

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

CSP NO. 459 OF 2017

AND

CSP NO. 460 OF 2017

AND

CSP NO. 461 OF 2017

Under Section 230-232 of the Companies  
Act, 2013

In the matter of Scheme of Amalgamation of  
MIRANDA EXPORTS PRIVATE LIMITED, the  
First Transferor Company and BEACON  
TRADING COMPANY PRIVATE LIMITED, the  
Second Transferor Company with  
INTEGRITY TRADING COMPANY PRIVATE  
LIMITED, the Transferee Company.

MIRANDA EXPORTS PRIVATE LIMITED

....Petitioner/ the First Transferor Company

AND

BEACON TRADING COMPANY PRIVATE LIMITED

...Petitioner/ the Second Transferor Company

AND

INTEGRITY TRADING COMPANY PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 06<sup>th</sup> December, 2017

Coram:

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

Hon'ble V. Nallasenapathy Member (T)

For the Petitioner(s): Miss. Aasifa Khan, 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 MIRANDA EXPORTS PRIVATE LIMITED, the First Transferor Company and BEACON TRADING COMPANY PRIVATE LIMITED, the Second Transferor Company with INTEGRITY TRADING COMPANY PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of MIRANDA EXPORTS PRIVATE LIMITED, the First Transferor Company and BEACON TRADING COMPANY PRIVATE LIMITED, the Second Transferor Company with INTEGRITY TRADING COMPANY 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. 55 of 2017, 56 of 2017 and 57 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 direction 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, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
  
6. The Learned Counsel for the Petitioners states that both the Transferor Companies have been carrying on the business of investments and the Transferee Company has also been carrying on the business of investments only. The management is of the opinion that all the three 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 the amalgamated Company will have the benefit of the combined assets and cash flows of the three companies and that the combined resources of the amalgamated

company will be conducive to enhance its profitability and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal. This Scheme of amalgamation would result in merger and thus consolidation of business of the Petitioner Companies in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform. It 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 all the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme. The amalgamation will result in cost saving for all the Petitioner Companies as they are capitalizing on each other's core competency and resources that is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company. Duplication of administrative functions will be eliminated together with the elimination of multiple records keeping resulting in reduced expenditure. The amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present.



7. The Authorised Share Capital of the First Transferor Company is Rs. 1,10,000/- comprising of 1,100 equity shares of Rs. 100/- each and Rs.40,000/- Non Cumulative Preference shares of Rs.100/- each and the Issued, subscribed and paid up capital is Rs. 1,00,000/- comprising of 1,000 equity shares of Rs. 100/- each fully paid.
8. The Authorised Share Capital of the Second Transferor Company is Rs. 1,10,000/- comprising of 1,100 equity shares of Rs. 100/- each and Rs.40,000/- Non Cumulative Preference shares of Rs.100/- each and the Issued, subscribed and paid up capital is Rs. 1,00,000/- comprising of 1,000 equity shares of Rs. 100/- each fully paid.
9. The Authorised Share Capital of the Transferee Company is Rs. 1,10,000/- comprising of 1,100 equity shares of Rs. 100/- each and Rs.40,000/- Non Cumulative Preference shares of Rs.100/- each and the Issued, subscribed and paid up capital is Rs. 1,00,000/- comprising of 1,000 equity shares of Rs. 100/- each fully paid. Upon the sanctioning of the scheme as per clause 14 of the scheme the Authorized Share Capital of the Transferee Company will be increased to Rs. 3,30,000 comprising of 3300 equity shares of Rs. 100/- each and Rs.1,20,000/- comprising of 1200 Non-Cumulative Preference Shares of Rs.100/- each.
10. Further this Bench hereby orders that, as the Share Capital of the Transferee Company is Fully Paid up, hence, the Transferee

Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorised Share Capital by creation of such number of Equity Shares of Rs.100/- each as may be necessary to fulfill its obligations under the said clause of Scheme including filling of prescribed form on increase of Capital as per the Act, read with the rules, if any

11. The clause 11.1 of the Scheme of Amalgamation states that upon coming into effect of this scheme, the Transferee Company will issue 132 *fully paid Equity Share of Rs. 100/- (Rupees Hundred Only) each of Transferee Company shall be issued and allotted for every 100 Equity Shares of Rs. 100/-(Rupees Hundred Only) each held in the First Transferor Company.*
12. The clause 11.2 of the Scheme of Amalgamation states that upon coming into effect of this scheme, the Transferee Company will issue 8 *fully paid Equity Shares of Rs. 100/- (Rupees Hundred Only) each of Transferee Company shall be issued and allotted for every 100 Equity Shares of Rs. 100/-(Rupees Hundred Only) each held in the Second Transferor Company.*
13. The Regional Director has filed a Report on 12<sup>th</sup> day of May, 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:*

- 1. 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 transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
- 2. Certificate by the Company’s Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

*In this regard it is requested that Petitioner may be asked to submit the certificate.*

- 3. Petitioner in clause 3.9 under explanation inter alia has mentioned that respective board of directors of the transferor companies and the transferee company shall mutually decide whether any particular assets, liabilities should be included as assets, liabilities or reserves of business undertaking or otherwise.*

*In this regard it is submitted that scheme has already been approved by the Board and the shareholders based on the financial statements filed by the companies. The Petitioner to undertake to comply only the accounting standards in this regard.*

- 4. It may be submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities.*

5. *Petitioner companies have not submitted the affidavits as called for by the Regional Director.*
  6. *Petitioner companies have not provide recommendation by the Chartered Accountant/ auditor regarding exchange ratio.*
  7. *Petitioner companies have not submitted minutes of order of the Hon'ble NCLT with regard to affidavit for summons filed by the companies' petitioner companies seeking directions for convening meetings of shareholders secured and unsecured creditors.*
  8. *Petitioner companies not replied for the information as called for by the Regional Director."*
14. So far as the observation in paragraph IV (1) 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.
15. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that it shall pass such accounting entries as may be necessary in connection with the Scheme to comply with all the applicable accounting standards.



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16. So far as the observation in paragraphs (2) and (4) to (8) made by the Regional Director, the Petitioner Companies submit that the documents are filed as annexures in an affidavit dated 5<sup>th</sup> December, 2017 filed with this Hon'ble Tribunal. The Copy of the said affidavit has also been submitted to the Regional Director. The clarifications and undertakings given by the Petitioner Companies are accepted.
17. The Official Liquidator has filed his report on 25th September, 2017 in the Company Scheme Petition Nos. 459 and 461 of 2017 inter alia, stating therein that the affairs of both the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.
18. From the material on record, the Scheme appears to be fair and reasonable and is not contrary to public policy.
19. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 459 of 2017 and 461 of 2017 is made absolute in terms of prayers clause (a) to (d) and 460 of 2017 is made absolute in terms of prayer clauses (a) to (c).
20. 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 1956 / 2013.

21. 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.
22. The Petitioner Companies to pay costs of Rs. 5,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition Nos. 459 of 2017 and 461 to pay costs of Rs.5,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
23. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.
24. The Scheme is hereby approved.

**Sd/-**

**V. Nallasenapathy**  
**Member (T)**

**Sd/-**

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