

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH AT MUMBAI**

COMPANY SCHEME PETITION NO. 735 OF 2017  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO. 582 OF 2017

AND

COMPANY SCHEME PETITION NO. 734 OF 2017  
CONNECTED WITH  
COMPANY SCHEME APPLICATION NO. 577 OF 2017

Under Sections 230 to 232 and all other  
applicable provisions of the Companies  
Act, 2013

In the matter of the Scheme of  
Amalgamation of Reliance Petro  
Distribution Private Limited (the  
"Transferor Company") with Fine  
Tech Corporation Private Limited  
(the "Transferee Company")

Reliance Petro Distribution Private Limited

...Petitioner Company/Transferor Company

AND

Fine Tech Corporation Private Limited

... Petitioner Company/Transferee Company

Order Delivered on **9<sup>th</sup> November 2017**

**Coram :**

Hon'ble Shri B. S. V. Prakash Kumar, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner(s):

Counsel Ms. Alpana Ghone and Counsel  
Mr. Sidharth Samantaray a/w Advocate  
Ms. Nirali Chopra i/b M/s. Junnarkar &  
Associates.



For Regional Director: Mr. S. Ramakantha, Joint Director  
For the Official Liquidator: Mr. Santosh Dalvi, Official Liquidator, in  
CSP No.735 of 2017.  
For Registrar of Companies: Mr. Ramesh Gholap, Deputy Registrar

**PER** : B.S.V. Prakash Kumar, Member (Judicial)

**ORDER**

1. Heard Learned Counsel for parties.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Reliance Petro Distribution Private Limited (the "Transferor Company") with Fine Tech Corporation Private Limited (the "Transferee Company").
3. Learned Counsel for the Petitioner Companies states that the Transferor Company is presently engaged in the business of providing maintenance and handling agency services and carries on incidental activities and the Transferee Company is presently engaged in the business of providing Logistics & Warehousing Services and Business & Infrastructure Support Services.
4. The benefit of the Scheme of Amalgamation is that the Transferor Company is a wholly owned subsidiary of the Transferee Company. The business of the Transferor Company can be conveniently combined with the business of the Transferee Company. The amalgamation will achieve economy, better administration and efficiency of operations. The amalgamation will achieve reduced administrative costs, avoid duplication of costs and result in internal economies and optimize profitability. The merged company will be in a better position to avail financial, managerial, technical and other capital resources available to both the Transferor



Company and the Transferee Company which will enable the merged company to expand business operations with minimum additional cost and in the shortest possible time. The financial position of the merged entity will be better as compared to that of smaller standalone entities. The integration proposed would enable cost savings, optimum utilization of available resources, will make management control systems more efficient and effective which will enhance the management focus thereby not only leading to higher profitability but will also increase the shareholders' value of both the companies. In furtherance of its aforesaid objects and in view of existence of business synergies between Transferee Company and Transferor Company, and to enhance shareholders value, it is proposed to merge the Transferor Company with the Transferee Company in accordance with the provision of this Scheme of Amalgamation.

5. The Board of Directors of both the Transferor Company and the Transferee Company have approved the Scheme of Amalgamation, which are annexed to the respective Company Scheme Petitions.
6. Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by this Tribunal in the Company Scheme Application Nos. 582 and 577 of 2017 and the Company Scheme Petition Nos. 735 and 734 of 2017 and the Company Scheme Petition Nos. 735 and 734 of 2017 filed in this Tribunal are in consonance with the Orders passed in the said Company Scheme Applications and Company Scheme Petitions.
7. Learned Counsel for the Petitioner Companies have stated that the Petitioner Companies have complied with all the requirements as per the directions of this Tribunal and it has filed necessary affidavits of compliance in this Tribunal. Moreover, both 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 thereunder. The said undertaking is accepted.

8. The Official Liquidator has filed his Report dated 26<sup>th</sup> September 2017 in Company Scheme Petition No. 735 of 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved.
9. Learned Counsel for the Petitioner Companies states that the office of the Regional Director, Mumbai has received objections from two unsecured creditors of the Transferee Company. Learned Counsel for the Petitioner Company submits that the outstanding debt of both the unsecured creditors is about 0.0072% in aggregate of the total outstanding debt of the Transferee Company as per the latest audited financial statement as on 31<sup>st</sup> March 2016, which is below the required threshold limit of 5% as required under Section 230(4) of the Companies Act, 2013 and therefore the two objectors are not entitled to raise any objections in pursuance of the proviso to Section 230(4) of the Companies Act, 2013.
10. In view of the proviso to Section 230(4), which mandates 5% value out of the total outstanding debt, the objections raised by both the objectors will not have any locus because both the objectors have outstanding debt below 5% out of the total outstanding debt of the Transferee Company as per the latest audited financial statement and therefore, both the objectors are not entitled to raise any objections.
11. The Regional Director, Western Region has filed his Report dated 12<sup>th</sup> October 2017 before this Tribunal stating therein that save and except as stated in para IV (a) to (g), it appears that the Scheme is not prejudicial to the interest of



shareholders and public. Para IV of the said Report reads as under:

