

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
NEW DELHI**

Present: SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

COMPANY PETITION NO. 932 OF 2016

CONNECTED WITH

COMPANY APPLICATION (MAIN) NO. 83 OF 2016

(TRANSFERRED FROM THE FILE OF HON'BLE HIGH COURT OF DELHI)

IN THE MATTER OF SECTION 391 & 394 OF

THE COMPANIES ACT, 1956

(PRESENTLY SECTIONS 230-232 OF THE COMPANIES ACT, 2013)

AND

IN THE MATTER OF SCHEME OF AMALGAMATION

BETWEEN

EN QUEST PROJECTS PRIVATE LIMITED

Having registered office at:

6th Floor, DLF Tower B, Jasola District Centre

New Delhi-110044

...TRANSFEROR COMPANY/ PETITIONER



WITH

ENQUEST PETRO SOLUTIONS PRIVATE LIMITED

Having registered office at:

6th Floor, DLF Tower B, Jasola District Centre

New Delhi-110044

... TRANSFEREE COMPANY / PETITIONER

AND

Their respective Shareholders and Creditors

ADVOCATE FOR THE PETITIONERS: Mr. Ashish Middha, Advocate

FOR REGIONAL DIRECTOR, (NR), MCA: Mr. C.Balooni, Company Prosecutor

FOR OFFICIAL LIQUIDATOR:

Ms. Chetana Kandpal, Company Prosecutor,

Office of Official Liquidator, Delhi



Order Reserved on: 11th, July, 2017

Order Delivered on: 28th July, 2017

ORDER

1. This petition filed by the companies above named is coming up finally before us on 11.07.2017 for the purpose of the approval of the scheme of arrangement, as contemplated between the companies and its shareholders by way of amalgamation of the Transferor Company / Petitioner with the Transferee Company/ Petitioner. A perusal of the petition discloses that initially the application seeking the dispensation of the meetings of equity shareholders, secured and unsecured creditors were filed before the Hon'ble High Court of Delhi in CA (M) 83/2016. The Hon'ble High Court of Delhi vide its order dated 3rd August,2016 was pleased to dispense with the requirement of convening the meetings of the equity shareholders of both the Petitioner Companies, in view of their consents having been obtained and produced before it. In relation to the Secured and Unsecured Creditors of both the Petitioner Companies, there was none, hence the necessity of convening the meeting did not arise.
2. Under the circumstances, the petitioners have filed their joint petitions for sanction of the Scheme of Amalgamation before the Hon'ble High Court of Delhi under the erstwhile provisions, subsequent to the order of dispensation of the meeting as ordered by the Hon'ble High Court of Delhi on 3rd August, 2016.
3. On 30.09.2016 the Hon'ble High Court of Delhi ordered Notice in the Second Motion petition in C.P. No.932 /2016 moved by the petitioners under Sections 391 to 394 of the Companies Act, 1956 read with relevant Rules of the



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Companies (Court) Rules, 1959 in connection with the scheme of amalgamation, to the Registrar of Companies, Regional Director and the Official Liquidator. The Petitioners were also directed vide said order to carry out publication in the newspapers "The Statesman" in English edition and "Veer Arjun" in Hindi Edition.

4. While the joint petition in C.P.No. 932 of 2016 was pending disposal, since the provisions relating to compromises, arrangements and amalgamation as contemplated under Sections 230-232 had been notified w.e.f. 15.12.2016 wherein the power to consider such schemes have now been vested with the National Company Law Tribunal, the Hon'ble High Court of Delhi pursuant to the notification bearing No. DL.33004/99 dated 7.12.2016 issued by the Ministry of Corporate Affairs has transferred/transmitted the records of the above petition to this Tribunal vide order dated 14.02.2017, for our consideration.
5. In view of the above, the petition of Second Motion as above filed by the petitioners jointly before the Hon'ble High Court and subsequently transferred is taken up for final consideration by us. The petitioners, it is seen from the records have filed an affidavit dated 07.03.2017 in relation to the compliance of the orders passed by the Hon'ble High Court of Delhi dated 30.09.2016 and a perusal of the same discloses that the petitioners have effected the paper publication as directed by the Hon'ble High Court of Delhi in one issue of the 'The Statesman' in English edition and 'Veer Arjun' in Hindi edition on 05th December, 2016. Further, it has also been stated by the Learned Counsel for the Petitioner Companies that notices have been issued to the



Regional Director, Northern Region, Registrar of Companies as well as to the Official Liquidator attached to the High Court, Delhi in compliance with the order dated 30.09.2016 and in proof of the same acknowledgement made by the respective offices have also been enclosed.

