

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 308 OF 2017

Kumar Agro Products Private Limited

.....Petitioner/Demerged Company

AND

COMPANY SCHEME PETITION NO. 309 OF 2017

Kumar Properties and Promoters Private Limited

.....Petitioner/Resulting Company

In the matter of Sections 230 - 232 and any other applicable provisions of the Companies Act, 2013 read with Companies (Compromise, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Arrangement between Kumar Agro Products Private Limited and Kumar Properties and Promoters Private Limited and their respective shareholders and creditors

Called for Hearing

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

Coram: M. K. Shrawat, Member (Judicial)

Date: 16th June 2017

MINUTES OF 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 Kumar Agro Products Private Limited (Demerged Company) and Kumar Properties and Promoters Private Limited (Resulting Company) and their shareholders and creditors.
3. The Counsel for the Petitioner Companies submits that the Demerged Company is engaged in the business of development and construction of residential/ commercial complexes and also engaged in business of development and leasing

me

of school. The Resulting Company is engaged in the business of development and construction of residential/ commercial complexes.

4. The Counsel for the Petitioner Companies submits that the rationale for the scheme is that the proposed Scheme of Arrangement is aimed at achieving the following business and commercial objectives:

a) KAPPL proposes to re-organise and segregate the project divisions along-with all its assets and liabilities from the business of development and leasing of school by way of demerger. The project divisions involved are;-

1. Kumar Palmcrest
2. Kumar Palmmeadows
3. Kumar Sienna (Privie)

Reasons for the proposed re-organisation:

b) The nature of business and the risks involved in the project divisions and leasing of school are distinct from each other. Further there are also differences in the manner in which these two business are required to be managed.

c) Each of the businesses are at a stage where they require focussed leadership and management attention. Hence, in order to provide focussed management attention and leadership it is proposed to segregate the business and management in the demerged and resulting company. In particular, Shri Rajas Vimal Jain having the requisite expertise in the business of construction and development will look after the project divisions in the resulting company.

d) The demerger of the project division of KAPPL into KPPPL will provide separate and independent administrative setup for the project division and will ensure the required depth and focus with respect to the said division and adoption of strategies necessary for the growth of the said division.

e) The structure post demerger will provide independence to the management in decisions regarding the use of their respective cash flow.

- f) The Group also believes that the proposed segregation will create enhanced value for the shareholders and allow a focussed strategy in operations, which would be best in interest of the Group.
- g) The Board of Directors of KAPPL are of the opinion that the proposed demerger would benefit the shareholders, employees and other stakeholders of the Company.
5. The Counsel for the Petitioner Companies submits that the Board of Directors of the Demerged Company and the Resulting 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 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.
7. The Regional Director has filed a Report dated 17th 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 paragraph IV, of the said Report it is stated that:
- a) *In addition to compliance of AS-14 (IND AS-103) the Resulting Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.*
- b) *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It is observed that the company vide letter dated 15.02.2017 has served a copy of company scheme application No. 16 & 17 of 2017 along with relevant orders etc. However, as on date there is no response from*

Income Tax Department. 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 Resulting Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.

- c) *Petitioner in the Clause No. 13.2.4 inter alia has mentioned that upon the coming into effect of this Scheme, the authorized share capital of KPPPL will have to be increased from 1,00,000 (Rupees One Lakh only) divided into 1,000 (One Thousand) Equity Shares of Rs. 100/- (Rupees One Hundred) to Rs. 2,00,000 (Rupees Two Lacs only) and Clause V of the Memorandum of Association of KPPPL shall, coming into effect of this Scheme, be substituted by the following New Clause:*

" V the Authorised Share Capital of the Company is Rs. 2,00,000 (Rupees Two Lacs only) divided into 2000 (Two Thousand) Equity Shares of Rs. 100/- (Rupees One Hundred) each"

Therefore, Deponent prays that the Hon'ble Tribunal may pass orders to comply with the sec 61, r/w sec 13, sec. 64 and other applicable sections of the Companies Act, 2013.

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(a) to (c) 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.

8. As far as the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that in addition to compliance with Accounting Standard 14 - "Accounting for Amalgamations", the Transferee Company shall pass such accounting entries as may be necessary

- in connection with the Scheme of Arrangement to comply with any other applicable accounting standards including Accounting Standard 5. The Petitioners through their Counsel clarify that the Indian Accounting Standard (“IND AS”) is not applicable to both the Companies since the Companies have net worth below the prescribed limit i.e. INR 250 Crores as contemplated under roadmap for convergence to IND AS.
9. In so far as observations made in paragraph IV(b) of the Report of Regional Director are concerned, the Petitioner Companies through their Counsel submits that the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
 10. In so far as observations made in paragraph IV(c) of the Report of Regional Director are concerned, the Petitioner Companies through their Counsel undertakes to comply with provisions of section 61, r/w section 13, sec. 64 and other applicable sections of the Companies Act, 2013 and shall file requisite forms with the Registrar of Companies.
 11. The observations made by the Regional Director have been explained by the Petitioners in paragraphs 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
 12. 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.
 13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 308 of 2017 filed by the Demerged Company has been made absolute in terms of prayer clause (a) to (c) of the Petition and Company Scheme Petition No.309 of 2017 filed by the Resulting Company is made absolute in terms of prayer clauses (a) to (c) of the Petition.
 14. Petitioner Company is directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies,

me

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.

15. 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.
16. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai.
17. Costs to be paid within four weeks from the date of receipt of the order.
18. 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.
19. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-
M. K. Shrawat , Member
(Judicial)