

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

CSP 718/230-232/NCLT/MB/MAH/2017

CSP 719/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Mohini Resources Private Limited

.....Petitioner in CSP 718/2017
(Transferor Company)

M/s. Rivaaz Trade Ventures Private Limited

.....Petitioner in CSP 719/2017
(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 Mohini Resources Private Limited ("Transferor Company") with Rivaaz Trade Ventures 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 and the Transferee Company both are engaged in the business of wholesale trading of textiles.
4. The amalgamation of the Transferor Company with the Transferee Company would inter alia have the following benefits:



a. Reduction in number of entities leading to simplification of group structure;

- b. Pooling of resources;
 - c. Enable cost saving and reduction in administrative inefficiencies; and
 - d. Reduction in administrative overheads and enhancing shareholder's value.
5. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferor Company is ₹ 5,00,00,000/- comprising of 50,00,000 equity shares of ₹ 10/- each, fully paid up.
6. The Authorised, Issued, Subscribed and Paid-up Share Capital of the Transferee Company is ₹ 1,00,000/- comprising of 10,000 equity shares of ₹ 10/- each, fully paid up.
7. The averments made in the Petition and the submissions made by the Learned Representative 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 6th October, 2017, stating therein that save and except as stated in paragraph IV (a) to (d), 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) *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.*
 - 2) *As per existing practice, this Directorate has also issued a letter dated 05/10/2017 to IT Department requesting them to file their objections / comments if any directly to the Hon'ble NCLT, Mumbai.*
 - 3) *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*

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transferee company after giving effect to the Scheme. The decision of the income tax authority is binding on the petitioner company.

4) *M/s Mohini Resources Private Limited the Transferor Company is a wholly owned subsidiary of Ms. Rivaaz Trade Ventures Private Limited the Transferee Company. Hence, this Hon'ble Tribunal may kindly direct each of the companies involved in the Merger, files a declaration of solvency in prescribed form with the Registrar of Companies, Mumbai, u/s 233(1)(c) read with section 233(12) of the Companies Act, 2013 and pass appropriate order(s) as deem fit.*

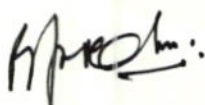
- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies submits that in addition to accounting treatment given in the Scheme, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.
- d) Apropos observations made in paragraph IV (b) and (c) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Amalgamation will be met and answered in accordance with applicable law.
- e) Apropos observations made in paragraph IV (d) of the Report of Regional Director, the Petitioner Companies submits that the present petition is filed under sections 230 to 232 of the Companies Act, 2013 and therefore solvency certificate as required under section 233 of the Companies Act, 2013 is not applicable in the present case. Counsel for the Petitioner Companies further submits that the Scheme does not involve any arrangement with any of the creditors of the Petitioner Companies and their rights shall not be prejudiced pursuant to the Scheme.
- f) No objector has approached, neither to the Petitioner nor before Tribunal, to oppose this Scheme of Amalgamation.

8. The Counsel for the Petitioners further submit that an affidavit dated 10th October, 2017 of Mr. Arun Agrawal, Authorised Signatory of the Petitioner Company has been



filed and scheme has been annexed as Annexure A2 of the affidavit as inadvertently the Scheme remained to be annexed to the Petition. The Counsel for the petitioner therefore submits that the registry may be directed to compare the Scheme which is annexed as Annexure A2 to the additional affidavit.

9. The Official Liquidator has filed his report dated 26th September, 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 dissolve without winding up.
10. 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) Since the entire Issued and Subscribed Share Capital of the Transferee Company is held by the Transferor Company hence no fresh share shall be issued of the Transferee Company nevertheless the entire equity share capital of the Transferor Company shall stand automatically cancelled.
 - e) 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.



- f) 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, duly certified by the Deputy Director or Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- g) Each Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai.
- h) 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.
- i) 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.
- j) Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.
- k) Any concerned Authority is at liberty to approach this Bench for any clarification/directions under this Scheme.
- l) The Scheme is sanctioned hereby and the appointed date of the Scheme is fixed as 1st March, 2017.

11. Ordered Accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 28.11.2017