

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

CSP NO. 552 & 554 OF 2017  
IN

CSA NO 302 & 304 OF 2017

In the matter of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation between HB Advisory  
Services Private Limited (Transferor Company) and Baker Tilly  
DHC Private Limited (Transferee Company) and their respective  
Shareholders.

HB Advisory Services Private Limited

Baker Tilly DHC Private Limited

.....Petitioner Companies

Judgment/Order delivered on 15<sup>th</sup> November, 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. S Ramakantha, Joint Director in the office of Regional Director

Mr. Santosh Dalvi, Representative of Official Liquidator

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

**ORDER**

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the Tribunal to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of HB Advisory Services Private Limited with Baker Tilly DHC Private Limited and their Respective Shareholders.
3. The learned Counsel for the Petitioner submits that the Transferee Company is presently in the business of rendering taxation and financial consultancy services

for clients. There are currently no business operations in the Transferor Company, it is merely a holding company holding investments.

4. The amalgamation of the Transferor Company with the Transferee Company is inter alia for the following benefits:

- a) *Cost savings are expected to flow from more focused management efforts, rationalization of operating costs, standardization and simplification of business process and elimination of duplication.*
- b) *The Amalgamation would result in an optimum utilization of the financial, managerial, technological and other resources which will be conducive to enhance the capability to face competition in the market more effectively, thereby strengthening the market position and growth prospects;*
- c) *By the proposed Scheme of Amalgamation, the financial resources of both the Transferor Company and Transferee Company will be conveniently merged and pooled together to drive growth oriented business plans of the Transferee Company;*
- d) *It would also lead to growth prospects for the personnel connected with these companies and thus, be in the interest of and for the welfare of, the employees of the companies concerned in this Scheme.*
- e) *Upon the Scheme becoming effective, the Transferor Company would stand dissolved and this will enable the rationalisation of the holding structure leading to simplification of shareholding structure and reduction in shareholding tiers, a decrease in compliances, reduction in overall administrative and operational cost, increase in organizational efficiencies and rationalization in economies of scale and more optimal utilization of various resources.*

- f) *The synergies created by the merger may lower the cost of borrowing and integrate other functions. This would contribute towards enhancement of shareholders' value along with interest of various stake holders.*
5. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolution which is annexed to the Company Scheme Petition.
  6. Counsel appearing on behalf of the Petitioner further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal and they have filed necessary affidavits of compliance. Moreover, the Petitioner Companies through their Counsel undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
  7. The Official Liquidator has filed his report dated 16<sup>th</sup> June, 2017 stating that the affairs of the Petitioner/Transferor Company have been conducted in a proper manner and that Petitioner/Transferor Company may be ordered to be dissolved.
  8. The Regional Director has filed his Report stating therein, save and except as stated in paragraph IV(a) to (d), it appears that the scheme is not prejudicial to the interest of shareholders and public.

In paragraphs IV, of the said affidavit it is stated that: -

- a) *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 Petitioner Companies after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*

- b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company vide letter dated 12.04.2017 has served a copy company scheme application No. 302 & 304 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 26.09.2017 to IT Department.*
- c) *In addition to compliance of AS-14 (IND AS-103) the Petitioner Companies 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) *It is submitted that, the petitioner company has inter alia mentioned in the clause 12.4 of the scheme as follows: -*

*“Difference between the value of assets over liabilities recorded by Transferee Company pursuant to Clause 12.1 and after making adjustments pursuant to Clause 12.2 shall be credited to capital reserve, and in case of shortfall shall be debited to goodwill account”.*

*Further, the petitioner company has amended the scheme and inter alia mentioned in the clause 12.4 as follows: -*

*“Difference between the amount recorded as share capital issued by the Transferee Company and the amount of share capital of the Transferor Company shall be credited to the General reserves. The difference between the carrying amount in the books of the Transferor Company of its investment in the Equity Share Capital shall, subject to the other provisions contained herein, be adjusted against Securities Premium Account. Such adjustment of Securities Premium Account shall be effected as an integral part of the Scheme itself in accordance with the provisions of Section 52 and Section 66 of the Act separately and the order of the NCLT sanctioning the Scheme shall*

