

THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

C.A(CAA)/18/MB-I/2024

In the matter of
The Companies Act, 2013 (18 of 2013)
and
Section 232 r/w Section 230 of
The Companies Act, 2013
and other applicable provisions of
The Companies Act, 2013 read with the
Companies (Compromises, Arrangements and
Amalgamations) Rules, 2016;
In the matter of
The Composite Scheme of Arrangement
Amongst
Apurva Natvar Parikh & Co Private
Limited
and
RAPG Developments Private Limited
and their respective Shareholders and
Creditors (“Scheme”)

**Apurva Natvar Parikh & Co Private
Limited**

CIN: U63010MH1959PTC011380

...Applicant Company 1/
Demerged Company

RAPG Developments Private Limited

CIN: U85212MH2023PTC409512

...Applicant Company 2/
Resulting Company

Order delivered on 20.03.2024

Coram:

Shri Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G. Bisht (Retd.)
Hon'ble Member (Judicial)

Appearances (through)

For the Applicant(s) : Mr. Ahmed Chunawala i/b
Rajesh Shah & Co.

ORDER

1. Heard the learned counsel for the Applicant Companies.
2. The present Scheme is a Composite Scheme of Arrangement sought u/s 232 r/w Section 230 of the Companies Act, 2013 and other applicable provisions of the Companies Act, 2013 between **Apurva Natvar Parikh & Co Private Limited** (Demerged Company) and **RAPG Developments Private Limited** (Resulting Company) and their respective Shareholders.
3. The Board of Directors of the Demerged Company and Resulting Company in their respective meetings conducted on January 10, 2024 have approved the Scheme. The Appointed Date is fixed as October 1, 2023
4. The rationale for the proposed Scheme is as under:
 - (a) *Over the last few years, differences in outlook and direction have arisen between members of the Family (as defined in the Scheme). In order to amicably resolve the said differences and to preserve the unity and harmony of the Family, the Family has agreed to divide and distribute the assets and businesses between the*

members of the Family and provide to each of them, so far as possible, independence and security for the future.

- (b) *Given that the business is being carried on and assets are held through the instrumentality of Applicant Company 1, Applicant Company 2 and several other Family held entities, the Family agreed and is of the view that this shall be best achieved by inter alia restructuring and demerging both, Applicant Company 1 and the Applicant Company 2 such that the Construction Education Retail and Warehousing Business shall be demerged/ hived off and transferred from the Applicant Company 1 to the Applicant Company 2 and thereafter the Hospitality Business of the Applicant Company 2 shall be demerged/ hived off and transferred from the Applicant Company 2 to the Applicant Company 1. Remaining Business Undertaking of the Applicant Company 1 (as defined in the Scheme) shall continue to remain in the Applicant Company 1 and Remaining Business Undertaking of the Applicant Company 2 (as defined in the Scheme) shall continue to remain in the Applicant Company 2.*
- (c) *The proposed demerger would facilitate focused growth, operational efficiencies, business synergies and increased operational and customer focus in relation to both the Applicant Companies.*
- (d) *The proposed demerger would provide a platform for having a concentrated approach thereby resulting in better strategic, operational and administrative efficiency of both the Applicant Companies.*

- (e) *The proposed demerger, transfer and vesting will enhance value for shareholders of the Applicant Companies and allow a focused strategy which would be in the best interest of the Applicant Companies and their respective shareholders, creditors and all persons concerned.*
- (f) *The Board of Directors of Applicant Company 1 and the Applicant Company 2 believe that the Demerged Undertaking No. 1 (as defined in the Scheme), Demerged Undertaking No.2 (as defined in the Scheme), Remaining Business Undertaking of Applicant Company 1 and Remaining Business Undertaking of Applicant Company 2 are capable of being operated, run and managed distinctly.*
- (g) *There is no likelihood that the interests of any shareholder or creditor of either Applicant Company 1 or the Applicant Company 2 would be prejudiced as a result of the Scheme. The proposed demerger will not impose any additional burden on the members of the Applicant Companies. The Scheme is not in any manner prejudicial or against public interest and would serve the interest of all shareholders, creditors and stakeholders.*

5. The Business Clause is as follows:

- i. The Applicant Company No.1 is entered in multiple business divisions and has four major verticals viz. Hospitality, education, Retail, construction and warehousing. As part of hospitality business to own and run club, hotels refreshment and entertaining centre, swimming pool, indoor and outdoor games, library, tourist centre, holiday camp, card room, gymnasium, canteen, cafes, milk and snack bars etc. Under the

educational business to own, run and operate schools, play schools, colleges, educational institutes. As part of construction and warehousing business to buy and sell or let on hire any movable or immovable property and to construct and renovate any property for the purpose of letting. As part of retail business to deal with articles or commodities of all and every kind.

