(2023) 07 NCLT CK 0014

In the National Company Law Tribunal

Case No : C.P. (CAA)18/MB/2023 In C.A. (CAA) 172/MB/2022

Genext Hardware & Parks Private Limited Vs

Date of Decision : 04-07-2023

Acts Referred:
Companies Act, 2013 — Section 230, 232
Income Tax Act, 1961 — Section 68

Citation : (2023) 07 NCLT CK 0014

Hon'ble Judges : Kishore Vemulappali, Member (J);Prabhat Kumar, Member (T)

Bench : Division Bench

Advocate : Aayesh Gandhi, Rohan Bhatia, Rupa Sutar

Final Decision : Disposed Of

Judgement

Kishore Vemulapalli, Member (Judicial)

1. Heard the Ld. Counsel appearing for the Petitioners Representative of the Regional Director. No objector has come before this Tribunal to oppose the Scheme and no party has controverted any averments made in the Petition.

2. The sanction is sought under Sections 232 r/w Section 230 along with other applicable provisions of the Companies Act, 2013 by Genext Hardware & Parks Private Limited (Demerged Company) and K Raheja Corp Real Estate Private Limited (Formerly known as Feat Properties Private Limited) ("Resulting Company") for sanctioning the Scheme of Arrangement (Demerger) between the Demerged Company and the Resulting Company and their respective shareholders.

3. The Board of Directors of the Demerged Company and Resulting Company in their respective meeting held on March 15, 2022 have approved the proposed Scheme. The Appointed Date of the Scheme is April 1, 2021

4. The Scheme, inter alia, provides for the demerger of the Demerged Undertaking (as defined in the Scheme) of the Demerged Company into the Resulting Company with effect from the Appointed Date (as defined in the Scheme).

5. The Petitioner Companies are part of K Raheja Corp Group (KRC Group) and are engaged in the business of real-estate.

6. The rationale and benefits of the Scheme are as under:

a. Considering that access to capital markets, equity and/or debt infusion, etc. is one of the stated rationales for the demerger of the Demerged Undertaking (as defined in the Scheme) into the Resulting Company, the demerger as set out under the Scheme would attract investors seeking to acquire a stake or have exposure in a specialist residential real estate business i.e. the Resulting Company.

b. It is aimed to consolidate other residential real estate businesses within the KRC Group into the Resulting Company including through other schemes/ restructuring/transfers filed or to be filed (as applicable and found suitable from time to time) to make the Resulting Company become the flagship residential real estate focused company in the KRC Group

c. The demerger of the Demerged Undertaking (as defined in the Scheme) of the Demerged Company into the Resulting Company inter alia would enable the Resulting Company to focus more significantly on the residential real estate business.

d. It would aid the Demerged Company to focus on the Other Business, post the completion of the Scheme;

e. It would result in cost saving by reduction of administrative and other overhead costs, avoidance of duplication and consolidation of managerial skill by vesting the Vivarea Business (as defined in the Scheme) into the Resulting Company. It would enable both the Demerged Company and the Resulting Company to focus attention towards their respective businesses and permit the Resulting Company to focus on development of residential real estate, which shall result in operational rationalization, organizational efficiency, combination and consolidation of synergies and enhanced captive consumption of support services, post the completion of the Scheme;

f. It would be aiding the Resulting Company to become the flagship residential real estate focused company in the KRC Group and aiding scaling, expansion and expertise building to offer specialized, better and competitive residential real estate development and offerings, post the completion of the Scheme;

g. It would strengthen the balance sheet of the Resulting Company, creating increased opportunities to access capital markets, equity and/or debt infusion, post the completion of the Scheme;

h. It would strengthen the brand value and market presence of the Resulting Company as a specialist residential real estate company and bringing in a wider pool of residential real estate projects under its ambit and enabling the Resulting Company to showcase such wider pool of residential real estate projects as its projects ensuring better reach, customer delivery, customer confidence, trust and competitive edge, post the completion of the Scheme;

i. It would attract strategic and financial investments and investments from other stakeholders in the future in the Resulting Company, post the completion of the Scheme;

j. It would aid the Resulting Company with the benefits of the Vivarea Business (as defined in the Scheme) including achieving greater efficiencies in business and supporting the overall growth of the business of the Resulting Company, post the completion of the Scheme;

k. It would achieve economies of scale with an aim to create long term shareholder value, post the completion of the Scheme;

l. It would streamline operations, efforts and ensuring more efficient management, control and day to day operations of the Demerged Company and the Resulting Company, post the completion of the Scheme.

