

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 417 OF 2017

AND

CSP NO. 418 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
SS VENTURE SERVICES PRIVATE LIMITED,
the Transferor Company with MILESTONE
RIVER VENTURE ADVISORY PRIVATE
LIMITED, the Transferee Company.

SS VENTURE SERVICES PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

MILESTONE RIVER VENTURE ADVISORY 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 SS VENTURE SERVICES PRIVATE LIMITED, the Transferor Company with MILESTONE RIVER VENTURE ADVISORY 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 SS VENTURE SERVICES PRIVATE LIMITED, the Transferor Company with MILESTONE RIVER VENTURE ADVISORY 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. 417 of 2017 and 418 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 has been engaged in the business of providing advisory

services, fund management services and other related services to private equity and venture capital funds and the Transferee Company has been engaged in the business of providing all kinds of services including investment advisory services to assist decision making and to engage in any and all activities necessary, business support services, project counseling and advisory services etc. As per the opinion of the management:

Both the Petitioner Companies are under the same management. The management of the companies are of the opinion that the merger will lead to synergies of operations and more particularly the following benefits:

- (a) Both the Companies are under the same Management and it would be advantageous to combine the activities and operations in a single Company. The amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base.
- (b) It would be advantageous to combine the activities and operations of both companies into a single Company for synergistic linkages as both the Companies are engaged in the same type of business activities and thus there will be benefit of combined financial resources.
- (c) The amalgamated Company will immensely benefit from several back end processes such as supply chain and logistics alignment, benefit from the increased scale of operations, saving in various fixed cost, reduced administrative cost as there will be no duplication of various activities in running two companies with similar business.

- (d) This Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity which will result in savings of cost and improvement in the revenues and margins of the Amalgamated Company, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform.
 - (e) Amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business. Specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies.
 - (f) The Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each other's core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company, thus it will immensely benefit the shareholders of both the companies.
7. The Petitioner Company and the Transferee Company are under the same management and that the management of the Companies are 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 will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that it would be advantageous to combine the

activities and operations of both companies into a single Company for synergistic linkages as both the Companies are engaged in the same type of business activities and thus there will be benefit of combined financial resources and that the amalgamated Company will immensely benefit from several back end processes such as supply chain and logistics alignment, benefit from the increased scale of operations, saving in various fixed cost, reduced administrative cost as there will be no duplication of various activities in running two companies with similar business and that this Scheme of amalgamation would result in merger and thus consolidation of business of the Transferor Company and the Transferee Company in one entity which will result in savings of cost and improvement in the revenues and margins of the Amalgamated Company, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the amalgamation of the Transferor Company with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business and specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of both the companies and that the Scheme of amalgamation will result in cost saving for both the companies as they are capitalizing on each others core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company, thus it will immensely benefit the shareholders of both the companies.

8. The Regional Director has filed a Report on 21st day of September, 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 Transferor Company vide letter dated 04.08.2017 has served a copy of company scheme application No. 417 of 2017 along with relevant orders etc. it is further observed that the Transferee Company has not served the copy of company scheme application No. 418 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 per Clause 12 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.*
- e) It is observed that the Transferor Company & Transferee Company has foreign/ non-residential shareholders. The Transferee Company must observe the FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.*

f) Petitioner companies have not submitted a copy of the admitted petition. In this regard, the Petitioner has to undertake to submit the same for the record of Regional Director.

9. 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.
10. 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.
11. 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 subsequent to the Amalgamation for setting off of fees paid by the Transferor Company on its Authorized Share Capital undertakes to comply in accordance with the provisions of Section 232(3)(i) of the Companies Act, 2013.
12. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company will observe the

FEMA guidelines for allotment of shares to the shareholder of the Transferor Company in Transferee Company.

13. So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that it is already submitted the same.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
15. The Official Liquidator has filed his report on 12th December 2017 in the Company Scheme Petition No. 417 of 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 417 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof and Company Scheme Petition No. 418 of 2017 is made absolute in terms of prayer clauses (a) to (c) thereof .
18. 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.

19. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy 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.
20. 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. 417 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.
21. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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