

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

C.P.(CAA)/214/MB/2021
c/w C.A.(CAA)/84/MB/2021

*In the matter of
the Companies Act, 2013;*

AND

*In the matter of
Sections 230 to 232 and other applicable
provisions of the Companies Act, 2013*

AND

*In the matter of
Scheme of Amalgamation of
Brickex Advisors Private Limited,
[Transferor Company /
Petitioner Company 1]*

With

***Piramal Corporate Services Private Limited,**
[Transferee Company /
Petitioner Company 2]*

And

their respective shareholders.

Brickex Advisors Private Limited
[CIN: U74120MH2012PTC225638]

... Petitioner Company 1/
Transferor Company

Piramal Corporate Services Private Limited
[CIN: U74110MH1989PTC051127]

...Petitioner Company 2 /
Transferee Company

(Hereinafter collectively referred to as 'the Petitioner Companies')

Order delivered on: 20.01.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioners : Mr. Ahmed M. Chunawala
i/b Rajesh Shah & Co., Advocates.

For the Regional Director : Ms. Rupa Sutar, Dy. Director from
Office of the Regional Director, MCA
(WR), Mumbai.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. The Court convened through video-conference.
2. Heard Learned Counsel for the Petitioner Companies and the Representative of the Regional Director, Western Region, Ministry of Corporate Affairs, Mumbai ("Regional Director"). No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme.
3. The sanction of this Tribunal is sought under Sections 232 read with Section 230 and Section 66 of the Companies Act, 2013 and the Rules framed thereunder for the Scheme of Amalgamation of Brickex Advisors

Private Limited ('BAPL' or 'the Transferor Company') with Piramal Corporate Services Private Limited ('PCSPL' or 'the Transferee Company') and their respective shareholders ('Scheme').

4. The Counsel for the Petitioners submits that the Petitioner Companies have approved the Scheme by passing the Board Resolutions at their respective board meetings held on 16.03.2021.
5. The rationale mentioned in the Scheme is summarised as under:
 - i. Elimination of inter-company transactions;
 - ii. Eliminate doubling of related costs, thereby reducing operational and administrative expenses and overheads, and lead to better cost and operational efficiencies;
 - iii. Simplification of group corporate structure;
 - iv. Rationalisation of administrative overheads; and
 - v. Greater administration efficiency.
6. The First Petitioner Company is engaged in the business of real estate advisory services and the Second Petitioner Company is engaged in the business of management consultancy services.
7. The Learned Counsel for the Petitioner Companies submits that the present Company Petition is filed in consonance with Section 232 read with Section 230 and Section 66 of the Companies Act, 2013 and in terms of order delivered on 17.08.2021 in CA(CAA)/84(MB)2021.

8. Learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have made requisite filings to demonstrate compliance with this Tribunal. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if and to the extent applicable, as may be required under the Companies Act, 2013 and the rules made thereunder.
9. The Regional Director (Western Region), Ministry of Corporate Affairs, has filed a Report dated 23.02.2022. In paragraphs IV (a) to (k) of the Report, the RD has made certain observations. In response to the observations made by the Regional Director, the Transferee Company has given necessary clarifications and undertakings vide its rejoinder affidavit dated 09.03.2022. The Transferee Company has submitted that :-
- a. *The Transferee Company shall pass applicable necessary accounting entries in connection with the Scheme of Amalgamation to comply with the accounting standards AS-14 (IND AS-103) and any other applicable Accounting Standards including AS-5 (IND AS-8) to the extent applicable.*
 - b. *The Appointed Date i.e. April 01, 2020 for amalgamation of Transferor Company with the Transferee Company has been clearly indicated in the Scheme in accordance with provision of Section 232(6) of the Companies Act, 2013 and the scheme shall become effective from the appointed date and shall comply with the requirements and clarification of circular No. F. No.: 7/12/2019/CL-I dated 21.08.2019 issued by the Ministry of Corporate*

Affairs.