7. Consideration as provided in the Scheme is as under:

“18,526 equity share of the Resulting Company of INR 10 fully paid up to be issued and allotted to the shareholders of the Demerged Company for every 1 equity share of the Demerged Company of INR 10 fully paid up held by such shareholder.”

8. The Company Scheme Petition is filed in consonance with the order dated 18.10.2022 passed in CA(CAA) No.172/MB/2022 by this Tribunal and the Petitioners have complied with all the requirements as per the directions of this Tribunal and have filed the necessary affidavit(s) with this Tribunal showing compliance.

9. The Regional Director has filed his report dated 29.03.2023 making certain observations. The Petitioner Companies have submitted/undertaken that:

a. The Scheme does not contemplate any arrangement or compromise with the creditors of any of the Petitioner Companies. The liabilities towards the creditors of any of the Petitioner Companies are neither being reduced nor being extinguished.

b. The interest of the creditors of each of the Petitioner Companies is protected under the Scheme.

c. The Appointed Date is also in line with the appointed dates under the similar schemes/restructuring/transfers filed/ to be filed within the KRC Group to make the Resulting Company become the flagship residential real estate focussed company in the KRC Group, so as to have one common date as the Appointed Date for aiding ease of valuation, accounting, stamp duty adjudication and other transfer process.

d. The Appointed Date is the first day of the financial year 2021-2022. Such date is a date determined by the Demerged Company and the Resulting Company, in its commercial prudence, as the suitable date to be the appointed date for the purpose of the Scheme. In addition, April 1, 2021 is the closest date to March 31, 2021, as of which the accounts of the Demerged Company and the Resulting Company are audited. These audited accounts have been used as one of the key documents for the valuation exercise carried out by the Registered Valuer for arriving at the share exchange ratio.

e. The Petitioner Companies will comply with the directions of the Income Tax Department, RERA and the concerned sectoral regulatory, if any.

f. The Petitioner Companies will comply with the rules, regulations, and guidelines of RERA, as applicable.

g. The "Securities Premium" reflected in the Financial Statements of the Demerged Company is a result of the issue of Securities on August 10, 2007, and its application/utilization u/s 52(2) of the Companies Act, 2013. The Securities Premium has been appropriately considered and disclosed in the Audited Financial Statements and in Income Tax Returns of the relevant Assessment Year (A.Y) as required under the Income Tax Act, 1961 and rules made thereunder and also in compliance with all relevant laws by the Demerged Company. Further, no addition under Section 68 of the Income Tax Act, 1961 on account of security premium received has been made during income tax assessments finalised for any of the relevant assessment years of the Demerged Company.

10. Ms. Rupa Sutar, Deputy Director from the Office of Regional Director of Western Region, Mumbai appeared on the date of hearing and submits that above explanations and clarifications given by the Petitioner Companies in rejoinder are satisfactory and they have no further objection to the Scheme.

11. The creditors of undertaking, being demerged, shall be entitled to make claim against the resulting company as well as demerged company in relation to their debt up to the date of demerger. In case the resulting Company is made to pay the debt of such undertaking, it shall be entitled to seek reimbursement of the amount so paid from the Demerged Company.

12. From the material on record, the Scheme annexed as Exhibit P to the Company Scheme Petition appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.

13. Since all the requisite statutory compliances have been fulfilled, C.P. (CAA) 18/MB/2023 is made absolute in terms of prayers made therein. Hence ordered.

14. The Petitioners are directed to lodge a copy of this Order and Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable on the same, if any, within 60 (sixty) clear

working days from the date of receipt of the certified copy of the Order and Scheme.

15. The Petitioners are further directed to file a copy of this Order along with a copy of the Scheme with the concerned Registrar of Companies electronically alongwith E-Form INC 28 within 30 days from the date of receipt of certified copy of this Order.

16. All concerned regulatory authorities to act on a copy of this Order alongwith the Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench.

17. Ordered Accordingly.

18. C.P. (CAA)/18/MB/2023 is allowed and disposed-off.