

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 416 OF 2017
CONNECTED WITH
TRANSFER COMPANY SCHEME APPLICATION NO. 53 OF 2017**

HGP Community Private Limited
[CIN: U45201MH2016PTC274222]

...Petitioner Company

AND

**COMPANY SCHEME PETITION NO. 412 OF 2017
CONNECTED WITH
TRANSFER COMPANY SCHEME APPLICATION NO. 54 OF 2017**

Vrihis Properties Private Limited
[CIN:U70100MH2016PTC274219]

...Petitioner Company

In the matter of the Companies Act, 2013 or any re-enactment thereof;

And

In the matter of Petition under Sections 230 to 232 read with Section 66 and other relevant provisions of the Companies Act, 2013 or any re-enactment thereof;

And

In the matter of the Scheme of Arrangement amongst HGP Community Private Limited and Vrihis Properties Private Limited and their respective shareholders and creditors and reduction of share capital of HGP Community Private Limited.

Called for Hearing:

Mr. Tapan Deshpande along with Ms. Priya Patwa, Advocates of Cyril Amarchand Mangaldas, Advocates for the Petitioner Companies.

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

V. Nallasenapathy, Member (Technical)

Date: 5th July, 2017

MINUTES OF ORDER

1. Heard counsel for the Petitioner Companies. No objector appears before this Tribunal to oppose the Petitions and the Scheme nor has any party controverted the averments made in the Petitions.
2. The Advocate appearing for the Petitioner Companies states that the Petitions had been filed to seek sanction, to the Scheme of Arrangement amongst HGP Community Private Limited ("**Demerged Company**") and Vrihis Properties Private Limited ("**Resulting Company**") and their respective shareholders and creditors and reduction of share capital of HGP Community Private Limited (hereinafter referred to as the "Scheme" or "Scheme of Arrangement"), pursuant to the provisions of Sections 230 - 232 read with Section 66 and other relevant provisions of the Companies Act, 2013.
3. The Demerged Company is *inter alia* engaged in the business of real estate development and property management. The Resulting Company is incorporated, *inter alia*, for carrying on the business of acquiring, managing and letting out commercial properties and also maintenance of the said properties. The shares of the Petitioner Companies are not listed on any stock exchange. The Learned Advocate for the Petitioner Companies says that the background, circumstances, rationale and significant benefits of the

Scheme are to streamline the business undertakings held by the Demerged Company, unlock stakeholder value, optimize resources and costs, and allow the shareholders to raise necessary resources for business expansion. The Board of Directors of the Demerged Company and the Resulting Company, have approved the said Scheme by passing their respective board resolutions which are annexed to the Petitions.

4. The Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed by this Tribunal in the Transfer Company Scheme Application Nos. 53 & 54 of 2017 and that the Company Scheme Petition Nos. 416 & 412 of 2017 filed in this Tribunal are in consonance with the orders passed in the said Transfer Company Scheme Applications.
5. The Advocate appearing for the Petitioner Companies have stated that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and it has filed necessary Affidavits of compliance in this Tribunal. Moreover the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
6. The Regional Director has filed his Report dated 12th May, 2017 *inter alia* stating therein that this Tribunal may consider the observations made at serial no. IV (a) to (c) and pass such other order or orders as deemed fit. The observations made by the Regional Director in paragraph IV (a) to (c) of the Report are for sake of ready reference reproduced hereunder:

IV. *The observations of the Regional Director on the proposed Scheme to be are as under:-*

- “a. *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 27th March 2017 has served a copy company petition No. 55 & 57 of 2017 along with relevant orders et., further the This directorate has also issued a reminder on 8th May, 2017.*
- b. *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.*
- c. *Hon’ble Tribunal may kindly direct the Company to submit certificate from auditor of the Company in terms of proviso to Section 232(3) of the Companies Act, 2013.”*
7. As far as the observation in paragraph IV (a) of the said Report is concerned, the Advocate for the Petitioner Companies states that the notices of the hearing of the Petitions have been given to the Income Tax Authorities and requisite affidavits proving service of the notices have been filed before this Tribunal.
8. As far as the observation in paragraph IV (b) of the said Report is concerned, the Advocate for the Petitioner Companies on instructions states that the Scheme is in compliance with the Income Tax Act 1961. The tax implication, if any, arising out of the Scheme shall, in any event, be subject

to final decision of the Income Tax Authority and the final orders, if any, of the appeals that may be preferred therein. Sanction to the Scheme by this Tribunal may not limit the powers of the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies.

9. As far as the observation in paragraph IV (c) of the said Report is concerned, the Advocate for the Petitioner Companies state that the Demerged Company has already submitted certificate from auditor of the Company in terms of proviso to Section 232(3) of the Companies Act, 2013 and the same has been annexed as Exhibit "K" to the Company Scheme Petition No. 416 of 2017, thus the observation of the Regional Director in paragraph IV (c) has been satisfied.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs (7) to (9) above. The clarifications and undertakings given by the Petitioner Companies 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, Company Scheme Petition No. 416 of 2017 filed by the Demerged Company is made absolute in terms of prayer clauses (a) to (e) and Company Scheme Petition No. 412 of 2017 filed by the Resulting Company is made absolute in terms of prayer clauses (a) and (b).
13. The Resulting Company to lodge a copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of

Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.

14. The respective Petitioner Companies are directed to file copy of this order along with a copy of the sanctioned Scheme (and Form of Minute Exhibit "L" to the Company Scheme Petition No. 416 of 2017) attached thereto, duly authenticated by the Registrar/Officer of this Tribunal, with the concerned Registrar of Companies, electronically, along with e-form INC 28 in addition to physical copy within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.
15. The Petitioner Companies to individually pay costs of the respective Company Scheme Petition of INR 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
16. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly certified by Registrar/Officer of the National Company Law Tribunal, Mumbai Bench.

Sd/-
V. Nallasenapathy,
Member (Technical)

Sd/-
B.S.V. Prakash Kumar
Member (Judicial)