- c. *The Petitioner Companies confirm that the Scheme enclosed to the Company Application and Company Petition are one and the same and there is no discrepancy or deviation.*
- d. *The Petitioner Companies have not received any representations or objections from any of the Regulatory/Sectoral/Tax/other Government Authorities and the approval of the Scheme by this Tribunal will not deter any such authorities to deal with any of the issues arising after giving effect to the scheme.*
- e. *The Petitioner Companies submit that the Scheme does not provide for aggregation of the authorised share capital of the Transferor Companies with the Transferee Company. Hence the provisions of Section 232(3)(i) of Companies Act, 2013 is not applicable.*
- f. *The Transferee Company undertakes to comply with provisions of section 2(1B) of the Income Tax Act, 1961, as applicable.*
- g. *The Transferee Company shall pay requisite fees and stamp duty payable as per applicable laws of the states, if any need arises, in accordance with provisions of Sections 13 and 62 of the Companies Act, 2013 does not arise.*
- i. *The Transferee Company shall not consider Capital Reserves arising out of the Amalgamation, if any, as free reserve for distribution of dividends.*
- j. *The Transferee Company undertakes to pay the fees as in accordance with the provisions of Section 13 and Section 232(3)(i) of the Companies Act, 2013 and stamp duty in accordance with the law of the States, if any, arising on reclassification of its share capital.*

- k. *The Transferee Company will comply with Income Tax Provisions in relation to proceedings/claims under Income Tax Act against the Transferor Company.*
- l. *The Transferee Company undertakes to file a copy of the order sanctioning the Scheme within 30 days from the date of receipt of the order with Reserve Bank of India in relation to merger of the Transferor Company and submit its Certificate of Registration (CoR) for cancellation after the proposed Scheme of merger comes into effect.*
- m. *The Transferor Company submits that it was or is not in the construction business nor has it developed any Real Estate Project, hence NOC from Real Estate Regulatory Authority is not required.*
- n. *The interests of the aforesaid creditors for Petitioner Companies are duly protected.*
10. The Regional Director has filed Supplementary Report dated 23.03.2022 stating that the replies of the Petitioner Companies are satisfactory and has submitted through Representative that RD has no further observations/objections to the proposed Scheme.
11. The Official Liquidator has filed his report dated 08.12.2022 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Scheme is not prejudicial to the interest of the public and the Shareholders of the Transferor Companies.

12. The Income Tax Department will be at liberty to examine the aspect of any tax payable as a result of this scheme and in case it is found that the scheme ultimately results in tax avoidance under the provisions of Income Tax Act, it shall be open to the income tax authorities to take necessary action as possible under the Income Tax Law.
13. 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 considering that no objection has so far been received from any authority or creditors or members or any other stakeholders.
14. In terms of clause 5 of the Scheme, the Second Petitioner Company shall without any further application or deed, issue and allot shares as fully paid up to the shareholders of the First Petitioner Company, whose names appear in the register of members of the First Petitioner Company as on the Effective Date or to their successors-in-title, as the case may be, in the following manner:

“426 (Four Hundred Twenty-Six) fully paid up New Preference Shares of Rs. 10 (Rupees Ten) each of Piramal Corporate Services Private Limited shall be issued and allotted for every 1(One) fully paid up equity shares of Rs. 10/- (Rupees Ten) each held in Brickex Advisors Private Limited”.
15. Since all the requisite statutory compliances have been fulfilled, consolidated Company Scheme Petition in C.P.(CAA)/214/MB/2021 filed

by Petitioner Companies are made absolute in terms of prayer in the said Company Scheme Petition.

16. The Scheme is hereby sanctioned and the Appointed Date of the Scheme is fixed as **1st April, 2020**.
17. The First Petitioner Company be dissolved without winding up.
18. All the assets and liabilities including taxes and charges, if any and duties of the First Petitioner Company, shall pursuant to Section 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Second Petitioner Company.
19. The Petitioner Companies are directed to lodge a certified copy of this order along with a copy of the Scheme with the concerned Registrar of Companies, electronically in E-Form INC-28 within 30 days from the date of receipt of the Order from the Registry.
20. The Petitioner Companies are directed to lodge a certified copy of this order and the Scheme duly authenticated by the Deputy / Assistant Registrar of this Tribunal, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty, payable, if any, within 60 clear working days from the date of receipt of certified copy of the Order from the Registry of this Tribunal.
21. All concerned regulatory authorities to act on a copy of this Order duly

certified by the Deputy Registrar / Assistant Registrar of this Tribunal along with copy of the Scheme.

22. Any person or any Authority, whose interest is adversely affected, shall be at liberty to approach appropriate Forum or to take appropriate action as permissible under law.
23. Further heard, Ms. Rupa Sutar, Dy. Director, Office of the Regional Director, MCA (WR), Mumbai, reported no objections for allowing the above Company Scheme Petition.
24. Ordered, accordingly. C.P.(CAA)/214/MB/2021 is **allowed** and disposed off. File to be consigned to records.

Prabhat Kumar
Member (Technical)

Kishore Vemulapalli
Member (Judicial)

20.01.2023/pvs