

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

C.P.(CAA)/2703/MB/2018

Under Sections 230 to 232 other applicable provisions of the Companies Act, 2013 and Rules framed there under as in force from time to time;

AND

In the matter of Scheme of Merger by Absorption of NEW HORIZON FINANCIAL RESEARCH PRIVATE LIMITED, the Transferor Company with NEW HORIZON WEALTH MANAGEMENT PRIVATE LIMITED, the Transferee Company.

NEW HORIZON FINANCIAL RESEARCH PRIVATE LIMITED

....Petitioner Company No.1

NEW HORIZON WEALTH MANAGEMENT PRIVATE LIMITED

....Petitioner Company No.2

Judgement/ order delivered on: 27th 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 a/w 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 the 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 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 Amalgamation by passing the Board Resolutions which are annexed to the respective Company 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 Company Scheme Application No. 208 of 2018 of the National Company Law Tribunal, Mumbai.
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 First Transferor Company submits that they undertake the business as financial research analysts, market informants, portfolio and investment advisors, mutual fund advisors and credit raters and the Transferee Company has been carrying on the business of rendering portfolio management and portfolio advisory services in accordance with laws as may be in force from time to time. The Petitioner Company No.1 and the Petitioner Company No.2 are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits that the amalgamation will enable the Transferee Company to consolidate the businesses, reduce the number of companies under the same Management and thus lead to reduction in administration efforts and it would be advantageous to combine the activities and operations of both the Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial

position and that the Scheme of amalgamation will result in cost saving for both the Companies and is expected to result in administrative efficiency and higher profitability levels for the Transferee Company and reduction in multiple legal and regulatory compliances required to be carried out at present by the Transferor Company and the Transferee Company

7. The Regional Director has filed a Report on 19th day of September, 2018. 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 Petitioner Company (s).
- b. In addition to compliance of (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 there is no discrepancy or deviation.
- d. Petitioner companies have not submitted a copy the admitted petition and minutes of order. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.
- e. As per Clause 2.4 of the scheme, Appointed Date means 1st April, 2017 or such other date as National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct/fix. 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.

- f. As regards Para No. 13 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 Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
 - g. The Petitioner in clause 12.4 of the Scheme has inter alia mentioned that equity shares of Transferee Company held by Transferor Company as on record date shall stand cancelled and there shall be no further obligation/ outstanding in that behalf. The difference between the amount recorded as Investments in the books of Transferor Company shall be adjusted in the reserves of the transferee Company. The Deponent prays that the above difference shall be adjusted in the Capital Reserve of the Transferee Company instead of Reserves Account.
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 scheme by this Hon'ble Tribunal may not deter any authorities to deal with any of the issues arising after giving effect to the scheme and that the decision of authorities is 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 in addition to Compliance of (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.
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 Petitioner undertakes that Scheme enclosed to the Company Application and the scheme enclosed to the Company Petition are one & same 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 undertakes to submit the copy of the admitted petition with the minutes of the order for the record 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 Appointed Date is 1st April, 2017.
13. So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the setting off of fees paid by the Transferor Company on its Authorised Share Capital shall be accordance with provisions of section 232(3) (i) of the Companies Act, 2013
14. So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that difference shall be adjusted in the Capital Reserve of the Transferee Company instead of Reserves Account.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 14 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
16. The Official Liquidator has filed his report on 10th September, 2018 in the Company Petition No. 2703 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.
17. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 2703 of 2018 is made absolute in terms of prayers clause (a) to (d).
19. 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, in addition to physical copy, as per the relevant provisions of the Companies Act 2013.

20. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the 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.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company in the Company Petition No. 2703 of 2018 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
22. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Assistant Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy
Member (T)

Sd/-

Bhaskara Pantula Mohan
Member (J)