

NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
COMPANY SCHEME PETITION NO. 594 OF 2017
AND
COMPANY SCHEME PETITION NO. 600 OF 2017

L&T ACCESS DISTRIBUTION SERVICES LIMITED

...Transferor Company/Petitioner Company

L&T CAPITAL MARKETS LIMITED

...Transferee Company/Petitioner Company

In the matter of the Companies Act,
2013 (18 of 2013);

And

In the matter of Sections 230 to 232
of the Companies Act, 2013 and
Rules framed thereunder as in force
from time to time;

And

In the matter of Scheme of
Amalgamation of L&T Access
Distribution Services Limited, the
Transferor Company

With

L&T Capital Markets Limited, the
Transferee Company.

Order delivered on 18th October, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar, Member (J)
Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Rashid Boatwalla a/w Ms. Lipsa Unadkat i/b

M/s. Manilal Kher Ambalal & Co., Advocates
for the Petitioner Companies.

Mr. Ramesh Golap, Assistant Director, in the
office of the Regional Director.

Mr. Vinod Sharma, Official Liquidator.

Per: - V. Nallasenapathy, Member (T)

MINUTES OF ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions.
2. The sanction of this Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of L&T Access Distribution Services Limited with L&T Capital Markets Limited.
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 orders passed in their respective Company Scheme Application Nos. 409 of 2017 and 449 of 2017.
5. The Learned Advocate appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they

have filed necessary affidavits of compliance in the Hon'ble Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.

6. The Regional Director has filed his Report dated 21st September 2017, *inter alia*, stating therein that save and except as stated in paragraph IV (a) to (e) of the said 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 :

“IV

- (a) *In addition to compliance of AS-14 (IND AS-103), the Transferee Company 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.*
- (b) *Regarding **Part-D of the Scheme**, it is submitted that the surplus, if any arising out of the Scheme shall be credited to **Capital Reserve Account** and deficit, if any arising out of the same shall be debited to **Goodwill Account** and will not be adjusted against **Profit & Loss Account** of the Transferee Company.*
- (c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. The Companies served copy of this Scheme along with relevant orders etc. further, the O/o the Regional Director (WR), Mumbai has also issued a reminder 11/09/2017.*
- (d) *The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax*

Authority to scrutinize the tax return filed by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.

*(e) As per **Clause A.4 Definitions of the scheme. "The Appointed Date"** means the **1st day of April, 2017** or such other date as may be fixed or approved by the National Company Law Tribunal or any other competent authority may otherwise direct/fix. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be **1st day of April, 2017.**"*

7. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his Report is concerned, the Transferee Company undertakes that in addition to compliance of AS-14 accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
8. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his Report is concerned, the Transferee Company through its advocate undertakes that the difference between the net assets (assets less liabilities) and reserves of the Transferor Company transferred to the Transferee Company shall be adjusted after making adjustments as mentioned in clause D (1)(a) of the Scheme and in accordance with the Accounting Standard-14.
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his Report is concerned, the Petitioner Companies submit that no response has been received from the Income Tax Department pursuant to the service of the Notice for Scheme of Amalgamation to the

Income Tax Department for their comments.

10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his Report is concerned, the Petitioner Companies submit that the Petitioners are bound to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of his Report is concerned, the Petitioner Companies submit that the Appointed Date is the 1st day of April, 2017.
12. The Official Liquidator has filed his Report dated 22nd August 2017 in Company Scheme Petition No. 594 of 2017 inter alia, stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 594 of 2017 and 600 of 2017 are made absolute in terms of prayer clauses (a) to (c).
15. 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 provision of

the Companies Act 2013.

16. The Petitioner Companies in all Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai, and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.

17. Filing and issuance of the drawn up order is dispensed with.

18. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Company Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)