

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

CSP 711/230-232/NCLT/MB/MAH/2017

CSP 712/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Rimjhim Tradelink Private Limited

.....Petitioner in CSP 712/2017  
(Transferor Company)

M/s. Active Infrastructures Private Limited

.....Petitioner in CSP 711/2017  
(Transferee Company)

Order delivered on: 10.11.2017

**Coram :**

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Ramesh Saraogi – Advocate for the Petitioners.

**For the Regional Director :**

Mr. Ramesh Gholap – Dy. Registrar (WR).

*Per : Bhaskara Pantula Mohan, Member (J)*

**ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s. Rimjhim Tradelink Private Limited (Transferor Company) with M/s. Active Infrastructures Private Limited (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company and the Transferee Company both are engaged in the Business of Suppliers, Traders, Merchants, Commission Agent etc.



4. As both the companies are in same business accordingly, this Scheme will result in to administrative efficiency and better utilization of resources, reduction in overhead expenses & Paper work and will result into better utilization of resources and economy in the long run.
5. The Authorised share capital of the Transferor Company is ₹ 40,00,000/- comprising of 4,00,000/- equity shares of ₹ 10/- each. Issued subscribed and paid-up share capital of the Transferor Company is ₹ 39,06,000/- comprising of 3,90,600/- equity shares of ₹ 10/- each fully paid-up.
6. The Authorised share capital of the Transferee Company is ₹ 2,00,00,000/- comprising of 50,00,000/- equity shares of ₹ 1/- each and 1,50,00,000 redeemable preference shares of ₹ 1/- each. The issued subscribed and paid-up share capital of Transferee Company is ₹ 49,00,000/- comprising of 49,00,000/- equity shares of ₹ 1/- each fully paid.
7. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
  - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
  - b) The Regional Director has filed a Report on 12<sup>th</sup> 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:-

*(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 comment. It is observed that the Petitioner Companies vide letters dated*

*14.06.2017 has served a copy of Company Scheme Application No. 595 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 06.10.2017 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.*

- c) Apropos the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
  - d) Apropos the observation in paragraph IV (b) of the report of the Regional Director is concerned the statement made in the Regional Director's report is correct.
  - e) Apropos the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that, the Petitioner Companies undertakes that 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.
  - f) The Official Liquidator has filed his report dated 20<sup>th</sup> September, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be order to dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.
  - g) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.
8. 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. And hereby this Bench, to the Petitioner Companies, **do Order that:**

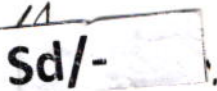


- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) In lieu of consideration of the Scheme, the Transferee Company shall issue and allot, 4.60 Equity Shares of ₹ 1/- each for every 1 equity share of ₹ 10/- each held in Transferor Company.
- d) 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, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- e) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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.
- f) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- g) Transferor Company (i.e. Petitioner in CSP No. 712 of 2017) to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- h) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.



- i) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- j) Any concerned Authority is at liberty to approach this Bench for any further clarification after sanctioning of the Scheme.
- k) The Scheme is sanctioned and the appointed date of the Scheme is fixed as, 1<sup>st</sup> April, 2016.

9. Ordered accordingly. To be consigned to Records.

  
Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

  
Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 10.11.2017**