

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
CSP NO 610 OF 2017
AND
CSP NO 609 OF 2017

KANAKIA RESIDENTIAL PRIVATE LIMITED

...Demerged Company /Petitioner Company

KANAKIA SPACES REALTY PRIVATE LIMITED

...Resulting Company /Petitioner Company

In the matter of the Companies Act, 2013

And

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

And

In the matter of Scheme of Arrangement between Kanakia Residential Private Limited ('Demerged Company' or 'Petitioner Company') and Kanakia Spaces Realty Private Limited ('Resulting Company') and their respective Shareholders.

Order delivered on 28th September, 2017

Coram:

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

For the Petitioner(s): Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocate for the Petitioner.

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

ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to Scheme of Arrangement between Kanakia Residential Private Limited and Kanakia Spaces Realty Private Limited and their respective Shareholders..

3. Learned counsel for the Petitioner Companies states that the Demerged Company is primarily engaged in the business of real estate development. Upon the sanction of the Scheme of Arrangement, the business of the Demerged Company shall be transferred to the Resulting Company.
4. Learned counsel for the Petitioner Companies further states that the scheme envisages arrangement of the Demerged Company with the Resulting Company and shall have the following benefits: (a) Consolidation of companies within the Group; (b) Reduction of intra - group transactions and compliance requirements under various laws; (c) Reduction of operating and compliance costs; and (d) Achieve administrative, operational and management efficiencies.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing respective Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Joint Company Scheme Application No. 498 of 2017 of the Hon'ble Tribunal.
7. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
8. Pursuant to filing of the Company Scheme Application to this Hon'ble Tribunal, the Regional Director, Western Region, Mumbai has filed his Report dated 25th September, 2017 stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.
 - a) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 05.05.2017 has served a copy Company Scheme Application No. 498 of 2017 along with relevant orders etc., further this office has also issued a reminder on 13.09.2017 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 Tribunal*

may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the petitioner Companies.

- c) 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 (IND AS-8) etc.*
- d) As per Clause 1.2, Definitions and sharecapital of the scheme. "The Appointed Date" means the 31st day of March 2017 or such other date as may be fixed or approved by the National Company Law Tribunal (NCLT), or any other competent authority may otherwise direct/fix. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 31st day of March 2017.*

However, this aspect may be decided by the Hon'ble Tribunal Taking into account its inherent powers.

- e) ROC, Mumbai in his report vide point 32.1 has mentioned that as both the companies fall under the category of "Real Estate" business, they may need to explain whether it to require to issue notice to sectorial regulator viz. Real Estate Regulatory Authority, if applicable. As several projects are work in progress as per schedule 19 of Balance Sheet as at 31.03.2016 in respect of demerged company as per Schedule 15 of Balance Sheet as at 31.03.2016 in respect of resulting company.*

In this regard, it is submitted that the petitioner companies have to undertake to serve notice to the Real Estate Regulator under Real Estate (Regulation And Development Act) 2016.

- f) ROC, Mumbai in his report vide point 32.4 has mentioned that solvency certificate is required to filed u/s. 233(1) (c) r.w. Section 233 (12) of the Companies Act, 2013 as the scheme is between Holding Company & its wholly owned Subsidiary Companies.*

In this Regard, it is submitted that the Hon'ble Tribunal may pass order as may deem fit

- g) It is submitted that, the Transferee Company has not filled Annual Return and Balance Sheet for the F.Y. 31.03.2016*

Hence the Transferee Company directed to file the same with concern ROC.

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Petitioner Companies submit that the Petitioner Companies have complied with the requirement of serving notice to the Income-tax Department on 8th May, 2017.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Petitioner Companies submit that the Petitioner Companies undertake that they shall comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Petitioner Companies undertakes that in addition to accounting treatment given in the Scheme, the Petitioner Companies shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Petitioner Companies confirms that in terms of provisions of section 232(6) of the Companies Act, 2013 the Appointed Date for the Scheme of Arrangement shall be 31st March, 2017.
13. As far as the observation of the Regional Director as stated in paragraph IV (e) of his report is concerned, the Petitioner Companies submit that the Real Estate (Regulation and Development) Act, 2016 (RERA) was notified on 1st May, 2017 and the compliance for registration under RERA was required to be done. The only requirement under RERA was to register the projects undertaken by the Petitioner Companies which has been complied with. Further, the Petitioner Companies undertakes to comply with all the regulations of RERA read with Maharashtra Rules and Regulations 2017, as may be applicable.

14. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (f) of his report is concerned the Petitioner Companies submit that Section 233(12) of the Companies Act, 2013 states that "The provisions of this section shall mutatis mutandis apply to a company or companies specified in sub-section (1) in respect of a scheme of compromise or arrangement referred to in section 230 or division or transfer of a company referred to in clause (b) of subsection (1) of section 232." In the present case, the Petitioner Companies have presented the Scheme to this Tribunal under Sections 230 to 232 of the Companies Act, 2013 and not under Section 233 of the Companies Act, 2013 therefore there is no requirement of filing solvency certificate. The provisions of section 233 are independent of Section 230-232 of Companies Act 2013.
15. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (g) of his report is concerned, the Transferee Company undertakes to submit annual return and balance sheet for the year ended 31.03.2016 within 15 days from the date of passing of this order.
16. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, have been explained by the Petitioner Companies in Para 9 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
17. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
18. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 610 & 609 of 2017 are made absolute in terms of prayer clauses (a) and (b).
19. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of receipt of the order by the Registry.

20. The Petitioner Companies to lodge a copy of this order and the Scheme 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, within a period of 60 days from the date of receipt of the order.
21. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.
22. All authorities concerned to act on a 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),