

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH**

Under Section 230 to 232 of the Companies
Act, 2013

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In the matter of

Piramal Texturising Private Limited

..... First Petitioner Company
(Transferor Company 1)

Vulcan Investments Private Limited

..... Second Petitioner Company
(Transferor Company 2)

Piramal Corporate Services Limited

..... Third Petitioner Company
(Transferor Company 3)

Nicholas Piramal Pharma Private Limited

..... Fourth Petitioner Company
(Transferee Company)

Order delivered on: 30.08.2018

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (J)

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Adv. Hemant Sethi i/b M/s. Hemant Sethi & Co.

For the Regional Director: Mr. S Ramakantha, Joint Director

Per: V. Nallasenapathy, Member (T)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Merger (by Absorption)

(hereinafter referred to as **Scheme**) of Piramal Texturising Private Limited (Transferor Company 1) and Vulcan Investments Private Limited (Transferor Company 2) and Piramal Corporate Services Limited (Transferor Company 3) (Transferor Company 1 and Transferor Company 2 and Transferor Company 3 are collectively referred to as Transferor Companies) with Nicholas Piramal Pharma Private Limited (Transferee Company) and their respective shareholders.

2. The Transferor Companies and the Transferee Company have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company 3 is primarily engaged in the business of management consultancy activities.
4. The proposed Scheme will have the following benefits:
 - (i) Streamlining the structure to eliminate multiple layers of companies and making it simple and transparent;
 - (ii) Reflection of true value of assets and liabilities of the Transferor Company 1, the Transferor Company 2 and the Transferor Company 3 (both tangible and intangible) whether currently recorded or not in the books of account;
 - (iii) Consolidating and improving the internal control systems and procedures which will bring greater management and operational efficiency due to integration of various similar functions being carried out by the entities such as human resources, finance, legal, management etc;
 - (iv) Elimination of doubling of related costs, thereby reducing operational and administrative expenses and overheads, and lead to better cost and operational efficiencies; and
 - (v) Facilitating enhancement in value for all stakeholders.
5. The Authorised Share Capital of the Transferor Company 1 as on the date of filing the petition was Rs. 2,01,00,000/- comprising of 2,70,000 Equity Shares of Rs. 10/- each and 17,40,000 Preference Shares of Rs.

10/- each whereas the Issued, Subscribed and Paid-up Share Capital was Rs. 26,09,260/- comprising of 2,60,926 Equity Shares of Rs. 10/- each.

6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 2 as on the date of filing the petition was Rs. 30,00,000/- comprising of 2,99,050 Equity Shares of Rs. 10/- each and 950 Preference Shares of Rs. 10/- each whereas the Issued, Subscribed and Paid-up Share Capital was Rs. 21,00,000/- comprising of 2,10,000 Equity Shares of Rs. 10/- each.
7. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company 3 as on the date of filing the petition was Rs. 2,10,00,000/- comprising of 5,00,000 Equity Shares of Rs. 10/- each and 16,00,000 Preference Shares of Rs. 10/- each whereas the Issued, Subscribed and Paid-up Share Capital was Rs. 19,57,210/- comprising of 1,00,000 Equity Shares of Rs. 10/- each and 95,721 Preference Shares of Rs. 10/- each.
8. The Authorised Share Capital of the Transferee Company as on the date of filing the petition was Rs. 35,00,000/- comprising of 3,50,000 Equity Shares of Rs. 10/- each whereas the Issued, Subscribed and Paid-up Share Capital was Rs. 26,00,000/- comprising of 2,60,000 Equity Shares of Rs. 10/- each.
9. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
 - a. The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. 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 thereunder whichever is applicable.
 - b. The Regional Director has filed his Report dated 14th day of August, 2018 stating therein that save and except the observations as stated in paragraph IV (a) to (e) of the report, 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:-

- a) *The Petitioners under the provisions of section 230(5) of the Companies Act, 2013 have to serve notices to concerned authorities which are likely to be affected by Merger (by Absorption). 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 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 power.*
- c) *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. Further, petitioners shall have to mention Accounting method, whether it is "Pooling of Interest Method" or "Purchase Method" to be followed for the Accounting treatment proposed in the Scheme.*
- d) *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.*
- e) *It is observed that the Petitioner companies have not submitted admitted copy of the admitted 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.

