

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

CSP 764/230-232/NCLT/MB/MAH/2017
CSP 768/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Bellissimo Facilities Management Limited
.....Petitioner in CSP 764/2017
(Transferor Company)

M/s. Cowtown Infotech Services Private
Limited
.....Petitioner in CSP 768/2017
(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 :

Adv. Ajit Singh Tawar and Adv. Rushil Aiya i/b Ajit Singh Tawar & Co., Advocates for
Petitioners

For the Regional Director :

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

Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, Scheme of Amalgamation of M/s. Bellissimo Facilities Management Limited (Transferor Company) with M/s. Cowtown Infotech Services Private Limited (Transferee Company).
2. The Transferor Company and Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions, which are annexed to the respective Company Scheme Petitions.

Bhaskara Pantula Mohan:

3. The Transferor Company is engaged in the business of Construction and Development of Real Estate and Allied Activities.
4. The Transferee Company is engaged in the business of Construction and Development of Real Estate and Allied Activities.
5. The amalgamation of the Transferor Company with the Transferee Company would help to simplify the group structure, minimize cost of administration of two legal entities achieving operational and management efficiency by way of consolidation of business; consolidation and simplification of the group structure; lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax filings, company law requirements at present to be carried out by the Transferor Company and the Transferee Company.
6. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 5,00,000/- comprising of 50,000 Equity Shares of ₹10/- each.
7. The Authorized, Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 20,02,71,000/- comprising of 2,00,071 Equity Shares of ₹ 1000/- each.
8. The Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 22,30,000/- comprising of 2,230 Equity Shares of ₹ 1000/- each.
9. Presently the entire Issued, Subscribed and paid-up Share Capital of the Transferor Company is held by Transferee Company.
10. The averments made in the petitions and the submissions made by the Learned Counsel for the Petitioners are:
 - a) The Petitioner Companies had complied with all the requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Companies 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 his report dated 13th October, 2017 and has stated that save and except as stated in Paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report read as follows:

“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-

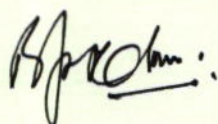
(a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such Accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc;*

(b) *As per existing practice, this Directorate has also issued a letter dated 11/10/2017 to IT Department requesting them to file their objections/comments if any directly to the Hon’ble NCLT, Mumbai.*

(c) *The Tax Implication if any arising out of the schemes 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.*

(d) *Para 14 of the Scheme speaks about combination of capital. Since the Scheme is filed under section 230 of the Companies Act, 2013. The transferee company may be directed to comply with the provisions of the Companies Act, 2013.*

- c) Apropos observation made in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners undertakes that it will comply with all the applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with the applicable Accounting Standards.

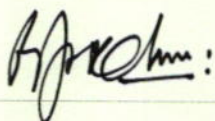


- d) Apropos observation made in paragraph IV (b) of the Report of Regional Director is concerned, the Transferee Company undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of scheme will be met and answered in accordance with law.
- e) Apropos observation made in paragraph IV (c) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners states that, the Petitioner Companies have already served the notice to the Income Tax Authorities and it has also served the acknowledgement copy of the service of notice to Regional Director and to NCLT.
- f) Apropos observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Transferee Company undertakes to comply with the applicable provisions of the Companies Act, 2013 as regards Combination of Authorized Share Capital.
- g) The Official Liquidator filed his report dated 11th October, 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved without winding up by this Hon'ble Tribunal.
- h) Further, the Learned Counsel for the Petitioner Companies submits that neither the Petitioner Companies nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor and the Transferee Company.

11. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not in violation 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 Section 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 Petitioner Companies to comply with the provisions / statements, which the Petitioner Companies undertakes herein.

- c) Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.
- d) Since the entire Issued, Subscribed and Paid-up Share Capital of the Transferor Company is held by the Transferee Company, no consideration shall be issued after the Amalgamation of the Transferor Company with the Transferee Company.
- e) The Petitioner Companies are directed to file a copy of this order along with 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.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme of Amalgamation 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 working days from the date of the receipt of the Order.
- g) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified True Copy of this Order.
- h) Transferor Company i.e. Petitioner in CSP 764 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 True Copy of this Order.
- i) All authorities concerned to act on a copy of this order along with Scheme duly certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modifications that may be necessary.

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k) Further that, any concerned authority is at liberty to approach before this Bench for any clarification.

l) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 1st April 2017.

12. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 10.11.2017