

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

CSP 708/230-232/NCLT/MB/MAH/2017

CSP 709/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Polyflex Marketing Private Limited

.....Petitioner in CSP 709/2017

(Transferor Company)

M/s. Rangoli Resorts Private Limited

.....Petitioner in CSP 708/2017

(Transferee Company)

Order delivered on : 28.11.2017

**Coram :**

Hon`ble M. K. Shrawat, Member (J)

Hon`ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co., Advocates for the Petitioners.

*Per : Bhaskara Pantula Mohan, Member (J)*

**COMMON ORDER**

1. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Polyflex Marketing Private Limited (Transferor Company) with Rangoli Resorts Private Limited (Transferee Company) and their respective shareholders.
2. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company is currently engaged in the business of trading of mattresses.
4. The Transferee Company is currently engaged in the business of gardening and selling plants.

*Hemant Sethi*

5. Both the Transferor Company and the Transferee Company are part of the same group of companies.
6. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:
  - a. enable creation of a larger entity and derive optimal management benefits;
  - b. reduction in administrative overheads;
  - c. greater integration and flexibility for the amalgamated entity and strengthening position, in terms of the asset base and revenues;
  - d. reduction in number of entities leading to simplification of group structure; and
  - e. enable cost saving, pooling of managerial skills and optimum utilization of valuable resources which will enhance the management focus thereby leading to higher operational efficiency and enhancing shareholders' value.
7. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 100/- each, fully paid up.
8. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 3,00,000/- comprising of 3,000 equity shares of ₹ 100/- each, fully paid up.
9. Upon the Scheme becoming effective and upon amalgamation of the Transferor Company into the Transferee Company in terms of this Scheme, the entire equity share capital of the Transferor Company shall stand automatically cancelled and there will not be any issue and allotment of equity shares in the Transferee Company.
10. The averments made in the Petition and the submissions made by the Learned Advocate for the Petitioners are:
  - a) The Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the 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.
  - b) The Regional Director has filed his Report dated 5<sup>th</sup> October, 2017, stating therein that save and except as stated in paragraph IV (1) to (3), it appears that the Scheme





is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

*1) The tax implications if any arising out of the Scheme is subject to the 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) It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 20.06.2017 for comments. The office of the Directorate also has issued reminder dated 15.09.2017.*

*3) It is submitted that, the authorized share capital of the transferee company post amalgamation will be not sufficient to allot the shares and therefore the petitioner undertake to file requisite form with the Registrar of Companies for increasing authorized share capital.*

- c) Apropos observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Companies 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.
- d) Apropos observations made in paragraph IV (2) of the Report of Regional Director is concerned, the Petitioner Companies have complied with the requirements of sending notices to the Income tax authorities.
- e) Apropos observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Transferee Company undertakes to increase the authorised share capital in order to issue shares to the shareholders of the Transferor Company pursuant to Scheme becoming effective.
- f) No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Amalgamation.

*APM*

11. The Official Liquidator has filed his report dated 6<sup>th</sup> October, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
12. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this bench, to the Petitioner Companies, **do Order that:**
- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, shall, pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
  - b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently, this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
  - c) Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.
  - d) In lieu of consideration of this Scheme, the Transferee Company shall issue and allot 225 Equity Shares of ₹ 100/- each, fully paid up for every 1 share of ₹ 100/- each held by the shareholders of the Transferor Company.
  - e) Since the present Authorised share capital of the Transferee Company is not sufficient to meet the requirements of new allotment of shares, hence, the Transferee Company shall increase its Authorised Share Capital before allotment of new shares after this Scheme becomes effective.
  - f) 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.
  - g) 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,

*Approved:*



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, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.

- h) Each Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai.
- i) Transferor Company (i.e. Petitioner in Company Scheme Petition No. 709 of 2017) to pay cost of ₹ 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
- j) 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.
- k) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- l) Any concerned Authority is at liberty to approach this Bench for any clarification/directions under this Scheme.
- m) The Scheme is sanctioned hereby and the appointed date of the Scheme is fixed as 1<sup>st</sup> April, 2016.

13. Ordered Accordingly. To be consigned to Records.

**Sd/-**

**BHASKARA PANTULA MOHAN  
MEMBER (JUDICIAL)**

**Sd/-**

**M. K. SHRAWAT  
MEMBER (JUDICIAL)**

**Dated : 28.11.2017**