

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

CSP 472/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Alchemy Investment Managers Private  
Limited

.....Petitioner in CSP 474/2017  
(1<sup>st</sup> Transferor Company)

M/s. Alchemy Wealth Management Private  
Limited

.....Petitioner in CSP 472/2017  
(2<sup>nd</sup> Transferor Company)

M/s. Alchemy Capital Management Private  
Limited

.....Petitioner in CSP 473/2017  
(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. Siddharth Ranade, Advocate i/b Trilegal – Advocates for the Petitioners.

**For the Regional Director :**

Mr. Ramesh Gholap – Dy. Registrar (WR).

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

**ORDER**

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s. Alchemy Investment Managers Private Limited (1<sup>st</sup> Transferor Company) and M/s. Alchemy Wealth Management Private Limited (2<sup>nd</sup> Transferor Company) with M/s. Alchemy Capital Management Private Limited (Transferee Company).



2. The Transferor Companies and the Transferee Company 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 First Transferor Company presently carrying on business of an investment company and to invest in, deal in, acquire, buy, sell, transfer, shares bonds, obligations, stocks, securities, debentures, debentures stocks, issued or guaranteed by any company constituted and carrying on business in India or elsewhere, and Government State, dominions, sovereign, Central or State commissioners.
4. The Second Transferor Company present is carrying on business of manufacture, fabricate, process, store, distribute, deal in, to execute contracts for the manufacture or manufacturing processes or to import, export, handle, forward, ship, carry on the profession of factors, brokers, agents, sub-agents, stockiest, distributors.
5. The Transferee Company is carrying on business as exporters, importers, traders, buyers, sellers, merchants and dealers in merchandise, articles, commodities, produce, substances, materials, metalware, merchants of hardware, building materials, tools, fixtures, implements and such or any other industrial, non-industrial consumer products.
6. As all the 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 amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger business and financial base for execution of the larger business activities and that the amalgamation will result in economy of scale and reduction in overheads, administrative, managerial and other expenditure and optimal utilization of resources and that the amalgamation will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each other's core competency and resources which is expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.



7. The Authroised Share Capital of the 1<sup>st</sup> Transferor Company is ₹ 25,00,000 comprising of 25,000 Equity Shares of ₹100/- each and the Issued, subscribed and paid up capital is ₹ 25,00,000 comprising of 25,000 Equity Shares of ₹100/- each.
8. The Authroised Share Capital of the 2<sup>nd</sup> Transferor Company is ₹ 5,00,000 comprising of 5,000 Equity Shares of ₹100/- each and the Issued, subscribed and paid up capital is ₹ 4,36,000/- comprising of 4,360 Equity Shares of ₹100/- each fully Paid-up.
9. The Authroised Share Capital of the Transferee Company is ₹ 50,00,000 comprising of 50,000 equity shares of ₹ 100/- each and the Issued, subscribed and paid up capital is ₹ 50,00,000/- comprising of 50,000 equity shares of ₹ 100/- each.
10. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:

- a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all 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 on 25<sup>th</sup> September, 2017, inter alia, 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. 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 the Income Tax Authorities. The Approval of the scheme by his 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.*

*Approved:*

2. *Petitioner Companies in the clause 14 of the scheme inter alia mentioned that combination of Authorised Capital. In the regards Hon'ble NCLT may direct Transferee Company to comply with provisions of section 232 3(i) of the Companies act, 20013, if applicable.*

3. *It is submitted that, ROC, Mumbai vide their report dated 19.09.2017 in point 3 has inter alia mentioned that petitioner companies has not filled form GNL-1 with Registrar of Companies for filling the Scheme. In this regard, petitioner companies have to undertake to file the form GNL-1 with the Registrar of Companies.*

4. *It is submitted that, as per shareholders list of transferor company-A, there is a trust who is shareholder, as per section 232 3(b) of Companies Act,2013 transferee company shall not, as a result of compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished.*

5. *It is submitted that, Transferor Company-A and Transferee Company is into Investment Business. In this regards, Transferor Company-A and Transferee Company have to undertake to serve Notice to the RBI under section 230 (5) of the Companies Act, 2013 and submit copy to the Hon'ble NCLT & the Directorate for the record.*

6. *It is submitted that, Transferor Company-B is also into Real Estate Business. In this regard, Transferor Company-B have to undertake to serve notice to Real Estate Regulator under Real Estate (Regulation And Development Act) 2016 read with rules and submit copy to the Hon'ble NCLT and to the Directorate for record.*

- c) *Apropos the observation of the Regional Director stated in paragraph IV (1) of his report are concerned, the Learned Counsel for the Petitioners submitted that, the Petitioner Companies undertakes to comply with all applicable provisions of*

*As per order:*

the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

- d) Apropos the observation of the Regional Director stated in paragraph IV (2) of his report are concerned, it is submitted that the Transferee Company undertakes to comply with provisions of section 232 3(i) of the Companies act, 20013, as applicable.
- e) Apropos the observation of the Regional Director stated in paragraph IV (3) of his report are concerned, it is submitted that the GNL 1 Form has been duly filed with the Registrar of Companies.
- f) Apropos the observation of the Regional Director stated in paragraph IV (4) of his report are concerned, it is submitted that the Transferee Company shall not, as a result of compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished.
- g) Apropos the observation of the Regional Director stated in paragraph IV (5) of his report are concerned, it is submitted that the business of the Transferee Company is not regulated by the RBI but is regulated by the Securities Exchange Board of India (SEBI) which has duly approved the Scheme of Amalgamation through its letter of approval dated 9<sup>th</sup> August, 2017.
- h) Apropos the observation of the Regional Director stated in paragraph IV (6) of his report are concerned, it is submitted that the 2<sup>nd</sup> Transferor Company is engaged in the business of providing wealth management solutions and not in any manner engaged in the business of real estate. Hence no notice is required to be served to the Real Estate Regulator under Real Estate (Regulation and Development Act) 2016.
- i) The Official Liquidator has filed his report inter alia stating therein that, the affairs of the Transferor Companies have been conducted in a proper manner and accordingly the Transferor Companies may be ordered to dissolve without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.



- j) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

11. 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 Companies 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) In lieu of consideration of the Scheme, the Transferee Company shall issue and allot 1 Equity Share of ₹ 10/- each for every 3 Equity Shares of ₹ 10/- each held by the shareholder of the 1<sup>st</sup> Transferor Company.
- d) Since as the entire issued, subscribed and paid-up capital of the 2<sup>nd</sup> Transferor Company is held by the Transferee Company hence, in lieu of consideration no share shall be issued and allotted to the shareholder of the 2<sup>nd</sup> Transferor Company.
- e) 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 the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench, with the concerned

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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) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- h) Transferor Companies (i.e. Petitioner in CSP No. <sup>472</sup>~~611~~ of 2017 and Petitioner in CSP No. <sup>474</sup>~~616~~ of 2017) each to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- i) The transferor companies shall be dissolved without winding-up after this Scheme becomes effective.
- j) All authorities concerned, to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
- k) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.
- l) Any concerned Authority is at liberty to approach this Bench for any clarification regards to this Scheme hereinafter.
- m) The Scheme is sanctioned hereby and the appointed date of the Scheme is fixed as, 1<sup>st</sup> April, 2016.

12. Ordered accordingly. To be consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN**  
MEMBER (JUDICIAL)

Sd/-

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

**Dated : 28.11.2017**