

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI

CSP NO. 763 OF 2017

IN

CSA NO. 650 OF 2017

PRATIRUP ADVISORY SERVICES PRIVATE LIMITED

...Petitioner Company 1/ Transferor Company 1
AND

UNITY ADVISORY SERVICES PRIVATE LIMITED

...Petitioner Company 2/ Transferor Company 2
AND

JSW PROJECTS LIMITED

... Petitioner Company 3/Transferee Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Pratirup Advisory Services Private Limited ('the Transferor Company 1') and Unity Advisory Services Private Limited ('the Transferor Company 2') with JSW Projects Limited ('the Transferee Company') and their respective Shareholders

Judgement/ Order delivered on 6th December, 2017

Coram:

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

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

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Prakash Punjabi , i/b P& P Legal, for State Bank of India
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 learned counsel for parties. The Counsel for the Petitioners submit that State Bank of India had filed representation dated 2nd August 2017 through their Advocates Prakash Punjabi & Co. in this Tribunal requesting 6 weeks time to carry out proper analysis of the Scheme. The Counsel for the Petitioners submit that State Bank of India by their subsequent letter dated 28th November 2017 has granted their approval for the Scheme. No other objector has come forward to oppose the scheme.

2. The present Scheme of Amalgamation pertains to amalgamation of 'Pratirup Advisory Services Private Limited ('the Transferor Company 1') and Unity Advisory Services Private Limited ('the Transferor Company 2') with JSW Projects Limited ('the Transferee Company') and their respective Shareholders with effect from the Appointed Date in terms of the Scheme. The Transferee Company is mainly involved in undertaking turnkey project and other similar construction activities and the Transferor Companies are into the business of providing advisory services. Amalgamation of the Transferor Companies will result in
 - (a) Simplified corporate structure;
 - (b) Elimination of holding through multiple entity i.e. streamlining promoter holding; and
 - (c) Rationalization of management and other operating expenses
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petitions.
4. By order dated 19th June, 2017 passed by this Tribunal, in Company Scheme Application 650 of 2017, meetings of Equity Shareholders of the Transferor Company 1, Transferor Company 2, Class A Equity Shareholders of Transferor Company 2 and the Equity Shareholders of the Transferee Company were ordered to be convened and held at JSW Centre, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051 on 28th day of July, 2017 at 10:00 a.m., 11:00 a.m., 12 noon and on 29th day of July, 2017 at 10.00 a.m. respectively.
5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Tribunal and they have filed necessary Affidavits of compliance in the Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
6. The Regional Director has filed his Report dated 30th day of November, 2017 stating therein 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 reads as follows:

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 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.*

2. *Petitioner Companies did not mentioned about treatment of employees of transferor companies in Transferee Company.*

In this regard Petitioner Companies undertake to clarify the same.

3. *Petitioner Companies did not mentioned about combination of Authorised share capital of transferor companies with Authorised share capital of Transferee Company.*

In this regard Petitioner Companies undertake to clarify the same and comply with provisions of section 232 3(i)

4. *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.*

7. In so far as observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel undertakes 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.

8. As far as observations made in paragraph IV (2) of the Report of Regional Director is concerned, the Transferor Companies submits that there are no staff/ workmen/ employees in employment with the Transferor Companies.

9. As far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Transferee Company submits that it has sufficient share capital and does not wish to combine the Authorized share capital of the Transferor Companies.

10. As far as observations made in paragraph IV (4) of the report is concerned, the Transferee Company undertakes that it will comply with Indian Accounting Standard- 103. Further, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply

with other Accounting Standards such as Indian Accounting Standard - 8, to the extent applicable.

11. The Official Liquidator has filed his report on September 22, 2017 in Company Scheme Petition Nos. 763 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 without winding up by the Hon'ble Tribunal.
12. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is in contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 763 of 2017 are made absolute in terms of prayer clause (a) of the Petition.
14. Petitioner Companies are directed to file 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, within 30 days from the date of receipt of the certified copy of the Order by the Registry.
15. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified 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 applicable.
16. All the Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and both the Transferor Companies to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the Order.
17. All authorities concerned to act on a copy of this Order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

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