

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CP (CAA) NO. 2375 OF 2018

Under Section 230-232 of the Companies  
Act, 2013

In the matter of Scheme of Merger by  
Absorption of Bhavna Asset Operators  
Private Limited and F R Retail Destination  
Private Limited and Hridyanshu Multitrade  
Private Limited and Legitimate Assets  
Operators Private Limited and Mitra Infratech  
Private Limited and U-Phase Infraprojects  
Private Limited and Rivaaz Trade Ventures  
Private Limited and their respective  
Shareholders.

BHAVNA ASSET OPERATORS PRIVATE LIMITED

....Petitioner/ the Transferor Company No. 1

AND

F R RETAIL DESTINATION PRIVATE LIMITED

....Petitioner/ the Transferor Company No. 2

AND

HRIDYANSHU MULTITRADE PRIVATE LIMITED

....Petitioner/ the Transferor Company No. 3

AND

LEGITIMATE ASSETS OPERATORS PRIVATE LIMITED

....Petitioner/ the Transferor Company No. 4

AND

MITRA INFRATECH PRIVATE LIMITED

....Petitioner/ the Transferor Company No. 5

AND

U-PHASE INFRAPROJECTS PRIVATE LIMITED

....Petitioner/ the Transferor Company No. 6

AND

RIVAAZ TRADE VENTURES PRIVATE LIMITED

....Petitioner/ the Transferee Company

Order delivered on 30<sup>th</sup> August, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan Hon'ble Member (J)

Hon'ble V. Nallasenapathy Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala  
I/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per: V. Nallasenapathy Hon'ble Member (T)

**ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation between BHAVNA ASSET OPERATORS PRIVATE LIMITED, the Transferor Company No. 1 and F R RETAIL DESTINATION PRIVATE LIMITED, the Transferor Company No. 2 and HRIDYANSHU MULTITRADE PRIVATE LIMITED, the Transferor Company No. 3 and LEGITIMATE ASSETS OPERATORS PRIVATE LIMITED, the Transferor Company No. 4 and MITRA INFRATECH PRIVATE LIMITED, the Transferor Company No. 5 and U-PHASE INFRAPROJECTS PRIVATE LIMITED, the Transferor Company No. 6 and RIVAAZ TRADE VENTURES PRIVATE LIMITED, the Transferee Company and their respective shareholders.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation between BHAVNA ASSET OPERATORS PRIVATE LIMITED, the Transferor Company No. 1 and F R RETAIL DESTINATION PRIVATE LIMITED, the Transferor Company No. 2 and HRIDYANSHU MULTITRADE PRIVATE LIMITED, the Transferor Company No. 3 and LEGITIMATE ASSETS OPERATORS PRIVATE LIMITED, the Transferor Company No. 4 and MITRA INFRATECH PRIVATE LIMITED, the Transferor Company No. 5 and U-PHASE INFRAPROJECTS PRIVATE LIMITED, the Transferor Company No. 6 and RIVAAZ TRADE VENTURES PRIVATE LIMITED, the Transferee Company and their respective shareholders.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in their Consolidated Company Scheme Application No. 196 of 2018 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company No. 1, Transferor Company No. 2, Transferor Company No. 3, Transferor Company No. 4, Transferor Company No. 5, Transferor Company No. 6 and Transferee Company are engaged or intend to engage in the business of acquiring and dealing in the residuary interest in all types and kinds of properties, equipment's and assets, renting out or letting on hire of all kinds of equipment, properties, assets, appliances, apparatus and gadgets its related products or peripherals. In order to consolidate its operations, it is intended that the Transferor Companies be amalgamated with Transferee Company. The amalgamation of Transferor Companies with Transferee Company would inter alia have the following benefits which is economies of scale, greater integration, greater flexibility, most effective network and greater market reach for the amalgamated entity, and will improve the competitive position of the combined entity and that operational synergies to the amalgamated entity which can be put to the best advantage of the stakeholders. The amalgamation will be value accretive through realization of business synergies and that cost savings, which are expected to flow from more focused operational efforts, standardization and

simplification of business processes, productivity improvements, improved procurement and that carrying on and conducting the business more efficiently and advantageously, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, stronger capital base for future expansion/growth.

7. The Regional Director has filed a Report on 21<sup>st</sup> day of August, 2018 stating therein, save and except as stated in paragraph IV, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:-

*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

- (a) In addition to compliance of AS-14(IND AS-103), the Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc;*
- (b) As per Part I Definitions Clause 1.2 of the scheme "**Appointed Date**" means **April 01, 2017** (01.04.2017) or such other date as may be approved by the Tribunal or any other competent authority. In this regard, it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be **April 01, 2017**.*
- (c) As per Part-I Definition Clause **1.4** of the Scheme **Effective Date**" in relation to the scheme means the last of the dates on which the certified copy of the order the order of this Hon'ble Tribunal under Sec 232(7) of Companies Act 2013 is filed with ROC Mumbai. In this regard it is submitted that the "**Effective Date**" shall be as per provisions of section 232(6) of the Companies Act, 2013 **and not** as specified in the above said clause of the scheme;*
- (d) As regards Clause 15 of the Scheme (Combination And Enhancement of Authorised Share Capital), and fee payable by the Transferee Company shall be in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013*

*(e) Hon'ble NCLT may kindly direct the petitioners to file an affidavit to the extent that the Scheme enclosed to Company Application & Company Petition, are one and same and there is no discrepancy/any change/changes are made, for changes if any, liberty be given to Central Government to file further report if any required;*

8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 (corresponding IND AS-103) for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (corresponding IND AS-8) as applicable.
9. So far as the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies shall abide that the "Appointed Date" shall be 1<sup>st</sup> April 2017, as stipulated in the Scheme.
10. So far as the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies shall abide by the provisions of the Section 232(6) of the Companies Act, 2013 and the scheme shall be effective from "Appointed Date", 1<sup>st</sup> April 2017 and not a date subsequent to the appointed date.
11. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes to comply with the provisions of Section 232 (3) (i) of the Companies Act, 2013 for Combination and Enhancement of Authorised Share Capital.
12. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that there is no material discrepancy / changes made to the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Scheme Petition. The Learned Counsel for the Petitioner Companies further submits that the Scheme enclosed to the Company Scheme Petition is same as

- unanimously approved with minor modification at the meeting of the equity shareholders of all the Petitioner Companies.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
  14. The Official Liquidator has filed his report on 11<sup>th</sup> July, 2018 in the Consolidated Company Scheme Petition No. 2375 of 2018 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
  15. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
  16. Since all the requisite statutory compliances have been fulfilled, Consolidated Company Petition No. 2375 of 2018 is made absolute in terms of prayers clause (a) to (f) thereof.
  17. Petitioners are directed to lodge a copy of this Order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically along with E-Form INC-28, as per the relevant provisions of the Companies Act 2013, within 30 days from the date of receipt of the order.
  18. The Petitioner Companies to lodge a copy of this Order and the 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 within 60 days from the date of receipt of the order, if any.
  19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company No. 1, Petitioner Company No. 2, Petitioner Company No.4, Petitioner Company No.5 and Petitioner Company No. 6 in the Consolidated Company Petition No. 2375 of 2018 to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.

20. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

SD/-

V. NALLASENAPATHY  
MEMBER (T)

SD/-

BHASKARA PANTULA MOHAN  
MEMBER (J)