

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

**CSP NO. 837 OF 2017
AND
CSP NO. 838 OF 2017
AND
CSP NO. 839 OF 2017**

RBS EQUITIES (INDIA) PRIVATE LIMITED

....Petitioner/ Transferor Company No 1

AND

RBS CORPORATE FINANCE INDIA PRIVATE LIMITED

....Petitioner/ Transferor Company No 2

AND

RBS PRIME SERVICES (INDIA) PRIVATE LIMITED

....Petitioner/ the Transferee Company

In the matter of the Companies Act, 2013;

AND

In the matter of Section 230-232 read with Section
66 of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement between RBS
Equities (India) Private Limited ('Transferor Company
No 1'), RBS Corporate Finance India Private Limited
('Transferor Company No 2') and RBS Prime Services
(India) Private Limited ('Transferee Company') and
their shareholders

Coram:

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

V. Nallasenapathy, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b. Hemant Sethi & Co. Advocates for
Petitioner

Per: . **B.S.V. Prakash Kumar, Member (J)**

Order delivered on 18th October, 2017

ORDER

1. Heard the learned counsel for the Petitioner companies. 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 Scheme of Arrangement between RBS

Equities (India) Private Limited ('Transferor Company No 1'), RBS Corporate Finance India Private Limited ('Transferor Company No 2') and RBS Prime Services (India) Private Limited ('Transferee Company') and their shareholders.

2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 to a Scheme of Arrangement between RBS Equities (India) Private Limited ('Transferor Company No 1'), RBS Corporate Finance India Private Limited ('Transferor Company No 2') and RBS Prime Services (India) Private Limited ('Transferee Company') and their shareholders.
3. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Scheme Application Nos. 723 of 2017, 724 of 2017 and 725 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per direction of this Tribunal and they have filed necessary affidavits of compliance in this Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

6. The merger of Transferor Company No 1 and Transferor Company No 2 with the Transferee Company is with a view to:
- a. reduce managerial overlaps, which are necessarily involved in running multiple entities;
 - b. reducing administrative cost; and
 - c. achieving operational and management efficiency.

The reduction of share capital and payment of dividend is with a view that the current capital is in excess of requirements of the Transferee company and that such surplus capital be returned to the shareholders. Accordingly, it is intended to return capital which is in excess of the requirements of the Transferee company to its shareholder viz. RBS AA Holdings (Netherlands) B.V. by way of undertaking reduction of capital for a cash consideration as provided in the scheme.

7. The Regional Director has filed a Report on 11th day of October, 2017 stating therein, save and except as stated in paragraph IV, 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. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:

- (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 reminder 09/10/2017 to IT Department*
- (c) 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 Tribunal may not deter the Income Tax Authority to scrutinize the tax return filed by the Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.

(d) This scheme involves reduction of capital which is as follows:

Clause 3.4 of the scheme mentioned that, on the Scheme becoming effective and subject to receipt of necessary approvals (if any), 14,67,69,790 equity shares of Rs. 10/- each held by RBS AA Holdings (Netherlands) B.V. ("RBS AA") shall stand cancelled and the Transferee Company shall pay an aggregate sum of Rs. 148,07,26,140/- (Rupees One hundred and Forty Eight crore Seven lakh Twenty Six thousand One hundred and Forty only), subject to payment of applicable taxes

On such cancellation as provided in Clause 3.4 above, the issued, subscribed and paid-up equity share capital of the Transferee Company shall stand reduced from 23,10,21,914 equity shares of Rs. 10 each fully paid up to 8,42,52,124 equity shares of Rs.10 each fully paid up. The share certificates held by RBS AA representing the equity shares that are cancelled pursuant to Clause 3.4 above shall also be deemed to be cancelled and not tradable from and after such cancellation.

In this regard, company may be directed to comply with the provisions of the Act

8. So far as observations made in paragraph IV(a) of the Report of Regional Director are concerned, the Petitioner Companies undertakes that they 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.
9. So far as observations made in paragraphs IV (b) & (c) of the Report of Regional Director are concerned, the Counsel for the Petitioners submit that the Petitioner Companies undertake to comply with all applicable provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.

10. So far as observations made in paragraph IV(d) of the Report of Regional Director are concerned, the Counsel for the Petitioners submit that the reduction of capital is an integral part of the Scheme. As per explanation to Section 230 of the Companies Act, 2013 the provisions of Section 66 shall not apply to the reduction of share capital effected in pursuance of an order of the Tribunal under Section 230. Further, the shareholders have approved the aforesaid capital reduction in the meeting of the equity shareholders meeting held on the 21st day of August, 2017 pursuant to directions of this Tribunal. The Petitioner Companies undertake to file the requisite forms with the Registrar of Companies to the extent applicable.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 837, 838 and 839 of 2017 is made absolute in terms of prayers clause (a) to (c).
14. Petitioners are directed to lodge a copy of this order along with a copy of the Scheme of Arrangement 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 1956 / 2013.
15. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy 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.

16. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition Nos. 838 & 839 of 2017 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.
17. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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

Date: 18.10.2017