6. The representative of the Official Liquidator vide affidavit dated 05.05.2017 represents that the office of Official Liquidator does not have any objection to the scheme being approved.
7. Further, Regional Director, Northern Region has also filed an Affidavit dated 08.03.2017 in which it has been stated that there is no objection to the sanction of the Scheme. However few pertinent observations is made by the Regional Director in para 6 stating that the list of shareholders and shareholding pattern for the Transferor & the Transferee Company as on the appointed dated as well as the shareholding pattern after the approval of the scheme of Amalgamation have not been found. In response to this petitioner companies have filed an affidavit dated 24th May, 2017 in which they have filed the shareholding pattern on the appointed dated and post-merger also.
8. The Regional Director in para 12 of the affidavit has made one more observation stating that the amount of consideration (i.e value of new equity shares issued) shall be deducted from the value of net assets of the Transferor Company acquired by the Transferee Company and if such difference is positive, then it shall be credited to the general reserve account or if the difference is negative, it shall be debited to Goodwill account arising on Amalgamation. He further pointed out that as per the accounting



standards, any difference between the values of new equity shares and the value of net assets shall be adjusted in the capital reserve/ goodwill account as the case may be and not to the general reserves. In response to this observation, the transferee company vide an affidavit dated 24th May, 2017 has undertaken that any difference between the values shall be credited/debited to the capital reserve/ Goodwill account and not to the General Reserve Account

9. Upon further perusal of the representation of Regional Director it discloses that notice to the Principal Commission of Income Tax, Delhi had been duly sent and that no specific comments/ observation have been received raising any objections. Further, it is also represented that the jurisdictional ROC from whom report has been sought has not made any adverse comment.
10. That petitioner companies have filed the certificate from the respective Company's auditor dated 22nd May, 2017 in compliance of provisos to sections 230 (7) and 232 (3) of Companies Act, 2013.
11. The counsel for Petitioners has stated that they have not received any objections from the third party and public at large for the purpose of sanction to the present Scheme of Amalgamation which is also supported by an affidavit dated 07.03.2107. The above statement is taken on record. In view of absence of any other objections having been placed on record before this Tribunal and since all the requisite statutory compliances having been fulfilled, this Tribunal sanctions the scheme of amalgamation annexed as **Annexure -1** with the Company Petition as well as the prayer made therein.



12. Notwithstanding the above, if there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this court will not come in the way of action being taken, albeit, in accordance with law, against the concerned persons, directors and officials of the petitioners

13. While approving the Scheme as above, it is clarified that this order should not be construed as an order in any way granting exemption from payment of stamp duty, taxes or any other charges, if any payment in accordance with law or in respect to any permission/compliance with any other requirement which may be specifically required under any law.

THIS TRIBUNAL DO FURTHER ORDER

(1) That all the property, rights and powers of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and vest in the Transferee company for all the estate and interest of the Transferor Company therein but subject nevertheless to all charges now affecting the same; and

(2) That all the liabilities and duties of the Transferor Company be transferred without further act or deed to the Transferee company and accordingly the same shall pursuant to section 232 of the Act, be transferred to and become the liabilities and duties of the Transferee company; and



- (3) That all proceedings now pending by or against the Transferor Company be continued by or against the Transferee company; and
- (4) That the Transferee Company do without further application allot to such members of the Transferor Company, as have not given such notice of dissent, as is required by clause 15 of the SCHEME OF AMALGAMATION herein the shares in the transferee company to which they are entitled under the said SCHEME OF AMALGAMATION; and
- (5) That as per clause 13 of the scheme, all the employees of the Transferor Company in service on date immediately preceding the date on which the scheme finally take effect shall become the employees of the Transferee company without any break or interruption in their service.
- (6) That Transferor Company shall within thirty days of the date of the receipt of this order cause a certified copy of this order to be delivered to the Registrar of Companies for registration and on such certified copy being so delivered the Transferor Company shall be dissolved and the Registrar of Companies shall place all documents relating to the Transferor Company and registered with him on the file kept by him in relation to the Transferee company and the files relating to the said both companies shall be consolidated accordingly; and that any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.



(7) That any person interested shall be at liberty to apply to the Tribunal in the above matter for any directions that may be necessary.

-Sd/-

(R. VARADHARAJAN)
MEMBER (JUDICIAL)

U.D Mehta

