

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 893 OF 2017

Under Sections 230-232 and Section 234 of
the Companies Act, 2013

AND

In the matter of Scheme of Arrangement
between Tata Industries Limited ('Transferee
Company' or 'Petitioner Company') and Apex
Investments (Mauritius) Holding Private
Limited ('Transferor Company') and their
respective Shareholders and Creditors.

TATA INDUSTRIES LIMITED

....Petitioner/ Transferee Company

Judgement/ order delivered on 18th October, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar Hon'ble Member (J)

Hon'ble V. Nallasenapathy Hon'ble Member (T)

For the Petitioner(s): Mr. Rajesh Shah, Advocate along with Mr. Ahmed M
Chunawala, Advocate i/b M/s. Rajesh Shah & Co., Advocates for the
Petitioner.

Per: SH. B.S.V. Prakash Kumar Hon'ble Member (J)

ORDER:

1. Heard learned counsel for parties. No objector has come before this
Tribunal to oppose the Scheme and nor has any party controverted
any averments made in the Petition to the Scheme of Arrangement
between Tata Industries Limited ('Transferee Company' or 'Petitioner
Company') and Apex Investments (Mauritius) Holding Private Limited
(('Transferor Company')).

2. Apex Investments (Mauritius) Holding Private Limited ('Transferor Company') was incorporated on 7th March, 1995 at Mauritius under the provisions of Mauritius Companies Act and has its registered office at, CIM Corporate Services Ltd, Les Cascades Building, Edith Cavell Street, Port-Louis, Mauritius. Further, the Transferor Company is a wholly owned subsidiary of the Transferee Company.
3. The sanction of the Tribunal is sought under Sections 230 to 232 and Section 234 and other applicable provisions of the Companies Act, 2013 to the Scheme of Arrangement involving inbound merger/amalgamation of Apex Investments (Mauritius) Holding Private Limited ('Transferor Company') having CIN 14247/1624 with Tata Industries Limited ('Petitioner Company') having CIN U44003MH1945PLC004403.
4. The Petitioner Company has approved the said Scheme of Arrangement by passing the Board Resolution which is annexed to the Company Scheme Petition.
5. The Learned Advocate appearing on behalf of the Petitioner states that the Petition has been filed in consonance with the Order passed in their Company Scheme Application No. 789 of 2017 of the National Company Law Tribunal.
6. The Learned Advocate appearing on behalf of the Petitioner further states that the Petitioner Company has complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and has filed necessary affidavit of compliance with the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Company undertakes to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made

there under, whichever is applicable. The said undertaking is accepted.

7. The Learned Counsel for the Petitioner states that the Transferor Company has been carrying on the business of promoting new companies/ making strategic investments outside India. The Petitioner Company (Transferee Company) has been carrying on the business of an investment holding company engaged in the promotion of new business ventures. Apart from functioning as a promoter of new ventures and an investment holding company, the Petitioner Company has 3 operating divisions: TSMG Division which provides consulting services in strategic management initiatives to Tata companies and others, TIS Division which is engaged in the design and development of customized e-learning solutions and TCE Division which provides an innovative and comprehensive instructional solution that empowers teachers to teach better. The Petitioner Company has also initiated new businesses in the areas of digital health platform and data analytics and Ready to Eat food products. It holds several investments as enlisted in the audited financial statements of the Petitioner Company.
8. The amalgamation of Apex Investments (Mauritius) Holding Private Limited(“Transferor Company”) with Tata Industries Limited(“Transferee Company”) under the Scheme is expected to give rise to a number of commercial benefits as follows:
 - a. In line with the investment and growth objectives of Petitioner Company and Transferor Company and also to participate and benefit from the “Start-up India” initiative of the Honourable Prime Minister of India, management of Petitioner Company

and Transferor Company intends to utilize the resources of Transferor Company to invest in innovative and new age technology startups in India. However, due to regulatory restrictions (RBI), Transferor Company cannot invest in India and hence it is proposed to merge the operations of Transferor Company with Petitioner Company as a part of the overall restructuring plan;

- b. Rationalizing foreign subsidiaries in the group to ensure optimized legal entity structure more aligned with the business by reorganizing the legal entities in the group;
 - c. Significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by Petitioner Company and Transferor Company;
 - d. Concentrated effort and focus by the senior management to grow the business by eliminating duplicative communication and burdensome co-ordination efforts across multiple entities and countries; and
 - e. Elimination of administrative functions and multiple record-keeping, thus resulting in reduced expenditure.
9. The Regional Director has filed a Report on 13th 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:

1. *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 transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
2. *It is submitted that the Petitioner Company has submitted the proof of serving notice upon the Income Tax Authorities dated 04.08.2017, In this directorate has issued reminder letter dated 09.10.2017.*
3. *Petitioner in clause 13 of the Scheme has inter-alia mentioned that the resolutions, if any, of Transferor Company, which are valid and subsisting on Effective Date shall continue to be valid and subsisting and be considered as resolutions validly passed by the Transferee Company to the extent necessary.*

In this regard, it is submitted that the Transferor Company incorporated outside India and therefore merging of resolutions is not in accordance with law and the Company has to pass resolution and file requisite form for every event for consolidation after merger.

