. 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.

16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 623, 575, 582 and 583 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause (a) of the said Petition.
17. Petitioner Companies are directed to file a copy of this order along with a copy of Scheme of Amalgamation with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to lodge certified copy of this order and the Scheme of Amalgamation 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 days from the date of receipt of the order.
19. The Petitioner Companies to pay cost of Rs.25,000/- to the Regional Director, Western Region, Mumbai and the transferor Companies 1, 2 and 3 to pay cost of Rs. 25,000/- each.to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of order.
20. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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