

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CP(CAA) NO. 2508 OF 2018

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Merger by
Absorption between Ivem Advisory Services
Private Limited and Sivana Advisory
Services Private Limited and Vira Advisory
Services Private Limited and Kalpatru
Advisory Services Private Limited and their
respective Shareholders.

IVEM ADVISORY SERVICES PRIVATE LIMITED

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

AND

SIVANA ADVISORY SERVICES PRIVATE LIMITED

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

AND

VIRA ADVISORY SERVICES PRIVATE LIMITED

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

AND

KALPATRU ADVISORY SERVICES PRIVATE LIMITED

....Petitioner/ the Transferee Company

Order delivered on 6th September, 2018

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

Hon'ble V. Nallasenapathy Hon'ble 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: Bhaskara Pantula Mohan, Member (J)

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 Merger by Absorption between IVEM ADVISORY SERVICES PRIVATE LIMITED,

the Transferor Company No. 1 and SIVANA ADVISORY SERVICES PRIVATE LIMITED, the Transferor Company No. 2 and VIRA ADVISORY SERVICES PRIVATE LIMITED, the Transferor Company No. 3 and KALPATRU ADVISORY SERVICES 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 Merger by Absorption between IVEM ADVISORY SERVICES PRIVATE LIMITED, the Transferor Company No. 1 and SIVANA ADVISORY SERVICES PRIVATE LIMITED, the Transferor Company No. 2 and VIRA ADVISORY SERVICES PRIVATE LIMITED, the Transferor Company No. 3 and KALPATRU ADVISORY SERVICES 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. 223 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 was engaged in the business of providing advisory services related to stock and commodities market and currently it is inactive; that the Transferor Company No. 2 was engaged in the business of providing advisory services related to project management and raising of finance;

that the Transferor Company No. 3 was engaged in the business of providing advisory services related to Financing and that the Transferee Company was engaged in the business of providing advisory services across various industrial sectors. The Transferor Companies and the Transferee Company are a part of the same group and have a common shareholding and management. All the companies are engaged in similar business activities of providing advisory services across various industrial sectors and to hold or dispose of or invest in shares, securities, and/or immovable properties. 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 31st day of August, 2018 stating therein: -

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 arrangement. 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) 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) It is observed that the Petitioner companies have not submitted admitted copy of the admitted Petition, and the 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.
 - (e) As regards Para No. 14.1 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized 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
8. So far as the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel of the Petitioner Companies submits that notices were served to the concerned regulatory authorities in accordance with the provisions of section 230(5) of the Companies Act, 2013. An affidavit of service in this regard was filed with the Hon'ble Tribunal by the Chairman appointed for the meeting of the equity shareholders of the Petitioner Companies on June 12, 2018. A copy of the notice served to concerned regulatory authorities was also submitted with the Regional Director vide letter dated June 15, 2018. Further the Learned Counsel of the Petitioner Companies submits that 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 shall be binding on the Petitioner Company(s).

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 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), etc. as applicable.
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 submits that the Scheme enclosed to the Company Scheme Application and the scheme enclosed to the Company Scheme Petition are one & same and there is no discrepancy or deviation.
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 Petitioner Companies have submitted the admitted copy of the Petition with Regional Director vide letter dated July 06, 2018. The Petitioner Company further submits that upon uploading of signed minutes of petition by the Hon'ble Tribunal on its portal, the same shall be submitted with the Regional Director.
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 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, and accordingly, set-off of fees paid by Transferor Company be allowed to the Transferee Company
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 6th September, 2018 in the Consolidated Company Scheme Petition No. 2508 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. 2508 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. 3 in the Consolidated Company Petition No. 2508 of 2018 to pay costs of INR 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

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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)