

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CA (CAA) No.16/Chd/Hry/2020

**Under Section 230-232 of the
Companies Act, 2013**

In the matter of Scheme of Amalgamation between:

RICHMOND PARK PROPERTY MANAGEMENT SERVICES LIMITED,

Having its registered office at
Shopping Mall, Phase-I,
DLF City, Gurugram – 122002,
Haryana
(CIN: U74920HR1999PLC034194)

.... Applicant Company No. 1/Transferor Company

With

DLF EMPORIO LIMITED,

Having Its Registered Office At
Shopping Mall, Phase-I,
DLF City, Gurugram – 122002,
Haryana
(CIN: U45201HR2006PLC034168)

.... Applicant Company No.2/Transferee Company

Order delivered on: 14.08.2020

**Coram: HON'BLE MR AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

Present through Video Conferencing:

For the Applicants : 1. Mr. Anand Chhibbar, Senior Advocate
2. Mr. Vaibhav Sahni, Advocate
3. Mr. K.V. Singhal, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

ORDER

This is the first motion joint Application filed by Applicant Companies herein, namely, Richmond Park Property Management Services Limited (hereinafter referred to as Transferor Company or RPPMSL)

and DLF Emporio Limited (hereinafter referred to as Transferee Company or DEL) seeking sanction of the Scheme of Amalgamation (hereinafter referred to as the "Scheme") in connection with the proposed Scheme of Amalgamation (for short the "Scheme") (Annexure A.9 of the Application) under Sections 230 to 232 of the Companies Act, 2013 (for brevity, the 'Act') and other applicable provisions read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (for brevity, the 'Rules'). The Joint Application is maintainable in terms of Rule 3(2) of the Rules.

2. It is stated that the Board of Directors of the Applicant Companies in their respective meetings held on 25.05.2020, considered and unanimously approved the 'Scheme' subject to sanctioning of the same by this Tribunal. Copies of these Board Resolutions are at Annexures A.10. The Transferor Companies has authorized Mr. Debaraj Sahoo and the Transferee Company has authorized Mr. Manoj Kumar Dua to do all the necessary acts, matters, deeds and things as may be necessary to give effect to the resolutions and to the Scheme.

3. As per the Memorandum and Articles of Association, the main objects of Transferor Company are as follows: -

"1. To undertake the business of management, security and maintenance of multi-storied buildings/ colonies and operation thereon of common services for the benefit of the Owners, Occupants and Residents thereof on such terms and conditions and for such considerations as may be agreed between the parties and run the same with such additions, alterations, improvements or limitations as may be deemed fit." etc.

4. The Transferor Company was incorporated on 05.04.1999 under the provisions of the Companies Act, 1956. The registered office of the Transferor Company is situated at Shopping Mall, Phase-I, DLF City,

Gurugram, Haryana-122002. The CIN of Transferor Company No. 1 is U74920HR1999PLC034194. The Certificate of Incorporation and Memorandum & Articles of Association are a part of Annexure-A.2.

5. The authorized, issued, subscribed and paid up share capital of Transferor Company as on 31.03.2019 is as follows:

Particulars	Amount (In ₹)
Authorised Share Capital	
9,000 Equity Shares of ₹10/- each.	90,000.00
100 12% Non - Cumulative Redeemable Preference Shares of ₹100/- each.	10,000.00
4,000 9% Non - Cumulative Redeemable Preference Shares of ₹100/- each.	4,00,000.00
Total	5,00,000.00
Issued, Subscribed And Paid-Up Share Capital	
9,000 Equity Shares of ₹10/- each.	90,000.00
100 12% Non - Cumulative Redeemable Preference Shares (RPS) of ₹100/- each.	10,000.00
4,000 9% Non - Cumulative RPS of ₹100/- each.	4,00,000.00
Total	5,00,000.00

6. As per the Memorandum and Articles of Association the main objects of Transferee Company are as follows: -

1. *“To undertake the business of management, security and maintenance of multi-storied buildings/ colonies and operation thereon of common services for the benefit of the Owners, Occupants and Residents thereof on such terms and conditions and for such considerations as may be agreed between the parties and run the same with such additions, alterations, improvements or limitations as may be deemed fit.” etc.*

7. The Transferee Company was incorporated on 17.03.1999 under the provisions of the Companies Act, 1956. The registered office of the Transferee Company is situated at Shopping Mall, Phase-I, DLF City, Gurugram, Haryana-122002. The CIN of Transferee Company is U45201HR2006PLC036074. The Certificate of Incorporation and Memorandum & Articles of Association are a part of Annexure-A.6.