*be deemed to be the order under Section 66 of the Act for the purpose of confirming the reduction. The reduction would not involve either a diminution of liability in respect of unpaid share capital or payment of paid-up share capital to the shareholders and the provisions of Section 66 of the Act will not be applicable. Which is contradictory of earlier clause 12.4 of the scheme and section 52 (2) read with rules of Companies Act, 2013”.*

*In this regards, it is hereby submitted that section 52 (2) of Companies Act, 2013 provides security premium may be applied in following cases: -*

- 1. Towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares*
- 2. In writing off the preliminary expenses of the Company*
- 3. In writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;*
- 4. In providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company;*  
*or*
- 5. For the purchase of its own shares or other securities under section 68.*

*Further, it is submitted that the modification of clause 12.4 of the scheme is not in compliance with provisions of section 52(2) of Companies Act, 2013. Hence, the petitioner company may be directed to comply with clause 12.4 of the earlier scheme which is in the accordance with Accounting Standard 14 read with section 133 of Companies Act, 2013.*

*Save and except as stated in para IV (a) to (d) it appears that the scheme is not prejudicial to the interest of shareholders and public.*

- 9. As far as the observations made in paragraph IV (a) & (b) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply*

- with all applicable provisions of the Income Tax Act and all tax implications, if any, arising out of the Scheme will be met and answered in accordance with law.
10. As far as the observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies undertake to comply with the applicable Accounting Standards such as AS-5 in addition to compliance with AS-14.
  11. As regards the observation made in para IV (d), the learned counsel for the Petitioner Company submits that as per clause 12.4 of the amended scheme, the difference between the carrying amount in the books of the Transferor Company of its investment in the Equity Share Capital of the Transferee Company which shall stand cancelled consequent to the Scheme and the aggregate face value of such Equity Share Capital shall be adjusted against Securities Premium Account.
  12. The Counsel for the Petitioners further submit that the proposed utilisation of Securities Premium Account amounts to reduction of Capital of the Transferee Company by virtue of the provisions of Sections 52 & 66 of the Companies Act 2013. As Section 52 of the Act expressly provides that provisions of the said Act relating to the reduction of share capital of a Company shall, except as provided in Section 52(2) of the Companies Act 2013 apply even for adjustment of Securities Premium Account as if it were the paid up share Capital of the Company. The counsel for the Petitioner Company further submits that as per Section 52 (1), where a company issues shares at a premium whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a securities premium account and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the Company.
  13. As provided under section 52 (1) of Companies Act, 2013, for reduction of share capital of the Company in accordance with the provisions of Companies Act,

2013 (except for the purposes specified under Section 52(2) of the Companies Act, 2013), the Securities Premium Account shall be treated as paid-up share capital of the company. Accordingly, if the Securities Premium Account is applied/ utilized for any of the purposes (s) other than those mentioned in subsection 2 of Section 52 of the Companies Act, 2013, then such utilization would be treated as reduction of share capital in accordance with the provisions of the Companies Act, 2013. The Petitioner, in such a case, is required to follow the provisions of Section 66 of the Companies Act, 2013.

14. Further, learned counsel submits that the above amendment as referred in para IV (d) of RD observation is required to reflect the correct accounting treatment as per Accounting Standard 14 'Accounting for Amalgamation' i.e "Amalgamation in the nature of merger". The Counsel for Petitioners submit that the Transferee Company shall be following AS-14 "Pooling of Interest Method" where the difference between the amount recorded as Share Capital issued and the amount of share capital of the Transferor Company is adjusted against reserve which is being done as per amended Scheme in compliance of AS -14 Pooling of Interest Method and in case of Purchase Method, the amount of consideration is deducted from the value of the net assets of the transferor company acquired by the transferee company. If the result of the computation is negative, the difference is debited to goodwill arising on amalgamation. If the result of the computation is positive, the difference is credited to the Capital Reserve. Since, the Petitioner Companies are not following Purchase method of accounting, the erstwhile clause 12.4 was deleted and modified.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 15 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
16. 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.

17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 552 and 554 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
18. Petitioner Companies are directed to file 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
19. The 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. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No 552 of 2017 to pay sum 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 the Order.
21. 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.
22. 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)