- ii. The Applicant Company No.2 is engaged in business of Education, hospitality business and construction business. To carry on education business on own or through fully equipped schools, play schools, colleges, educational institutes, universities including deemed or autonomous and also to establish and setup coaching institutes, Study centre, oral coaching classes, where in professional, technical, vocational or higher education in every field. To purchase & acquire land for construction and establishment under the construction business. As part of hospitality business to own and run club, hotels etc.

6. The Authorised Share Capital of the Applicant Company No.1, as on November 30, 2023 is as under:

Particulars	Amount in (Rs.)
Authorised Capital	
30,000 Equity Shares of Rs.1,000/- each	3,00,00,000
Total	3,00,00,000
Issued and Subscribed and Paid-up	
30,000 Equity Shares of Rs. 1,000/- each fully paid-up	3,00,00,000
TOTAL	3,00,00,000

As on date there is no change in the capital structure of the Applicant Company No.1

7. That there are 5 (Five) Equity Shareholders in the Applicant Company No.1. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Composite Scheme of Arrangement between the Applicant Companies are dispensed with in view of the consent affidavits given by all the Five Equity Shareholders of the Applicant Company No.1.
8. The Share Capital of the Applicant Company No.2 as on November 30, 2023 is as under:

Particulars	Amount in (Rs.)
Authorised Capital	
1,00,000 Equity Shares of Rs.1,000/- each	10,00,00,000
Total	10,00,00,000
Issued, Subscribed and Paid-up	
87,412 Equity Shares of Rs. 1,000/- each fully paid-up	8,74,12,000
Total	8,74,12,000

As on date, there is no change in the capital structure of the Applicant Company No.2.

9. That there are 4 (Four) Equity Shareholders in the Applicant Company No.2. That the convening and holding the meeting of the Equity Shareholders of the Applicant Company No.2 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Composite Scheme of Arrangement between the Applicant Companies are dispensed

with in view of the consent affidavits given by all the Five Equity Shareholders of the Applicant Company No.2.

10. That there are 3 (Three) Secured Creditors having value of Rs. 33,18,59,000/- (Rupees Thirty Three Crores Eighteen Lakhs Fifty Nine Thousand Only) as on November 30, 2023 in the Applicant Company No.1. The Counsel for the Applicant Company further submits that the Applicant Company No.1 will obtain the Consent from Secured Creditors having value of more than 90% in value before the date of Final Hearing. In view of the above submission, the Applicant Company No. 1 is directed to file consent affidavit of at least 90% value of Secured Creditors at the time of filing of Company Petition.
11. That the counsel for the Applicant Company No. 2 submits that there are no Secured Creditors in the Applicant Company No. 2 as mentioned in Para 16 of the Application.
12. That there are 818 (Eight Hundred and Eighteen) Unsecured Creditors having value of Rs. 13,64,42,972/- (Rupees Thirteen Crores Sixty-Four Lakhs Forty-Two Thousand Nine Hundred and Seventy-Two Only) as on November 30, 2023 in the Applicant Company No.1. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.1 for the purpose of considering and, if thought fit, approving, with or without modification(s) the proposed Composite Scheme of Arrangement Amongst Apurva Natvar Parikh & Co Private Limited and RAPG Developments Private Limited and their respective Shareholders and Creditors shall be convened & held as may be decided by the Chairman. The

quorum for the aforesaid meeting of the Unsecured Creditors of the Applicant Company No. 1 shall be 10 (Ten) in number.

13. Ms. Manish Jain, Advocate, Contact No: 9888012447, Email: mjainnmj@gmail.com, is appointed as the Chairperson and Mr. Mitesh Shah, ICSI No. F10070 COP 12891, Contact No: 9820464964, Email: csmjshah@gmail.com is appointed as scrutinizer for the said meeting. The remuneration for Chairperson shall be Rs.1,50,000/- and for scrutinizer shall be Rs.50,000/- The quorum for the said meeting is 90% of total value of Unsecured Creditors, either in person or through representative/proxy in view of the Act prescribed for consideration of the Scheme later.
14. The Chairperson to file an affidavit not less than seven days before the date fixed for the holding of the meeting and do report this Tribunal that the direction regarding the issue of notices and advertisement have been duly complied with as per Rule 12 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
15. The Chairperson to report to this Tribunal, the result of the aforesaid meeting within thirty days of the conclusion of the meeting, as per Rule 14 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.
16. That there are 31 (Thirty-One) Unsecured Creditors having value of Rs. 64,05,63,720/- (Rupees Sixty-Four Crores Five Lakhs SixtyThree Thousand Seven Hundred and Twenty Only) as on November 30, 2023 of Applicant Company No. 2. That the convening and holding the meeting of the Unsecured Creditors of the Applicant Company No.2 for the purpose of

