

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH, AT MUMBAI,
COMPANY SCHEME PETITION NO. 674 OF 2017
IN
COMPANY APPLICATION NO. 281 OF 2017**

The Companies Act, 2013

And

Sections 230 and 232 read with Section 52 and other applicable provisions of the Companies Act, 2013

And

The Scheme of Arrangement for the demerger of the TPPL Undertaking of Trion Properties Private Limited ("**Petitioner Company No.1/Transferor Company No.1**") and KRCPL Commerzone Undertaking of K Raheja Corp Private Limited ("**Petitioner Company No.2/Transferor Company No. 2**") into Mindspace Business Parks Private Limited ("**Petitioner Company No.3/ Transferee Company**") and their respective shareholders and creditors.

Trion Properties Private Limited	... Petitioner Company No.1/ Transferor Company No.1
K Raheja Corp Private Limited	... Petitioner Company No.2/ Transferor Company No.2
Mindspace Business Parks Private Limited	... Petitioner Company No. 3/ Transferee Company

Judgment/ order delivered on September 7, 2017

Coram:

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

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

For the Petitioner(s): Mr. Sayantan Banerjee and Mr. Yuvraj Choksy i/b. M/s. Veritas Legal, Advocates for the Petitioners.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard learned counsels for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to

the Scheme of Arrangement for the demerger of the TPPL Undertaking of Trion Properties Private Limited, Petitioner Company No. 1/ Transferor Company No.1, and KRCPL Commerzone Undertaking of K Raheja Corp Private Limited, Petitioner Company No. 2/ Transferor Company No. 2 into Mindspace Business Parks Private Limited, Petitioner Company No. 3/ Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 and 232 read with Section 52 and other applicable provisions of the Companies Act, 2013 to a Scheme of Arrangement for the demerger of the TPPL Undertaking of Trion Properties Private Limited, Petitioner Company No. 1/ Transferor Company No.1, and KRCPL Commerzone Undertaking of K Raheja Corp Private Limited, Petitioner Company No. 2/ Transferor Company No. 2 into Mindspace Business Parks Private Limited, Petitioner Company No. 3/ Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to this Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioners states that this Petition has been filed in consonance with the order passed in Company Scheme Application No. 281 of 2017 passed by the National Company Law Tribunal, Mumbai Bench.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under, as may be applicable. The said undertaking is accepted.

6. The Learned Counsel for the Petitioners states that Petitioner Company No. 1/ Transferor Company No. 1 is presently engaged in the business of real estate development, leasing and management of shopping malls, Petitioner Company No. 2/ Transferor Company No. 2 is presently engaged in the business of development, sale and leasing of real estate residential and commercial premises (including IT Parks) and hotel operations, and Petitioner Company No. 3/ Transferee Company is presently engaged in the business of real estate development projects such as Special Economic Zones ("SEZs"), Information Technology Parks ("IT Parks") and other commercial segments, having projects in Airoli, Navi Mumbai and Hyderabad for the development of SEZs. All the companies form part of the K Raheja Corp group of companies and are under the same management and owned and controlled by the same promoters and the management is of the opinion that the arrangement will provide complete and direct control to Petitioner Company No. 3/ Transferee Company over the development of the land in prime commercial areas, including but not limited to SEZs and IT Parks and enable development of the IT Parks under a single entity and achieve synergistic integration and consolidation of the businesses presently being carried on by the Petitioner Company No. 1/ Transferor Company No.1 and Petitioner Company No. 2/ Transferor Company No. 2. Further, that this arrangement shall be in particular be beneficial to the shareholders, creditors and employees of such companies and to the interests of the public at large, as such an arrangement would integrate the businesses of the companies into a single entity and would enable them to have access to better financial resources and will make it easier to raise funds from the investors at a later date as well as increase the managerial efficiencies, while effectively pooling technical, distribution and marketing skills in one entity. It is also submitted that the Scheme of Arrangement would provide saving of costs as there would be reduction of administrative and other overhead costs, avoidance of duplication and pooling of managerial skills, and also there would be focused management attention towards the

business and result in operational rationalization, organizational efficiency and optimal utilization of resources. Since both the undertakings *i.e.* the TPPL Undertaking of Petitioner No. 1/ Transferor Company No. 1 and the KRCPL Commerzone Undertaking of Petitioner No. 2/ Transferor Company No. 2 have projects in Pune, Maharashtra, this would lead to efficiencies in relation to location synergies. Also, it was submitted that upon consolidation of the TPPL Undertaking of Petitioner No. 1/ Transferor Company No. 1 and the KRCPL Commerzone Undertaking of Petitioner No. 2/ Transferor Company No. 2 into Petitioner No. 3/ Transferee Company, there would be reduction in regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements, etc. and therefore reduction in administrative costs and other wastage in overheads. Further, that the above will lead to a simplified corporate structure; apart from that the combination of the businesses would increase the long-term value for their stakeholders.

7. The Regional Director has filed a Report on 21st day of June, 2017 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV (a) to (c) of the said Report, 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 are 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 18.05.2017 has served a copy Company Scheme Application No. 281 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder 15/06/2017 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 transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.

(c) Regarding Clause 9 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Reserve Account of the Transferee Company."

8. So far as the observation in paragraphs IV (a) and (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertake to 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 the applicable law.
9. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertake that, in the accounting statement prepared pursuant to the demerger, the surplus, if any, arising out of the scheme shall be credited to Capital Reserve, and deficit, if any, arising out of the same, shall be debited to Goodwill Account, without adjusting against Reserve Account of the Transferee Company.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraphs 8 and 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted.

11. 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.
12. Since all the requisite statutory compliances have been fulfilled, this Company Petition is made absolute in terms of prayers clause (a) to (c).
13. The Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act, 2013.
14. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
15. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of the Order.
16. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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