

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 822 OF 2017

AND

CSP NO. 823 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
BLUE BELL IMPEX PRIVATE LIMITED, the
Transferor Company with INFINITE CREATE
& CONSTRUCTION PRIVATE LIMITED, the
Transferee Company.

BLUE BELL IMPEX PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

INFINITE CREATE & CONSTRUCTION PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 14th December, 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 with Mr. Ahmed M Chunawala

i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per : 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 Petitions to the Scheme of Amalgamation

of BLUE BELL IMPEX PRIVATE LIMITED, the Transferor Company with INFINITE CREATE & CONSTRUCTION PRIVATE LIMITED, the Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation of BLUE BELL IMPEX PRIVATE LIMITED, the Transferor Company with INFINITE CREATE & CONSTRUCTION PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in their Company Scheme Application Nos. 628 of 2017 and 629 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake 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.
6. The Learned Counsel for the Petitioners states that the Transferor Company was set up to undertake the business of processors,

importers, exporters, merchants stockists, sellers, purchasers, agents, delcredre, agents, commission agents, brokers and dealers, in machineries engineering goods, stores, spares & components, tools, alloy steel, ferrous and non-ferrous metals goods produced from them, dyes & chemicals and the Transferee Company its business to establish, construct, acquire, manage, run, lease, games park such as Go kart racing , Bowling alleys, snookers, & pool tables, golf courses, amusement joy rides, joint wheels, merry-go-round, bashing cars, amusement parks, theme parks water parks, water games, water slides, lazy river with boats, rotating ducks on water, swimming pools, Jacuzzi, spa, sauna, children's park, indoor games, sport clubs, country clubs, recreational sports with facilities for entertainment. As per the opinion of the management the Petitioner Company and the Transferee Company are under the same management and that the management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits and that both the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that it would be advantageous to combine the activities and operations of both the Companies into a single Company for leveraging financial and operational resources and for the benefit of lesser compliance issues and that the Scheme of amalgamation will result in cost saving for both the Companies and is expected to result in

administrative efficiency and higher profitability levels for the Transferee Company.

7. The Regional Director has filed a Report on 14th day of November, 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:

- 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, 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 has not served a copy of the Company Scheme Petition No. 822 and 823 of 2017 along with relevant orders etc. to the Income Tax Department. This deponent prays that the Hon’ble Tribunal may pass orders as may deem fit.*
- c) 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.*
- d) As regards Clause C-13 of the Scheme, the Transferee Company may be allowed in respect of fees payable by the Transferee Company on its Authorized Share Capital, subsequent to the Amalgamation for setting-off of fees paid by the Transferor Company on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.*

8. So far as 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 Transferee Company undertakes that in addition to compliance of AS-14 (corresponding Ind AS-103, if applicable) for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5(corresponding Ind AS-8), if applicable etc.
9. So far as the observation in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company /Transferee Company 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.
10. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferor Company undertakes to pay fees on its Authorized Share Capital in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.

12. The Official Liquidator has filed his report on 15th September, 2017 in the Company Scheme Petition No. 822 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 822 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof and 823 of 2017 is made absolute in terms of prayer clauses (a) to (c) thereof .
15. Petitioners are directed to lodge 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 physical copy, as per the relevant provisions of the Companies Act 2013.
16. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar or Assistant Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.

17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition No. 822 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
18. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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