**"IV.** It is further submitted that:-

- (a) Regarding **Clause 13.3 of the Scheme under "Accounting Treatment"**, it is submitted that any surplus/deficit, if any arising out of the Scheme shall be adjusted in Reserves i.e. Capital Reserves being Capital Profit and Loss and will not be adjusted against General Reserve of the Transferee Company;
- (b) That in view of provisions of **proviso to Section 66(3)** of the Companies Act, 2013 in respect of reduction of the Share Capital of the Transferee Company, the Hon'ble Tribunal may kindly direct the Company to submit Certificate from the Auditor of the Company that **"the Accounting Treatment proposed by the company for such reduction is in conformity with Accounting Standards specified in Section 133 or any other provisions of the Companies Act, 2013;**
- (c) 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;
- (d) In accordance to proviso to Section 232(3) of the Companies Act, 2013, the Company may be directed to file a **Certificate from the Company's Auditors** to the effect that the Accounting Treatment as proposed in the Scheme is in conformity with the Accounting Standards as prescribed under Section 133 of the Companies Act, 2013.
- (e) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. The Companies served a copy of this Scheme along with the relevant orders etc., further the Office of Regional Director, Western Region has also issued a reminders dt. **09-10-2017**.
- (f) 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.
- (g) As regards Para No. 18.2 of the Scheme, it is directed to the Petitioners not to make any alteration/ modification in terms of the Scheme during implementation of the Scheme according to their convenience. It should be



*according to the Scheme sanctioned by the Hon'ble NCLT and any alteration/modification can be done with the prior approval of the Hon'ble NCLT only.*

12. With respect to Para IV (a) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies undertakes that the surplus/deficit, if any arising out of the Scheme of Amalgamation shall be adjusted in Reserves i.e. Capital Reserve being Capital Profit or Loss and will not be adjusted against the General Reserve of the Transferee Company.
13. With respect to Para IV (b) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Transferee Company has already filed a Certificate of its Auditors, being Exhibit "E" to the Company Scheme Petition filed by the Transferee Company, confirming that the Accounting Treatment (which includes reduction of Share Capital) proposed in the Scheme of Amalgamation is in compliance with the Accounting Standards notified by the Central Government under the Companies Act, 2013.
14. With respect to Para IV (c) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies states that the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the Scheme of Amalgamation to comply with other applicable Accounting Standards such as AS-5 (IND AS-8), etc.
15. With respect to Para IV (d) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Transferee Company has already filed a Certificate of its Auditors, being Exhibit "E" to the Company Scheme Petition filed by the Transferee Company, stating that the Accounting Treatment proposed in the Scheme of Amalgamation is in compliance with the Accounting Standards notified by the Central Government under the Companies Act, 2013.



16. With respect to Paras IV (e) and (f) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and the Transferee Company shall comply with and deal with all tax matters arising out of the Scheme of Amalgamation in accordance with law.
17. With respect to Para IV (g) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies states that the Petitioner Companies are bound to not make any alterations/modification in terms of the Scheme of Amalgamation according to their convenience and undertakes to make any alteration/modification only with the prior approval of the Hon'ble Tribunal.
18. The observations made by the Regional Director have been explained by the Learned Counsel for the Petitioner Companies in paragraphs 12 to 17 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
19. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
20. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (h) and clause (j) of Company Scheme Petition No. 735 of 2017 and prayer clauses (a) to (m) and (o) to (q) of Company Scheme Petition No. 734 of 2017.
21. The Transferee Company to file a copy of this Order and the Scheme of Amalgamation duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench with the concerned Superintendent of Stamps for the

purpose of adjudication of stamp duty, if any, payable on the same, within 60 (sixty) days from the date of receipt of the Order.

22. The Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme of Amalgamation and Minute of Reduction with the concerned Registrar of Companies, electronically, alongwith E-Form INC 28 in addition to the physical copy, as per relevant provision of the Companies Act, 1956 or Companies Act, 2013, whichever is applicable.
23. The Transferor Company and the Transferee Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Transferor Company to pay costs of Rs.25,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the Order.
24. All concerned regulatory authorities to act on a copy of this Order alongwith Scheme of Amalgamation and Minute of Reduction, duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

**V. Nallasenapathy**  
**Member (Technical)**

Sd/-

**B.S.V. Prakash Kumar**  
**Member (Judicial)**