- c. Apropos the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies hereby clarify that an affidavit, stating that the notices have been served to concerned authorities as required under Section 230(5) of the Companies Act, 2013, has been annexed with the Company Scheme Petition. Further, the approval of the Scheme by the 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 will be binding on the Petitioner Companies.
- d. Apropos the observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that as per clause 1.3 of the Scheme, "*Appointed Date*" means *1st February, 2018*. Further, as per clause 1.6 of the Scheme, "*Effective Date*" means *the later of the dates on which the certified copy of the order of NCLT sanctioning the Scheme of Merger (by Absorption), is filed by the Transferor Companies and Transferee Company with the Registrar of Companies, Maharashtra at Mumbai or such other authority as may be necessary for making the Scheme effective*". The Learned Advocate further submit that pursuant to these clauses in the Scheme, the Scheme shall be effective from such date and not at a date subsequent to the appointed date.
- e. Apropos the observations made in paragraph IV (c) of the Report of Regional Director is concerned, it is stated that the Transferee Company undertakes to pass such accounting entries which are necessary to comply with all other applicable Accounting Standards such as AS-5 (IND AS-8), AS-14 (IND AS-103) etc. Further the Transferee Company state that the Accounting method to be followed for the Accounting Treatment proposed in the Scheme is "*Purchase Method*". The Transferee Company has obtained certificate from the Statutory Auditor certifying the accounting treatment specified in the Scheme.

- f. Apropos the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submit 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 except the title of the Scheme was amended by the members of the Petitioner Companies in their respective meetings held on 25th May, 2018 from "Scheme of Amalgamation" to "Scheme of Merger (by Absorption)".
- g. Apropos the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies submit that a copy of the admitted petition has been filed with the office of Regional Director on 17th July, 2018. Further, the minutes of order for admission of petition shall be submitted with the Regional Director once it is uploaded on the NCLT website.
- h. The Official Liquidator has filed his report inter alia stating that the affairs of the Transferor Company 1, the Transferor Company 2 and the Transferor Company 3 have been conducted in a proper manner and further that the Transferor Company 1, the Transferor Company 2 and the Transferor Company 3 may be ordered to dissolve without winding up.
10. The Advocate for the Petitioners further state that consideration in lieu of the Scheme is as follows:

175,37,90,862 (One Hundred and Seventy Five Crore Thirty Seven Lakhs Ninety Thousand Eight Hundred and Sixty Two) fully paid up equity share of Rs. 10/- each of the Transferee Company to be issued and allotted at par to the specified shareholders of the Transferor Company 1, namely, The Srikrishna Trust and The Sri Govinda Trust in the ratio of their holding in the Transferor Company 1"

For Preference shareholders in Transferor Company 3

95,721 (Ninety Five Thousand Seven Hundred and Twenty One) fully paid up New Preference Shares of Rs. 10/- each of the Transferee Company to be issued and allotted at par for every 1

(One) preference share of Rs.10/- (Rupees Ten) each held by them in the Transferor Company 3

11. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**

- a. All the assets and liabilities including taxes and charges, if any, and duties of the Transferor Companies, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the assets and liabilities and duties of the Transferee Company.
- b. The clarifications and undertakings given by the Learned Advocate for the Petitioners to the observations made in the Report of Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c. In lieu of the consideration of the Scheme,

175,37,90,862 (One Hundred and Seventy Five Crore Thirty Seven Lakhs Ninety Thousand Eight Hundred and Sixty Two) fully paid up equity share of Rs. 10/- each of the Transferee Company to be issued and allotted at par to the specified shareholders of the Transferor Company 1, namely, The Srikrishna Trust and The Sri Govinda Trust in the ratio of their holding in the Transferor Company 1

For Preference shareholders in Transferor Company 3

95,721 (Ninety Five Thousand Seven Hundred and Twenty One) fully paid up New Preference Shares of Rs. 10/- each of the Transferee Company to be issued and allotted at par for every 1 (One) preference share of Rs.10/- (Rupees Ten) each held by them in the Transferor Company 3

- d. Transferor Companies are to be dissolved without winding-up after Scheme becomes effective.

- e. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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, if any, on the same within 60 days from the date of receipt of the order.
- f. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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 receipt of the order by the Registry, duly certified by the Assistant Registrar of the National Company Law Tribunal, Mumbai Bench.
- g. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of receipt of order.
- h. The Transferor Companies to pay costs of Rs. 25,000/- each to the Official Liquidator, Mumbai. The costs to be paid within four weeks from the date of receipt of order.
- i. All authorities concerned, to act on a certified copy of this order along with Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai Bench.
- j. Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- k. Any concerned Authority is at liberty to approach this Bench for any further clarification/direction under this Scheme.
- l. The Scheme is sanctioned and the appointed date of the Scheme is fixed as 1st February, 2018.

12. Ordered accordingly.

SD/-
V. Nallasenapathy
Member(T)

SD/-
Bhaskara Pantula Mohan
Member (J)