

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 112 OF 2017

ARIEL ESTATE INVESTMENT PRIVATE LIMITED

..... Petitioner / the Transferor Company 1

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 113 OF 2017

BARBARIK DISTRIBUTORS PRIVATE LIMITED

..... Petitioner / the Transferor Company 2

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 114 OF 2017

GENIUS VINCOM PRIVATE LIMITED

..... Petitioner / the Transferor Company 3

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 115 OF 2017

MOONLINK TRADCOMM PRIVATE LIMITED

..... Petitioner / the Transferor Company 4

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 116 OF 2017

PRESCON PROJECTS PRIVATE LIMITED

..... Petitioner / the Transferor Company 5

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 117 OF 2017

PRESCON PROPERTIES PRIVATE LIMITED

..... Petitioner / the Transferor Company 6

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 118 OF 2017

RAJSHILA FERTILISERS PRIVATE LIMITED

..... Petitioner / the Transferor Company 7

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 119 OF 2017

RAJSHILA TRADING PRIVATE LIMITED

..... Petitioner / the Transferor Company 8

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 120 OF 2017

RAJSHILA REALTORS PRIVATE LIMITED

..... Petitioner / the Transferee Company

In the matter of the Companies Act, 1956 and the Companies Act, 2013 (18 of 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation ('Scheme') of Ariel Estate Investment Private Limited ('the Transferor Company 1') AND Barbarik Distributors Private Limited ('the Transferor Company 2') AND Genius Vincom Private Limited ('the Transferor Company 3') AND Moonlink Tradcomm Private Limited ('the Transferor Company 4') AND Prescon Projects Private Limited ('the Transferor Company 5') AND Prescon Properties Private Limited ('the Transferor Company 6') AND Rajshila Fertilisers Private Limited ('the Transferor Company 7') AND Rajshila Trading Private Limited ('the Transferor Company 8') WITH Rajshila Realtors Private Limited ('the Transferee Company') AND Their Respective Shareholders

CALLED FOR HEARING

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

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

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

Shri V. Nallasenapathy, Member (Technical)

DATE: 23rd June, 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation ('Scheme') of Ariel Estate Investment Private Limited ('the Transferor Company 1') AND Barbarik Distributors Private Limited ('the Transferor Company 2') AND Genius Vincom Private Limited ('the Transferor Company 3') AND Moonlink Tradcomm Private Limited ('the Transferor Company 4') AND Prescon Projects Private Limited ('the Transferor Company 5') AND Prescon Properties Private Limited ('the Transferor Company 6') AND Rajshila Fertilisers Private Limited ('the Transferor Company 7') AND Rajshila Trading Private Limited ('the Transferor Company 8') WITH Rajshila Realtors Private Limited ('the Transferee Company') AND Their Respective Shareholders.
3. Learned Counsel for the Petitioner states that the Petitioner in Company Scheme Petition No. 112 of 2017 is engaged in the business of estate owners and estate developers and Petitioner in Scheme Petition No. 113 of 2017 is engaged in the business of trading of all kinds of commodities and Petitioner in Scheme Petition No. 114 of 2017 is engaged in the business of real estate and Petitioner in Scheme Petition No. 115 of 2017 is engaged in the business of trading of goods and Petitioner in Scheme

Petition No. 116 of 2017 is engaged in the business of estate owners and estate developers and Petitioner in Scheme Petition No. 117 of 2017 is engaged in the business of estate owners and estate developers and Petitioner in Scheme Petition No. 118 of 2017 is engaged in the business of all kinds and forms of Fertilisers and Chemicals and Petitioner in Scheme Petition No. 119 of 2017 is engaged in the business of trading of all kinds of commodities and Petitioner in Scheme Petition No. 120 of 2017 is presently engaged in the business of real estate development.

4. The rationale for the scheme is that amalgamation of the Transferor Companies into the Transferee Company would lead to simplification of structure by elimination of multiple entities and to achieve greater administrative efficiency, elimination of multiple record keeping, thus resulting in reduced expenditure, and significant reduction in the multiplicity of regulatory compliances.
5. Learned Advocate for the Petitioner states that the Transferor Companies are directly or indirectly wholly owned subsidiary of the Transferee Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Transferor Companies by the Transferee Company and the entire share capital of the Transferor Companies will stand cancelled.
6. The Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petition have been filed in consonance with the orders passed in their respective Company Summons for Directions Nos. 879 to 887 of 2016 of the Bombay High Court.

8. The learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in this Court. Moreover, the Petitioner Companies undertake 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 is accepted.
9. The Official Liquidator has filed his report on 25th April, 2017 *inter alia*, stating therein that the affairs of the Transferor Companies has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
10. The Regional Director has filed his report on 1st May, 2017, *inter alia*, 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. In paragraph IV of the said report, the Regional Director has stated that:-
 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 Court 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. *The Petitioner Companies have submitted the proof of serving notices, upon the Income Tax Authorities dates 01.03.2017, 03.03.2017 and 07.03.2017, for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 27.04.2017*

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (1) and (2) of his report is concerned, the Petitioner Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
12. The Counsel for the Regional Director on instructions of Ms. P. Sheila, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai states that they are satisfied with the explanations given by the Petitioner Companies.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 112 to 120 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petitions.
15. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Amalgamation 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 issuance of the order by the Registry.
16. 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, as applicable.

17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in Company Scheme Petition No. 112 to 119 of 2017 to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
18. 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)