

CSP NO. 516 OF 2017

AND

CSP NO 517 OF 2017

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

CSP NO. 516 OF 2017

IN

CSA NO. 411 OF 2017

MAHANADI TRADING PRIVATE LIMITED

...Petitioner or Transferor Company 5

AND

CSP NO. 517 OF 2017

IN

CSA NO. 411 OF 2017

SHREEVALLABH TEXTILE PRIVATE LIMITED

...Petitioner or Transferor Company 6

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 Ankita Pratisthan Limited ('the Transferor Company 1' or 'Ankita') and Mayuka Investment Limited ('the Transferor Company 2' or 'Mayuka') and Puneet Trading and Investment Company Private Limited ('the Transferor Company 3' or 'Puneet Trading') and Zipahead.com Private Limited ('the Transferor Company 4' or 'Zipahead') and Mahanadi Trading Private Limited ('the Transferor Company 5' or 'Mahanadi') and Shreevallabh Textile Private Limited ('the Transferor Company 6' or 'Shreevallabh') and Keshav Power Limited ('the Demerged Company 1' or 'Keshav Power') and Shree Nirman Limited ('the Demerged Company 2' or 'Shree Nirman') and Rama Investment Company Private Limited ('the Transferee Company' or 'the Resulting Company' or 'Rama') and their respective shareholders and creditors

Order delivered on 6th December, 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V .Nallasenapathy Hon'ble**, Member (T)

For the Petitioner(s): For the Petitioner(s): Mr. Hemant Sethi i/b Hemant
Sethi & Co

Mr. P Sheela, Joint Director in the office of Regional
Director

Mr. Ramesh Gholap , Deputy Registrar of Companies

Mr. Santosh Dalvi, Assistant in the office 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 this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013, to the Scheme of Amalgamation and Arrangement amongst Ankita Pratisthan Limited and Mayuka Investment Limited and Puneet Trading and Investment Company Private Limited and Zipahead.com Private Limited and Mahanadi Trading Private Limited and Shreevallabh Textile Private Limited and Keshav Power Limited and Shree Nirman Limited and Rama Investment Company Private Limited and their respective shareholders and creditors (hereinafter referred to as 'the Scheme').
3. The Counsel for the Petitioner Companies submits that the rationale of the Scheme consisting of the following:
 - a. Amalgamation of Ankita, Mayuka, Puneet Trading, Zipahead, Mahanadi and Shreevallabh with Rama;
 - b. Demerger of the Identified Undertaking 1 of Keshav Power into Rama; and
 - c. Demerger of Identified Undertaking 2 of Shree Nirman into Rama.

Is as follows:

- a) Simplification of group structure by elimination of multiple entities and achieve greater administrative efficiency;

- b) Elimination of administrative functions and multiple record keeping, thus resulting in reduced expenditure; and
 - c) Unlocking and maximizing shareholder value.
4. The Board of Directors of the Petitioner Companies have approved the said Scheme by passing necessary Board Resolutions on March 21, 2017 which are annexed to the respective Company Scheme Petitions filed by the Petitioner Companies.
 5. By order dated 13th April, 2017 passed by the Hon'ble National Company Law Tribunal, Bench at Mumbai ('Hon'ble Tribunal') in Company Scheme Application 411 of 2017, meetings of Equity Shareholders of the Transferor Company 5 were ordered to be convened and held at B-5, The Tardeo Everest Premises Co-Operative Society Limited, Tardeo Main Road, Mumbai – 400034 on 26th day of May, 2017 at 11:00 a.m. Further, meetings of the Equity Shareholders of the Transferor Company 6 were also ordered to be convened and held at B-5, The Tardeo Everest Premises Co-Operative Society Limited, Tardeo Main Road, Mumbai – 400034 on 26th day of May, 2017 at 11:30 a.m.. Further, since there were no Secured Creditors in the Transferor Company 5 and Transferor Company 6, their meetings were not required to be convened.
 6. The learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed by the Tribunal in the Company Scheme Applications and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Scheme Applications.
 7. The learned Counsel appearing on behalf of the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking given by the Petitioner Companies is accepted.
 8. The Regional Director has filed his Report dated 25th September, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders. In paragraph IV of the said Affidavit, the Regional Director has stated that:

- a) *The Registered Office of the Transferor Company 1, Transferor Company 2, Transferor Company 3, Transferor Company 4, Demerged Company 1 and Demerged Company 2 and the Transferee Company are situated in the State of Tamil Nadu respectively i.e. outside of the jurisdiction of NCLT of this Tribunal and falls within the jurisdiction of NCLT of Chennai. Accordingly, similar approval be obtained by the abovesaid companies from Hon'ble NCLT at Chennai;*
- 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 5 and Transferor Company 6 vide letter dated 26.04.2017 has served a copy Company Scheme Application No. 411 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 08.09.2017 to IT department;*
- c) *The tax implications 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 Companies.*
- d) *As per clause 1.3 Definitions and Share Capital of the Scheme "Appointed Date" means the 01st April, 2016 or such other date as may be fixed or approved by the National Company Law Tribunal (Chennai Bench and Mumbai Bench) or such other competent authority. In this regard, it is submitted in the terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.*
However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.
- e) *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.*

9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Counsel for the Petitioner Companies submit that the

CSP NO. 516 OF 2017

AND

CSP NO 517 OF 2017

Scheme has been approved by the Chennai Bench of the NCLT on 7th November, 2017 and the order is yet to be pronounced.

10. In so far as observations made in paragraph IV (b) of the Report of Regional Director is concerned, the Transferor Company 5 submits that vide letter dated May 03, 2017 it has served a copy of Company Scheme Application No. 411 of 2017 along with relevant orders etc. with the Income Tax Department. The Transferor Company 6 submits that vide letter dated May 02, 2017 it has served a copy of Company Scheme Application No. 411 of 2017 along with relevant orders etc. with the Income Tax Department. However, no response has been received from the Income Tax Department so far.
11. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. As far as observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Companies submits that the Appointed Date shall be 1st April, 2016.
13. In so far as observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies submit that 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.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 516 of 2017 filed by the Transferor Company 5 is made absolute in terms of prayer clause (a) of the Petition and Company Scheme Petition No. 517 of 2017 filed by the Transferor Company 6 is made absolute in terms of prayer clause (a) of the Petition.
16. 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.

17. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the Order.
19. 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.
20. It is directed that the Scheme shall take effect from the date of filing of a signed copy of this order with the Registrar of Companies. The Petitioner Companies undertake to file a certified copy of the Scheme along with this order with the Registrar of Companies within a period of thirty days from the date of receipt of order. 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)
Date: 6.12.2017

Sd/-

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