

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 751 OF 2017
CSP NO 752 OF 2017
CSP NO 753 OF 2017
CSP NO 754 OF 2017
CSP NO 755 OF 2017
CSP NO 756 OF 2017
AND
CSP NO 757 OF 2017

In The Matter Of The Companies Act, 2013;

And

In the Matter Of Sections 230 to 232 of the Companies Act, 2013;

And

In the matter of Scheme of Amalgamation of Manz Retail Private Limited ('First Transferor Company') and ESES Commercials Private Limited ('Second Transferor Company') and PIL Industries Limited ('Third Transferor Company') and Future Corporate Resources Limited ('Fourth Transferor Company') and Gargi Business Ventures Private Limited ('Fifth Transferor Company') and Weavette Business Ventures Limited ('Sixth Transferor Company') with Suhani Trading and Investment Consultants Private Limited ('Transferee Company') and their respective shareholders.

Manz Retail Private Limited	.....	Petitioner Company / First Transferor Company
ESES Commercials Private Limited	.....	Petitioner Company / Second Transferor Company
PIL Industries Limited	.....	Petitioner Company / Third Transferor Company
Future Corporate Resources Limited	.....	Petitioner Company / Fourth Transferor Company
Gargi Business Ventures Private Limited	.....	Petitioner Company / Fifth Transferor Company
Weavette Business Ventures Limited	.....	Petitioner Company / Sixth Transferor Company
		AND
Suhani Trading and Investments Consultants Private Limited	.....	Petitioner Company/ Transferee Company

Judgment/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. Hemant Sethi i/b Hemant Sethi & Co

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

Per: **B. S.V. PRAKASH KUMAR, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition of Scheme of Amalgamation of Manz Retail Private Limited and ESES Commercials Private Limited and PIL Industries Limited and Future Corporate Resources Limited and Gargi Business Ventures Private Limited and Weavette Business Ventures Limited with Suhani Trading and Investment Consultants Private Limited and their respective shareholders.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Manz Retail Private Limited ('First Transferor Company') and ESES Commercials Private Limited ('Second Transferor Company') and PIL Industries Limited ('Third Transferor Company') and Future Corporate Resources Limited ('Fourth Transferor Company') and Gargi Business Ventures Private Limited ('Fifth Transferor Company') and Weavette Business Ventures Limited

('Sixth Transferor Company') with Suhani Trading and Investment Consultants Private Limited ('Transferee Company') and their respective shareholders.

3. The learned Counsel for the Petitioners submit that the First Transferor Company, Second Transferor Company, Third Transferor Company, Fifth Transferor Company and Sixth Transferor Company are engaged in the business of fabric trading. The Fourth Transferor Company is engaged in running of loyalty program in partnership with PAYBACK, acquisition of media space rights in various publishing media houses and a model linking shopping and talking program under "T24". The Transferee Company is engaged in the business of consultancy and providing advisory services.
4. The amalgamation of the Transferor Companies with the Transferee Company would *inter alia* have the following benefits:
 - a. Reduction in number of entities within the group;
 - b. Simplification of group structure by streamlining cross holdings;
 - c. Pooling of resources to facilitate future expansion of business of Transferee Company;
 - and
 - d. Enable cost saving and reduction in administrative inefficiencies;
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes 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.
8. The Regional Director has filed his Report on 16th October, 2017, stating therein that save and except as stated in paragraph IV (a) to (e), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
 - (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) *As per existing practice, this Directorate has also issued a letter dated 13/10/2017 to IT Department requesting them to file their objection / comments if any directly to the Hon'ble NCLT, Mumbai.*
 - (c) *The tax implications if any arising out of the Scheme is subject to the final decision of Income tax Authorities. The approval of the Scheme by this Hon'ble*

Tribunal 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.

- (d) *Clause 28 of the Scheme, upon the Scheme becoming effective name of the Transferee Company shall stand change to "M/s Future Corporate Resources Limited". In this regard it is submitted that the same is subject to compliance with the provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Company (Incorporation) Rules, 2014.*
- (e) *Para 16 of the Scheme speaks about combination of capital. Since the scheme filed under section 230 of the Companies Act, 2013. The transferee company may be directed to comply with the provisions of Section 232 3(i) of the Companies Act, 2013.*
9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with other applicable accounting standards such as AS-5 (IND AS-8), etc.
 10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Petitioner Companies have complied with the requirements of sending notices to the Income tax authorities.
 11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
 12. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with applicable provisions of section 4(2) & (3) of the Companies Act, 2013 r/w rule 8(8) of the Companies (Incorporation) Rules, 2014 in respect of change of name of the Transferee Company.
 13. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with provisions of Section 232 3(i) of the Companies Act, 2013 in respect of combination of capital and will file necessary forms.
 14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
 15. The Registrar of Companies, Maharashtra has filed his Report dated 22nd September, 2017 wherein the RoC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
 16. The Official Liquidator has filed his report dated 20th September, 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Transferor Companies may be ordered to be dissolved without winding up.

17. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 751 of 2017 to Company Scheme Petition No. 757 of 2017 filed by the Petitioner Companies are accordingly made absolute.
19. Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
20. 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 issuance of the order by the Registry.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 751 of 2017 to Company Scheme Petition No. 756 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
22. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
23. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date: 18.10.2017