4. *Petitioner in clause 17.4 of the scheme has inter alia mentioned that Upon the Transferee Company entering into an agreement under Section 4(2)(b) of Part II of the Fourteenth Schedule of the Mauritius Companies Act and appointing the relevant competent authority as its agent to accept service of process, and relevant competent authorities in Mauritius accepting the Order passed by the NCLT as sufficient evidence of the Scheme being sanctioned and consequently striking off the Transferor Company, from the Register of Companies.*

In this regard, it is submitted that petitioner undertake to comply the same.

5. *ROC, Mumbai in their report dated 14.09.2017 mentioned that the company has to comply with the conditions as imposed by RBI (Foreign Exchange Department) while giving their prior approval vide their letter dated 29.06.2017 may please be incorporated in the order sanctioning the same.*
6. *Petitioner to undertake transfer the excess over liabilities of the transferor company to capital reserves as per AS-14.*

7. *Post approval of the Scheme, the transferee company to submit confirmation of striking of name of the transferor company from the register maintained by Appropriate Authority of the Government of Mauritius."*
10. So far as the observation in paragraph IV (1) and (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company/Transferee Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications, if any, arising out of the Scheme of Arrangement will be answered in accordance with law.
11. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company /Transferee Company undertakes to pass necessary resolution(s) and to file the requisite form(s), as may be applicable, in this regard.
12. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to comply with aforesaid observation in relation to clause 17.4 of the Scheme.
13. So far as the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company undertakes to comply with the conditions as imposed by RBI (Foreign Exchange Department) while giving their prior approval vide their letter dated 29.06.2017, which are reproduced as follows:

"a) Any issue or transfer of security by Tata Industries Ltd. the resultant company to a person resident outside India shall be in accordance with

the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000.

b) Any borrowing or impending borrowing of the foreign company from overseas sources which becomes the borrowing of the resultant company or any borrowing from overseas sources entering into the books of resultant company arising shall conform to the External Commercial Borrowing norms or Trade Credit norms or other foreign borrowing norms, as laid down under Foreign Exchange Management (Borrowing or Lending in Foreign Exchange) Regulations, 2000 or Foreign Exchange Management (Guarantee) Regulations, 2000, as applicable.

c) The resultant company may acquire and hold any asset outside India which an Indian company is permitted to acquire under the provisions of the Act, rules or regulations framed thereunder. Such assets can be transferred in any manner for undertaking a transaction permissible under the Act or rules or regulations framed thereunder

d) Where the asset or security is not permitted to be acquired or held by the resultant company under the Act, rules or regulations, the resultant company shall sell such asset or security within a period of 180 days from the date of sanction of the Scheme of cross border merger and the sale proceeds shall be repatriated to India immediately through banking channels”

14. So far as the observation in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company shall transfer the difference between the value of assets over the value of liabilities, including Reserves of the Transferor Company transferred to the

Petitioner/ Transferee Company over the carrying value of investments in its books to be cancelled pursuant to this Scheme, to Capital Reserves as per Accounting Standard (AS) 14 as prescribed in "Accounting for Amalgamations" notified under section 133 of the Companies Act, 2013, read with rules made thereunder.

15. So far as the observation in paragraph IV (7) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Petitioner Company shall submit to the ROC, Mumbai, the confirmation of striking-off name of the Transferor Company from register maintained by Appropriate Authority of the Government of Mauritius, as and when received from the said Mauritius Authority.
16. The observations made by the Regional Director have been explained by the Petitioner Company in Para 10 to 15 above. The clarifications and undertakings given by the Petitioner Company is accepted by the Tribunal.
17. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 893 of 2017 is made absolute in terms of prayers clause (a) to (c) thereof.
19. The Petitioner Company is 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 2013, within 30 days from the date of receipt of the order.

20. The Petitioner Company is directed 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, within 60 days from the date of receipt of the order, for the purpose of adjudication of stamp duty payable, if any, on the same.
21. The Petitioner Company to pay costs of Rs.25,000/- to the Regional Director, Western Region, Mumbai in the Company Petition No. 893 of 2017. Cost to be paid within four weeks from the date of receipt of the Order.
22. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member(T)

Sd/-

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