8. The authorized, issued, subscribed and paid up share capital of Transferee Company as on 31.03.2019 is as follows:

PARTICULARS	AMOUNT (IN ₹)
Authorised Share Capital	
49,59,000 Equity Shares of ₹10/- each.	4,95,90,000.00
100 12% Non - Cumulative Redeemable Preference Shares of ₹ 100/- each.	10,000.00
4,000 9% Non - Cumulative Redeemable Preference Shares of ₹ 100/- each.	4,00,000.00
Total	5,00,00,000.00
Issued, Subscribed And Paid-Up Share Capital	
49,59,000 Equity Shares of ₹10/- each.	4,95,90,000.00
Total	4,95,90,000.00

9. It is represented that there has been no change in the capital structure of all the Applicant Companies post 31.03.2019 till the date of filing of this company application.

10. The registered offices of both the Transferor and Transferee Companies are situated in the State of Haryana. Therefore, the jurisdiction of both the Applicant Companies lies within this Tribunal.

11. It is also submitted that there are no proceedings under Sections 235 to 251 of the CA, 1956 and/or Section 206 to 229 of the Companies Act, 2013 against Applicant Companies.

12. The learned counsel for the Applicant Companies submitted that as per the shareholders list certified by M/s Oberoi & Associates, Company Secretaries as on 25.02.2020 (Annexure A-11), the Transferor Company has 7 equity shareholders and 2 preference shareholders. All the equity shareholders and preference shareholders have given their consent/ no objection to the Scheme and for the dispensation of the meeting of the shareholders by way of affidavits attached from pages 254 to 286 of the

application.

13. As per certificate of M/s Kwatra Tarun & Associates, Chartered Accountants, (Annexure A-13), there are nil secured and unsecured creditors in Transferor Company as on 25.02.2020.

14. The learned counsel for the Applicant Companies submitted that as per the shareholders list certified by M/s Oberoi & Associates, Company Secretaries as on 25.02.2020 (Annexure A-14), the Transferee Company has 7 equity shareholders. All the equity shareholders have given their consent/no objection to the Scheme and for dispensing of the meeting of the shareholders by way of affidavits attached as Annexure A-15 of the application.

15. As per certificate of M/s Kwatra Tarun & Associates, Chartered Accountants, (Annexure A-16), there is one secured creditor in Transferee Company as on 25.02.2020. The secured creditor has given its consent/ no objection to the Scheme and for dispensing of the meeting of the secured creditor by way of affidavit, which is attached from page 319 to 323 of the application.

16. As per certificate of M/s Kwatra Tarun & Associates, Chartered Accountants, (Annexure A-16), there are 104 unsecured creditors in the Transferee Company as on 25.02.2020.

17. We have heard the Learned Senior Counsel for the Applicant Companies and have perused the records and the supporting documents/papers filed along with the "Scheme" contemplated between the Applicant Companies.

18. The Rationale for the "Scheme" is stated as below:-

"The amalgamation would, inter alia, bring about:

1. *Simplification of the corporate structure and reducing the layers of subsidiaries;*
2. *Better, efficient and economical management and control over the running of businesses;*
3. *Elimination of duplication in administrative cost and multiple record keeping thus resulting in cost savings, increased operational efficiencies and administrative convenience;*
4. *Creating better synergies across the group, optimal utilization of resources and obtaining economies of scale; and*
5. *The Scheme of amalgamation is in the best interest of all the stakeholders including shareholders and creditors and has no adverse impact on directors, key managerial personnel and vendors.”*

19. The statutory auditors of both the Applicant Companies have furnished certificates (Annexure A-20) stating that the accounting treatment specified in Clause 11 of the Scheme is in compliance with the Accounting Standards prescribed under Section 133 of the Companies Act, 2013 read with Companies (Indian Accounting Standard) Rules, 2015 (as amended) and other Generally Accepted Accounting Principles (GAAP).

20. The Learned Senior Counsel for the Applicant Companies has also represented that both the Applicant Companies have filed their audited financial statements as on 31.03.2019, along with provisional financial statements for the period ended 31.12.2019 attached as Annexures A-3, and A-7 respectively of the application.

21. The learned counsel also submitted that the valuation report dated 24.02.2020 of Mr. Romesh Vijay, Registered Valuer, Securities & Financial Assets registered with the Insolvency and Bankruptcy Board of India

(IBBI), has been annexed as Annexure A.19. The following Share Exchange Ratio has been proposed in the aforesaid report:

- a. Allotment of 2,680 (Two thousand six hundred and Eighty) equity shares of DEL of ₹10/- each fully paid for every 10(Ten) equity shares of RPPMSL of ₹ 10/- each fully paid up as of October 31, 2019.
- b. Allotment of 3 (Three) equity shares of DEL of ₹10/- each fully paid for every 100(one hundred) 12% Non-Cumulative Redeemable Preference Shares of ₹100/- each fully paid up as of 31.10.2019.
- c. Allotment of 114 (One hundred and Fourteen) equity shares of DEL of ₹10/- each fully paid for every 4000 (four thousand) 9% Non-Cumulative Redeemable Preference Shares of ₹100/- each fully paid up as of 31.10.2019.

