

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

C.P. (CAA)/1631/MB/2018
IN
C.A.(CAA) /41/MB/2018

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 the Rules
framed thereunder as in force from
time to time;

And

In the matter of Scheme of Merger by
Absorption of Blue Bell Integrated
Facility Services Private Limited ('The
Transferor Company') with SMS
Integrated Facility Services Private
Limited ('The Transferee Company') And
their Respective Shareholders

Blue Bell Integrated Facility Services Private Limited
....Petitioner/ Transferor Company

AND

SMS Integrated Facility Services Private Limited
....Petitioner/ Transferee Company

Judgement/ Order delivered on 9thAugust, 2018

Coram:

Hon'ble Bhaskara Pantula Mohan 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., Advocates for the Petitioners.

Mr. S. Ramakantha, Joint Director for Regional Director

Mr. Mangutkar officer of the Official Liquidator

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

ORDER

1. Heard learned counsel for the Petitioner Companies. 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 said Scheme.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to the said Scheme.
3. The Petitioner Companies have approved the said Scheme of Merger by Absorption by passing the Board Resolutions, which are annexed to the Company Scheme Petition.
4. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the Orders passed in their Company Scheme Application Nos. 41 of 2018 of the National Company Law Tribunal.
5. The Learned Counsel appearing on behalf of the Petitioner Companies 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, the 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 submits that Transferee Company is one of the leading integrated facilities management

company in India, offering a range of soft and technical services. The Transferor Company is also an integrated facility and management service company offering property services engineering solutions, catering services while also offering complementary services using tech platforms in the multidisciplinary fields of asset management, energy and sustain.

7. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits amongst others, to companies, their respective members and other stakeholders:

- a) Synergies of operations and a stronger and wider capital and financial base for future growth/expansion;
- b) Enable cost saving and reduction in administrative inefficiencies;
- c) Pooling of resources; and
- d) Reduction in administrative overheads and enhancing shareholder's value.

8. The Regional Director, Western Region, Mumbai has filed his Report dated 21st June, 2018, stating therein, save and except as stated in paragraph IV of the said report, it appears that the Scheme is not prejudicial to the interest of the 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) *The Petitioners under provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Compromise or Amalgamation. Further, the approval of the scheme by this Hon'ble Tribunal may not deter such authorities to deal with any of the issues arising after giving*

effect to the scheme. The decision of such Authorities is binding on the Petition Company(s).

- b) *In addition to compliance of AS-14 (IND AS-2013), the Petitioner Companies 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.*
- c) *It is observed that the Petitioner companies have not submitted copy of the petition and Minutes of Order for admission of the Petition. In this regard, petitioner companies has to undertake to submit the same for the record of Regional Director and also to undertake that the scheme as admitted with the Hon'ble NCLT through company petition and the scheme which is served to the Regional Director through company application is one and the same, and in case of deviation, if any, shall be brought to the notice of the Regional Director.*
- d) *As regards Para 13 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorised Share capital, subsequent to the Amalgamation for setting off of fees paid by the Transferor Company on its Authorised Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act 2013*
- e) *As per Clause 1.3 of the Scheme "Appointed Date" means 1st day of April 2017 or such other date as may be approved by the NCLT or such other competent authority as may be applicable. In this regard, it is submitted that Section 232(6) of the Companies Act 2013 states that the scheme under this section shall clearly indicate an appointed date from which it shall be effective and the scheme shall be deemed to be effective from such date and not at*

a date subsequent to the appointed date. However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

- f) *Petitioner in Clause 11.5 of the scheme has inter alia mentioned that the Transferee Company shall, to the extent required, increase its Authorised Share Capital in order to issue shares under the scheme. In this regards, petitioner Company have to undertake to comply with provisions of Companies Act 2013 read with Rules & file form SH-7 and MGT-14 with Registrar of Companies.*
- g) *Petitioner in the Clause 12.5 of the Scheme has inter alia mentioned that the difference, if any, being excess of book value of assets over liabilities including reserves of the Transferor Company transferred to the Transferee Company, after making the adjustments as mentioned in Clause 12.2, 12.3, and 12.4 above, shall be adjusted against reserves of the Transferee Company. The Deponent prays that the difference shall be adjusted against Capital Reserve instead of the reserves of the Transferee Company*

9. The Learned Counsel for the Petitioner Companies submits that the Petitioner Companies hereby accepts the above points and give undertaking in the following paras.

10. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have served notices to all such relevant regulatory authorities in accordance with section 230 (5) of the Companies Act, 2013. Further, the Petitioner Companies have filed Affidavit of Service dated 11th April, 2018 with the Tribunal in this regard. Furthermore, the Petitioner Companies also undertakes that any issues raised by the relevant regulatory authorities, which are

arising out of the Scheme will be met and answered in accordance with relevant laws and the decision of such Authorities shall be binding on the Petition Companies.

11. In so far as observations made in paragraph IV (b) is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that it shall pass necessary accounting entries in connection with the Scheme as per AS-14 (IND AS-103) and comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc to the extent applicable.
12. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted the copy of the petition on 27th April, 2018 and the copy of minutes of order for the admission of the petition on 6th July, 2018 with the Regional Director. Further, the Petitioner Companies clarify that the Scheme enclosed to the Company Scheme Application and the Scheme enclosed to the Company Scheme Petition are one and the same and there is no discrepancy or deviation.
13. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Authorised Share Capital of the Transferor Company shall be merged with that of the Transferee Company in terms of Para No. 13 of the Scheme in accordance with the provisions of Section 232(3)(i) of Companies Act, 2013.
14. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies states that the Appointed Date of the Scheme is 1st April 2017. In this regard, the

Petitioner Companies confirm and undertake that upon the Hon'ble National Company Law Tribunal, Mumbai Bench approving the Scheme, the Scheme shall take effect and be operation from the Appointed Date in terms of provisions of Section 232(6) of the Companies Act, 2013.

15. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that to the extent required to increase the authorised share capital to issue the shares, it shall comply with the provisions of Companies Act, 2013 read with rules and file relevant forms with ROC.
16. As far as observations made in paragraph IV (g) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Companies undertakes that difference being excess of book value of assets over liabilities including reserves of the Transferor Company transferred to the Transferee Company, after making the adjustments as mentioned in Clause 12.2, 12.3 and 12.4 of the Scheme, shall be adjusted against Capital Reserves of the Transferee Company, if any. The Petitioner Companies further undertakes that it shall pass all such accounting entries as may be required in connection with the Scheme of Amalgamation and ensure compliance with Accounting Standard 14 and other applicable accounting standards, to the extent applicable.
17. The Registrar of Companies, Maharashtra has filed his Report with the Regional Director wherein the ROC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
18. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 10 to 16 above. The clarifications and

undertakings given by the Petitioner Companies are accepted by the Tribunal.

19. The Official Liquidator has filed his report dated 10th day of May, 2018 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
20. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy.
21. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No 1631 of 2018 is made absolute in terms of prayers in clause (a) and (b).
22. Petitioner Companies are directed to lodge a copy of this Order along with a copy of the Scheme of Merger by Absorption with the concerned Registrar of Companies, electronically along with E-Form INC-28, in addition to physical copy, as per the relevant provisions of the Companies Act 2013.
23. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar or Assistant 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.
24. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.

25. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai Bench.

SD/-

V. Nallasenapathy
Member (T)

SD/-

Bhaskara Pantula Mohan
Member (J)