

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 83 OF 2017

Manav Promoters Private LimitedPetitioner /MPPL or Demerged Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 84 OF 2017

Manav Properties Private LimitedPetitioner /MPPL2 or First Resulting Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 85 OF 2017

Manav Hemant Homes Private Limited....Petitioner /MHHPL or Second Resulting Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 86 OF 2017

Manav Rehab Private LimitedPetitioner /MRPL or Third Resulting Company

In the matter of the Companies Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (corresponding sections 230 to 232 of the Companies act, 2013);

AND

In the matter of Scheme of Arrangement between Manav Promoters Private Limited and Manav Properties Private Limited, Manav Hemant Homes Private Limited and Manav Rehab Private Limited and their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b Hemant Sethi & Co., Advocates for the Petitioners in all the Petitions.

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

CORAM: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date : 22nd March 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has 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 the Scheme of Arrangement between Manav Promoters Private Limited and

Manav Properties Private Limited, Manav Hemant Homes Private Limited and Manav Rehab Private Limited and their Respective Shareholders.

3. The Counsel for the Petitioners submit that the Demerged Company and the Resulting Companies are inter alia, in the business of real estate development.

4. The Counsel for the Petitioners further submit that the proposed demerger of the Demerged Undertaking(s) envisaged in this Scheme, is aimed at achieving the following business and commercial objectives and is expected to result in the following benefits for Demerged Company and the First Resulting Company, Second Resulting Company and Third Resulting Company:

- Each of the varied businesses carried on by MPPL either by itself or through strategic investments in limited liability partnership or through partnership firm, have significant potential for growth and profitability. The nature of risk and competition involved in each of businesses is distinct from others and consequently each business or undertaking is capable of attracting a different set of investors, strategic partners, lenders and other stakeholders. There are also differences in the manner in which each of these businesses are required to be handled and managed. In order to enable distinct focus of investors to invest in some of the key businesses and to lend greater/enhanced focus to the operation of the said businesses, MPPL proposes to re-organize and segregate by way of a demerger its the Residential project, built-to-transfer project and Slum Rehabilitation project;
- MPPL is contemplating splitting and hiving off different undertakings in order to achieve specialization in various entities. Further, MPPL is contemplating investments from Private Enterprises Funds (PE Funds) and/or investors who are interested in sector specific undertakings. Such sector specific investment is possible only if each undertaking is demerged in separate entities and not in a common entity.
- The demerger would enable greater/enhanced focus of management in these businesses thereby facilitating the management to efficiently exploit opportunities for each of these businesses including raising funds for the projects;
- It is believed that the proposed segregation will create enhanced value for shareholders and allow a focus strategy in operations, which would be in the best interest of all the stakeholders and the persons connected with MPPL, MPPL2, MHHPL and MRPL. The demerger proposed by this Scheme will enable investors to hold investments in businesses with different investment characteristics thereby enabling them to select investments which best suit their investment strategies and risk profiles.
- The demerger will also provide scope for independent collaboration and expansion.

The demerger will facilitate the employment of sector specific skill and achieve

expertise in field, higher volume of business and larger market share which will result in economic advantage;

- The demerger of undertakings would result in issuance of shares to the shareholders of the MPPL by the resulting company, thereby, resulting in unlocking and maximizing shareholder value.
 - In view of the above, the Board of Directors of the MPPL as well as Board of Directors of the MPPL2, MHHPL and MRPL have considered and proposed the demerger of the Residential projects, built-to-transfer project and Slum Rehabilitation projects of MPPL to MPPL2, MHHPL and MRPL, respectively in order to benefit the stakeholders of the Companies. Accordingly, the Board of Directors of the MPPL and the MPPL2, MHHPL and MRPL have formulated this Scheme of Arrangement pursuant to the provisions of Sections 391 to 394 and other relevant provisions of the Companies Act, 1956 (or provisions of the Companies Act, 2013, as may be applicable).
5. The Demerged Company and the Resulting Companies have approved the said Scheme of Arrangement by passing the Board Resolution which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
 6. The Learned Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company has complied with all requirements as per directions of the Tribunal and the necessary affidavits of compliance has been filed in the Tribunal. Moreover, the Petitioner Company 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 undertakings given by the Petitioner Company is accepted.
 7. The Regional Director has filed an Report dated 21st March 2017 stating therein, save and except as stated in paragraph IV(a) to (c) , it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraphs IV, of the said Report it is stated that:
 - a) *Further, as per Part – A Definition & Interpretations 1.2 of the scheme, for the purpose of the Scheme and for Income Tax Act, 1961 “Appointed Date” means 1st September, 2016 or such other date as may be approved by the Honorable High Court. In this regard, it is submitted in terms of provisions of S. 232(6) of the Companies Act, 2013 it should be 1st September, 2016.*
 - b) *As per existing practice, the Petitioner Companies are required to serve notice for the Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 7th February, 2017 has served a copy of company petition No. 83 to 86 of 2017 along with relevant order etc. to IT Department. Further, this office has also issued reminder letter dated 17.03.2017.*
 - c) *The tax implications if any arising out of the Scheme is subject to final decision of Income Tax Authorities. The approval of the Scheme by this Honorable Tribunal*

may not deter the Income Tax Authority to scrutinize the Tax Returns filed by Transferee Company after giving effect to the Scheme. The decision of Income Tax Authority is binding on the Petitioner Company.

8. As far as the observations made in paragraph IV(a) of the Report of Regional Director is concerned, the Petitioner companies confirms that the appointed date shall be 1st September, 2016.
9. As far as the observations made in paragraph IV (b) and (c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel 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 will be met and answered in accordance with law.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in Paragraph 8 and 9 above. The clarification and undertakings given by the Petitioner Company are hereby 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, Transferred Company Scheme Petition No. 83 to 86 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
13. 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.
14. The Petitioners 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.
15. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai.
16. Costs to be paid within four weeks from today.
17. 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.
18. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)