22. The Scheme also deals with and takes care of the interest of staff, workmen and employees of Transferor Companies by virtue of clause 8 which is reiterated as under :-

“Upon the coming into effect of this Scheme all the staff, workmen, employees of the Transferor Company, if any, who are in its employment as on the Scheme coming into effect shall become the staff, workmen, employees or other labour of the Transferee Company with effect from the Appointed Date without any break or interruption in service and on terms and conditions as to employment and remuneration not less favourable than those on which they are engaged or employed by the Transferor Company whereas there will be no effect on the employees of the Transferee Company, if any.”

23. As per Clause 5 of the Scheme, on and from the Appointed Date,

all suits, actions, claims and legal proceedings by or against the Transferor Company pending and/or arising on or before the Effective Date shall be continued and / or enforced by the Transferee Company and on and from the Effective Date, shall be continued and / or enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been originally instituted and/or pending and/or arising by or against the Transferee Company. On and from the Effective Date, the Transferee Company shall have the right to initiate, defend, compromise or otherwise deal with any legal proceedings relating to the Amalgamating Undertaking, in the same manner and to the same extent as would or might have been initiated by the Transferor Company as the case may be, had the Scheme not be made; if any suit, appeal or other proceedings relating to the Undertaking, of whatever nature by or against the Transferor Company be pending, the same shall not abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation of the Undertaking or by anything contained in this Scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been continued, prosecuted and enforced by or against the Transferor Company as if this Scheme had not been made.” etc.

24. As per Clause 1.2 of the Scheme, the Appointed Date for Amalgamation will be 01.04.2019, or such other date, as the Hon’ble National Company Law Tribunal or any other competent authority may approve.

25. Further, the Applicant Companies in their affidavits filed vide Spl. Diary No.162 dated 23.06.2020 have stated that there are no sectoral regulators applicable to the Applicant Companies except statutory authorities.

26. In view of the above, following directions are issued with respect to calling, convening and holding of meetings of the Shareholders, Secured Creditors and Unsecured Creditors or dispensing with the same as well as issue of notices including by way of paper publication which are as follows:

A. In relation to Applicant No. 1/ Transferor Company:

- i. Meeting of the equity shareholders is dispensed with as consent affidavits of all of the equity shareholders have been obtained and placed on record.
- ii. Since there are no secured creditors, there is nothing to convene the meetings.
- iii. Since there are no unsecured creditors, there is nothing to convene the meetings.

B. In relation to Applicant Company No. 2/ Transferee Company:

- i. Meeting of the equity shareholders is dispensed with as consent affidavits of all of the equity shareholders have been obtained and placed on record.
- ii. Meeting of the secured creditor is dispensed with as consent affidavits of the secured creditor has been obtained and placed on record.
- iii. Meeting of the unsecured creditors to be convened on 09.10.2020 at 3:00 p.m. through Video Conference subject to notice of meeting being issued through email and post. The quorum of the meeting of the unsecured creditors shall be 78 in number or 3/4th in value of the unsecured creditors, either personally present or through proxy.

- C.** In case the required quorum as noted above for the meetings of unsecured creditors of the Transferee Company is not present at the commencement of the meeting, the meeting shall be adjourned by 30 minutes and thereafter the persons present, and voting shall be deemed to constitute the quorum. For the purposes of completing the quorum the valid proxies and Authorised Representatives shall also be considered, if the proxy in the prescribed form, duly signed by the persons entitled to attend and vote at the meeting, is filed through email or otherwise with the respective Registered Office of the Transferee Company at least 48 hours before the meetings. The Chairperson and the Alternate Chairperson appointed herein along with Scrutinizer shall ensure that the proxy register is properly maintained. The Scrutinizer is also duty bound to record all the proceedings of the meeting conducted through video conference.
- D.** Mr. Justice M.M. Kumar, (Retd. Chief Justice) email id: mmkumar.j@gmail.com, Mobile No.9888824752 is appointed as the Chairperson for the meetings to be called under this order. An amount of ₹3,00,000/- (Rupees Three Lakhs only) be paid to him for his services as the Chairperson.
- E.** Mr. Amitabh Tiwari, Advocate, email id: amitabh16tewari@gmail.com , Mobile No. 9814016469 is appointed as the Alternate Chairperson for the meetings to be called under this order. An amount of ₹1,50,000/- (Rupees One Lakh Fifty Thousand Only) be paid to him for his services as the Alternative

Chairperson.

