

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TRANSFER COMPANY SCHEME PETITION NO 325 OF 2017
COMPANY SCHEME PETITION NO 850 OF 2016

Vardaan Properties Private LimitedPetitioner/Transferor Company

AND

TRANSFER COMPANY SCHEME PETITION NO 326 OF 2017
COMPANY SCHEME PETITION NO 851 OF 2016

Ram India Mittal Township LimitedPetitioner/Transferee Company

In the matter of Companies Act, 2013

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 (corresponding to Sections 391 to 394 of the Companies Act, 1956) read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation between Vardaan Properties Private Limited and Ram India Mittal Township Limited and their respective Shareholders.

Called for Hearing

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

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

V. Nallasenapathy, Member (Technical)

Date: 26 April 2017

MINUTES OF ORDER

- 1 Heard the learned counsel for the Petitioner Companies. No objector has come before this Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
- 2 The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation between Vardaan Properties Private Limited ("VPPL") with Ram India Mittal Township Limited ("RIMTL") and their respective Shareholders.

- 3 The Counsel for the Petitioner Companies submit that VPPL is engaged in the business of developers, contractors, builders, maintainers, furnishers of land, building, flats, apartments, residential, official, industrial, commercial, etc. RIMTL is engaged in the business of developers, contractors, builders, maintainers, furnishers of land, building, flats, apartments, residential, official, industrial, commercial, etc.
- 4 The respective Boards of Directors are of the view that the proposed Scheme of Amalgamation is beneficial to the respective shareholders, employees and all stakeholders of the Petitioner Companies. The proposed Scheme of Arrangement is aimed at achieving the following benefits pursuant to amalgamation:
 - a. *Merger of Transferor Company (VPPL) with the Transferee Company (RIMTL) will provide synergies and strengthen the operational capabilities of the Transferee Company;*
 - b. *Streamline operations and reduce operational cost by sharing common service requirements like legal, human resource and finance, etc.;*
 - c. *Better economic and efficient management, control and running of the businesses;*
 - d. *Attain economies of scale as also to synergize the resources for growth and development of business.*
 - e. *Improved organizational capability and leadership by pooling human capital resource with diverse skills, talent and experience. The consolidation would enable the business units of the Transferor Company (VPPL) and the Transferee Company (RIMTL) to leverage on talent pool to complete successfully in an increasingly competitive industry.*
- 5 The Board of Directors of the Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing necessary Board Resolutions which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
- 6 The Learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per directions of the Court/Tribunal and the necessary affidavits of compliance has been filed in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel 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 undertakings given by the Petitioner Companies are accepted.
- 7 The Official Liquidator has filed his report on 24 March 2017 stating that the affairs of the Petitioner/Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
- 8 The Regional Director has filed his report dated 29 March 2017 stating therein that, save and except as stated below, 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 Transferee 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 existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 9 December 2016 has served a copy of company petition No. 850 & 851 of 2016 along with relevant orders etc. Further this directorate has also issued reminder letters to the Income Tax Department dated 27 March 2017. However, as on date, there is no response from Income Tax Department.*

(c) *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.*

- 9 In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that it 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.
- 10 In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through their Counsel submit that the Petitioner Company 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.
- 11 The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 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, Transfer Company Scheme Petition No 325 and 326 of 2017/ Company Scheme Petition No 850 and 851 of 2016, filed by the respective Petitioner Companies is made absolute in terms of prayer clause (a) of TCSP No 325 and 326 of 2017/ CSP No 850 and 851 of 2016 of the respective Petition.
- 14 Petitioner Companies 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
- 15 The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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 and to the Official Liquidator, High Court, Bombay.
- 17 Costs to be paid within four weeks from today.
- 18 All authorities concerned to act on a certified copy of this order along with the 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/-

V. Nallasenapathy, Member (T)

Sd/-

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