

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

C.P. (CAA) 2882/MB/2018

C.P. (CAA) 2883/MB/2018

In the matter of the Companies
Act, 2013

AND

In the matter of Scheme of
merger by absorption of Choice
Merchandise Broking Private
Limited, The Transferor
Company With Choice Equity
Broking Private Limited, the
Transferee Company.

AND

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

CHOICE MERCHANDISE BROKING PRIVATE LIMITED,
CHOICE EQUITY BROKING PRIVATE LIMITED

.....Petitioner Company

Order delivered on: 06th September, 2018

Coram:

Hon'ble BHASKARA PANTULA MOHAN, Member (J)

Hon'ble V. NALLASENAPATHY, Member (T)

For the Applicant: Mr. Chandrakant Mhadeshwar, Advocate

Per:- V. NALLASENAPATHY, 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.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of merger by absorption of Choice Merchandise Broking Private Limited, The Transferor Company With Choice Equity Broking Private Limited, the Transferee Company.

3. The Petitioner Company and the Transferee Company have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all 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.
5. The Regional Director has filed his Report, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (5) 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 Affidavit, the Regional Director has stated that:
 - a) *The Petitioners under provision of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by 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 Petitioner Company (s).*
 - b) *As per clause 14.3 of the scheme, In case of any differences in the accounting policies between the Transferor Company and Transferee Company, the impact of the same till the Appointed date of amalgamation will be quantified and adjusted in the Free/ General Reserves of the Transferee Company, in this regards, In addition to compliance of AS-14 (IND AS-103) 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) *The Hon'ble NCLT may kindly direct to the Petitioners to file an undertaking to the extent that the scheme enclosed to the company Application and the scheme enclosed to the Company Petition are one & same and there is no discrepancy or deviation.*
- d) *As per Clause 2.4 of the Scheme, Appointed Date means the 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 is 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 power.*
- e) *Petitioner Company have to undertake to comply with section 232 (3) (i) of Companies Act, 2013, where the Transferor Company is dissolved, the fee, if any, Paid by the Transferor Company on its authorised capital shall be set-off against any fees payable by the transferee Company on its authorised capital subsequent to the amalgamation and therefore, petitioners to affirm that they comply the provisions of the section."*
6. As far as the observation of the Regional Director stated in paragraph IV (a) of his report are concerned, the Petitioner Companies states that the Petitioner have already served copy of the notice along with Scheme and application upon Registrar of Companies, Regional Director, official Liquidator and Income Tax Authority and all others statutory authorities. Further, the Petitioner Companies undertake that the approval of the scheme by this Tribunal may not deter authorities to whom notice has been served to deal with any of the issues arising after giving effect to the scheme. The decision of such Authorities is binding on the Petitioner Company
7. As far as the observation of the Regional Director stated in paragraph IV (b) of his report are concerned, the Transferee Company undertake that in addition to compliance of AS-14 (IND AS-103) the transferee 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..

8. As far as the observation of the Regional Director stated in paragraph IV (c) of his report are concerned, counsel for the Petitioner undertakes that the scheme enclosed to the company application and enclosed to the Company Petition is one and the same and there is no discrepancy or deviation.
9. As far as the observation of the Regional Director stated in paragraph IV (d) of his report are concerned, Petitioner Companies through its counsel for the Petitioner submits that the appointed date for the present scheme shall be 1st day of April, 2017 and that the scheme shall be deemed to be effective from such date and not at a date subsequent to the appointed date.
10. As far as the observation of the Regional Director stated in paragraph IV (e) of his report are concerned, Petitioner Companies through its counsel undertakes to comply with provision of section 232 (3) (i) of Companies Act, 2013.
11. The Official Liquidator has filed his report in the Scheme Petition No. 2882 of 2018, inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved
12. From the material on record, the Scheme of Arrangement appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition Nos. 2882 of 2018 and 2883 of 2018 are made absolute in terms of prayer clauses (a) and (b) of the respective Petitions.

14. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to the physical copy within 30 days from the date of issuance of the Order by the Registry.
15. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 days from the date of receipt of the Order.
16. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No. 2882 of 2018 to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
17. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

SD/-
V. Nallasenapathy
Member (T)

SD/-
Bhaskara Pantula Mohan
Member (J)