- F.** Mr. Vivek Goyal, Chartered Accountant, email id: vpachd@gmail.com, Mobile No. 9815522553 is appointed as the Scrutinizer for the above meeting to be called under this order. An amount of ₹75,000/- (Rupees Seventy Five Thousand Only) be paid to him for his services as the Scrutinizer.
- G.** The fees of the Chairperson, Alternative Chairperson and Scrutinizer along with out of pocket expenses and other expenses for them shall be borne by the Transferee Company.
- H.** It is further directed that individual notice of the said meeting shall be sent by the Transferee Company to the respective unsecured creditors through email and registered post or speed post or through courier, 30 days in advance before the scheduled date of meeting, indicating the day, date, time and link to meeting through video conference as aforesaid, together with a copy of the Scheme, copy of explanatory statement required to be sent under the Companies Act, 2013 and the applicable Rules along with the proxy forms and any other documents as may be prescribed under the Act shall also be duly sent with the notice.
- I.** It is further directed that along with the notice, Transferee Company shall also send, statement explaining the effect of the Scheme on the creditors, key managerial personnel, promoters and non-promotor members etc. along with effect of the arrangement for amalgamation on any material interests of the Directors of the Company, as provided under sub-section 3 of Section 230 of the

Act.

- J.** It is also directed that the supplementary accounting statement of the Applicant Companies as on 30.06.2020, be also circulated for the aforesaid meetings in terms of Section 230 (2) of the Act, apart from other requirements of Section 230 (2) of the Act.
- K.** That the Transferee Company shall publish the advertisement with a gap of at least 30 clear days before the aforesaid meetings, indicating the day, date, time and link of the meeting to be conducted through video conference as aforesaid, to be published in "Financial Express" (English), Delhi-NCR Edition and "Jansatta" (Hindi), Delhi-NCR Edition. It be stated in the advertisement that the copies of the "Scheme", the explanatory statement required to be published pursuant to Sections 230 – 232 of the Companies Act, 2013 and the form of proxy shall be provided free of charge at the registered office of the Transferee Company. The Transferee Company shall also publish the notice on their respective website(s), if any.
- L.** The authorized representatives of the Transferee Company shall furnish affidavit of service of notice of meetings and publication of advertisement and compliance of all directions contained herein at least ten (10) days before the date of proposed meetings.
- M.** Voting shall be allowed on the "Scheme" in person or by proxy or through electronics means as may be applicable to the Transferee Company under the Act and the Rules framed thereunder.
- N.** The Chairperson shall be responsible to report the result of the meeting to the Tribunal in Form No. CAA-4, as per Rule 14 of the

Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 within seven (7) days of the conclusion of the meeting. He would be fully assisted by the authorized representative/Company Secretary of the Transferee Company and the Scrutinizer, who will assist the Chairperson and Alternate Chairperson in preparing and finalizing the report.

- O. All Applicant Companies shall individually and in compliance of subsection (5) of Section 230 of the Act and Rule 8 of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 send notices in Form No. CAA-3 along with copy of the Scheme, Explanatory Statement and the disclosures mentioned in Rule 6 of the "Rules" to (i) Central Government through the Regional Director (Northern Region), Ministry of Corporate Affairs, New Delhi (ii) Registrar of Companies, Haryana (iii) Official Liquidator, Haryana and (iv) Income Tax Department through the Nodal Officer - Principal Commissioner of Income Tax, NWR, Aayakar Bhawan, Sector 17-E, Chandigarh and Commissioner of Income Tax within whose jurisdiction the respective Applicant Companies are assessed by mentioning their respective PAN number and such other sectoral regulator(s) governing the business of Applicant Companies, if any, stating that representations, if any, to be made by them shall be sent to the Tribunal within a period of 30 days from the date of receipt of such notice and copy of such representation shall be simultaneously sent to the concerned companies, failing which it shall be presumed that they have no objection to the proposed Scheme.

- P.** The Transferee Company shall furnish a copy of the Scheme free of charge within one day of any requisition for the Scheme made by any Creditor entitled to attend the meeting as aforesaid.
- Q.** All the aforesaid directions are to be complied with strictly in accordance with the applicable laws including forms and formats contained in the Rules as well as the provisions of the Companies Act, 2013 by the Applicant Companies.

27. With the aforesaid directions, this First Motion Application stands disposed of. A copy of this order shall be supplied to the learned counsel for the Applicant Companies who in turn shall supply copy of the same to the Chairperson, Alternative Chairperson and the Scrutinizer.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

August 14, 2020
Anchal