considering and, if thought fit, approving, with or without modification(s) the proposed Composite Scheme of Arrangement Amongst Apurva Natvar Parikh & Co Private Limited and RAPG Developments Private Limited and their respective Shareholders and Creditors is dispensed with in view of the consent affidavits given by more than 90% in value of the Unsecured Creditors of the Applicant Company No.2.

17. The Consideration is as follows:

- i. the Demerged Undertaking No. 1 (*as defined in the Scheme*) of the Applicant Company 1, on a going concern basis, into the Applicant Company 2. Pursuant to the Scheme, the Applicant Company 2 shall issue consideration to the members of the Applicant Company 1 as on the effective Date (*as defined in the Scheme*) in the following manner:

“1 equity share of Company No.2 of INR 1,000/- fully paid up to be issued and allotted to the shareholders of the Company No.1 for every 1 equity share of the Company No.1 of INR 1,000/- fully paid up held by such shareholder”

- ii. the Demerged Undertaking No. 2 (*as defined in the Scheme*) of the Applicant Company 2, on a going concern basis, into the Applicant Company 1. Pursuant to the Scheme, the Applicant Company 1 shall issue consideration to the members of the Applicant Company 2 as on the effective Date (*as defined in the Scheme*) in the following manner:

“1 equity share of Company No.1 of INR 1,000/- fully paid up to be issued and allotted to the shareholders of the Company No.1 for every 1 equity share of the Company No.1 of INR 1,000/- fully paid up held by such shareholder”

18. That the Applicant Companies is directed to serve notices along with copy of Scheme under the provisions of Section 230 (5) of the Companies Act, 2013 and Rule 8 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 upon the:
- a) Central Government through the office of Regional Director, Western Region, Mumbai;
 - b) Jurisdictional Registrar of Companies;
 - c) Jurisdictional Income Tax Authority within whose jurisdiction; the Applicant Company's assessment are made, the Applicant Company No. 1 PAN:- AAACN2937Q having their address at The Income Tax Officer, Circle 14(1)(1), Aayakar Bhawan, Mumbai. The Applicant Company No. 2 PAN:- AAMCR9574K having their address at The Income Tax Officer, Circle 14(1)(2), Aayakar Bhawan, Mumbai and the Nodal Authority in the Income Tax Department having jurisdiction over such authority i.e. Pr. CCIT, Mumbai, Address:- 3rd Floor, Aayakar Bhawan, Mahrishi Karve Road, Mumbai – 400 020, Phone No. 022-22017654 [E-mail: Mumbai.pccit@incometax.gov.in];
 - d) Jurisdictional GST Authority(s) (proper officer), if applicable, within whose jurisdiction such companies are assessed to tax under GST law; and
 - e) Any other Sectoral / Regulatory Authorities relevant to the Applicant Companies or their business.
19. The Notice shall be served through by Registered Post-AD, Hand Delivery, Speed Post and email along with copy of Scheme and state that *“If no response is received by the Tribunal from*

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the concerned Authorities within 30 days of the date of receipt of the notice it will be presumed that the concerned Authorities has no objection to the proposed Scheme". It is clarified that notice service through courier shall be taken on record only in cases where it is supported with Proof of Delivery having acknowledgement of the notice.

20. The Applicant Companies will submit –
- i. Details of Corporate Guarantee, Performance Guarantee and Other Contingent Liabilities, if any.
 - ii. List of pending IBC cases, if any, along with all other litigation;
 - iii. pending against the Applicant Companies having material impact on the proposed Scheme.
 - iv. The Applicant Companies shall submit details of all Letters of Credit sanctioned and utilized as well as Margin Money details; if any.
21. The Transferee Company shall submit a declaration that it shall enhance its authorised capital in accordance with the minimum capital requirement of RBI for carrying the business of financing industrial enterprises and investment company.
22. The Applicant Companies to file an affidavit of service within 10 working days after serving to notice to all the regulatory authorities as stated above and do report to this Tribunal that the directions regarding the issue of notices have been duly complied with.

Sd/-
Prabhat Kumar
Member (Technical)

Sd/-
Justice V.G. Bisht
Member (Judicial)