

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP No. 431 of 2017
And
CSP No. 432 of 2017
And
CSP No. 433 of 2017
And
CSP No. 435 of 2017

Under Section 230 to 232 of CA 2013

And

In the matter of In the matter of Scheme of
Arrangement between Now Realty Private
Limited, RGP Realty Private Limited, Now Realty
Promoters and Builders Private Limited and RGP
Promoters Private Limited and their respective
shareholders

Now Realty Private Limited

.....**Petitioner/Transferor Company 1**

AND

RGP Realty Private Limited

.....**Petitioner/Transferor Company 2**

AND

Now Realty Promoters and Builders Private Limited

.....**Petitioner/Transferor Company 3**

AND

RGP Promoters Private Limited

.....**Petitioner/Transferee Company**

Judgment/Order delivered on 19th July 2017

Coram:

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

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

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

Mr. Ramesh Golap, Assistant Director in the office of
Regional Director

Per: V. Nallasenapathy, Member (T)

Order

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petitions and nor any party has controverted any averments made in the Petitions.

2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement of Now Realty Private Limited (NRPL / Transferor Company 1), RGP Realty Private Limited (RRPL/ Transferor Company 2), Now Realty Promoters and Builders Private Limited (NRBPL / Transferor Company 3) and RGP Promoters Private Limited (RGPPPL / Transferee Company) and their shareholders and creditors.
3. The Counsel for the Petitioner Companies submits that the Transferor Company 1, Transferor Company 2 and Transferor Company 3 (hereinafter collectively referred to as the 'Transferor Companies') and the Transferee Company are engaged in the business of real estate development, construction and other allied activities.
4. The Counsel for the Petitioner Companies submits that below is the rationale for the proposed Scheme of Arrangement:
 - a) The Transferor Companies and the Transferee Company share common fundamental management philosophies. The Companies also share common corporate values.
 - b) With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures, it is desirable to merge and amalgamate all the undertakings of the Transferor Companies with the Transferee Company.
 - c) The amalgamation of the undertakings of the Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
 - d) The consolidation of operations of the Transferor Companies and the Transferee Company by way of amalgamation will lead to a more efficient utilization of capital, superior deployment of brand promotion, sales and distribution strategies and create a consolidated and diversified base for future growth of the amalgamated entity with a wider presence in the domestic and global markets.

- e) It would be advantageous to combine the activities and operations of the companies for synergetic linkages and the benefit of combined financial resources, manpower, customers, distributors, brands, etc. and also provide an opportunity to leverage on the combined assets and build a stronger sustainable business.
- f) The Transferee Company would gain a competitive edge over the ongoing projects, capabilities, marketing and distribution network of the Transferee Company 3 and would be in a better position to harness this potential especially in view of the increasing competition, which will be beneficial in more than one ways to all the Transferor and the Transferee Companies and their shareholders. In order to unveil this potential with the myriad prospects more effectively into the market, application of combined asset base is necessary to pursue such business and other opportunities in the real estate segment more effectively.

The banks, creditors and financial institutions, if any, will not be adversely affected by the proposed amalgamation.

- 5. The Counsel for the Petitioner Companies submits that the Board of Directors of the Transferor Companies and the Transferee Company have approved the said Scheme of Arrangement by passing Board Resolutions which are annexed to the respective Company Scheme Petitions.
- 6. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and the Company Scheme Petitions have been filed in consonance with the orders passed in abovementioned Company Scheme Applications.
- 7. The Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their 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 undertakings given by the Petitioner Companies are accepted.
- 8. The Regional Director has filed a Report dated 12 June 2017 stating therein, save and except as stated in paragraph IV (1) to (5), it appears that

the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV, of the said Report it is stated that:

1. *The tax implications if any arising out of the scheme is subject to the final decision of the Income Tax Authorities. The approval of the scheme by this Hon'ble Tribunal may not deter 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. This office has issued reminder dated 31.05.2017*
3. *Petitioner companies not submitted Minutes of order of the Hon'ble NCLT.*

In this regard petitioner to undertake submit minutes of order for the record of Regional Director.

4. *Petitioner in clause 8 of the scheme has mentioned that upon the scheme becoming effective name of the transferee company shall change to Now Realty Promoters and Builders Private Limited without any further act.*

In this regard petitioner companies has to undertake to comply with the provisions of the Act, 2013 to the extent of requirements of filing form for availability of name.

5. *Petitioner companies have to undertake to mention that the companies are not doing real estate business.*

Under these circumstances the Regional Director prays this Hon'ble Tribunal may kindly be pleased to:

- (a) *Take this report on record;*
- (b) *Consider the observations made at Sr. No. IV (1) to (5) mentioned above*
And
- (c) *Pass such other order or orders as deemed fit and proper in facts and circumstances of the case.*

The Registrar of Companies Pune has filed his report stating that no complaint, no prosecution, no scrutiny pending against the companies under reference.

9. As far as the observations made in paragraph IV (1) & (2) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that the Petitioner Companies undertakes 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.
10. As far as the observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to submit minutes of order of all the Petitioner Companies for the record of Regional Director.
11. In so far as observations made in paragraph IV (4) of the Report of Regional Director are concerned, the Transferee Company through their Counsel undertakes to comply with the provisions of the Companies Act 2013 to the extent of requirements of filing form for change of name with the concerned Registrar of Companies.
12. As per paragraph IV (5) of the Report of Regional Director, the Regional Director has directed the Petitioner Companies to undertake that they are not doing real estate business. The Counsel for the Petitioners clarifies that the Petitioner Companies are engaged in the business of real estate and all applicable provisions RERA would be complied by the Transferee Company to the extent applicable.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 431 of 2017 filed by the Transferor Company 1 has been made absolute in terms of prayer clause (a) to (c) of the Petition, Company Scheme Petition No 433 of 2017 filed by the Transferor Company 2 has been made absolute in terms of prayer clause (a) to (c) of the Petition, Company Scheme Petition No.432 of 2017 filed by the Transferor Company 3 is made absolute in terms of prayer clauses (a) to (c) of the Petition and Company Scheme Petition No.435 of 2017 filed by the Transferee Company is made absolute in terms of prayer clauses (a) to (c) of the Petition.
16. 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 the physical copy within 30 days from the date of issuance of the order by the Registry.

17. The Petitioner Company 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, if any, on the same within 60 days from the date of receipt of the order.
18. The Petitioner Companies to pay costs of Rs, 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition Nos. 431 to 433 of 2017 to pay of cost of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay.
19. Costs to be paid within four weeks from the date of receipt of the 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)