

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

CSP 992/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Mayur Enclave Private Limited
.....1st Petitioner
(1st Transferor Company)

M/s. Classic Tradecomm Private Limited
.....2nd Petitioner
(2nd Transferor Company)

M/s. Kanakratan Agency Private Limited
.....3rd Petitioner
(3rd Transferor Company)

M/s. Amritdhara Projects Private Limited
.....4th Petitioner
(Transferee Company)

Order delivered on : 22.12.2017

Coram : Hon'ble M. K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Ms. Sara Sancheti, Advocate i/b. Sancheti & Sancheti – Advocates for the Petitioners.

For the Regional Director :

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

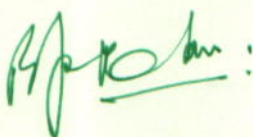
Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation (hereinafter as **Scheme**) of M/s. Mayur Enclave Private Limited (1st Transferor Company) and M/s. Classic Tradecomm Private Limited (2nd Transferor Company) and M/s. Kanakratan Agency Private Limited (3rd Transferor Company) with M/s. Amritdhara Projects Private Limited (Transferee Company) and their respective shareholders.



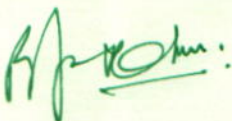
2. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The amalgamation of the Transferor Companies with Transferee Company would help to simplify the group structure, minimize cost of administration of legal entities achieving operational and management efficiency by way of consolidation of business; consolidation and simplification of the group structure; lesser regulatory and legal compliance obligations including accounting, reporting requirements, statutory and internal audit requirements, tax fillings, company law requirements at present to be carried out by the Transferor Companies and Transferee Company.
4. The Authorised Share Capital of the 1st Transferor Company is ₹ 55,00,000 /- compromising of 5,50,000 Equity Shares of ₹ 10/- each whereas the Issued, subscribed and paid up share capital is ₹ 2,02,000 /- comprising of 20,200 Equity Shares of ₹ 10/- each, fully paid- up.
5. The Authorised Share Capital of the 2nd Transferor Company is ₹ 52,00,000/- compromising of 5,20,000 Equity Shares of ₹ 10/- each whereas the Issued, subscribed and paid up share capital is ₹ 1,42,000 /- comprising of 14,200 Equity Shares of ₹ 10/- each, fully paid- up.
6. The Authorised, Issued, Subscribed and paid-up Share Capital of the 3rd Transferor Company is ₹ 50,00,000/- compromising of 5,00,000 Equity Shares of ₹ 10/- each, fully paid up.
7. The Authorised Share Capital of the Transferee Company, is ₹ 1,00,00,000 /- compromising of 10,00,000 Equity Shares of ₹ 10/- each whereas the Issued, subscribed and paid up share capital is ₹ 96,80,000 /- comprising of 96,800 Equity Shares of ₹ 10/ each fully paid- up.
8. 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 30.11.2017 stating therein that save and except the observations stated in paragraph IV (a) to (d) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

"IV. The observations of the Regional directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-

- (a) "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;*
 - (b) As per Part-II Definitions, Interpretations and Capital Structure, clause 3.2 of the scheme. "Appointed Date" means the 1st day of April 2016 or such other date as may be approved by the Tribunal. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.*
 - (c) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 7th September 2017 has served a copy Company Scheme Application No. 796 of 2017 along with relevant orders etc.*
 - (d) 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.*
 - (e) As regards Part-IV- Clause 9 of the Scheme (Combination of Authorised Share Capital) of the Scheme, and fee payable by the Transferee Company shall be in compliance with the provisions of Section 232(3)(i) of the Companies Act, 2013".*
- c) Apropos the observation in paragraph IV (a) of the Report of the Regional Director, is concerned, it is submitted that the Petitioner Companies undertake to comply with other applicable Accounting standards such as AS – 5 (IND AS – 8) etc. pursuant to section 133 of the Companies Act, 2013.
- d) Apropos the observation in paragraph IV (b) of the Report of the Regional Director, Western Region, Mumbai, is concerned, it is submitted that the "Appointed Date" will be "1st April 2016" only, in terms of provisions of Section 232(6) of the Companies Act 2013.
- e) Apropos the observation made in paragraph IV (c) of the Report of the Regional Director, Western Region, is concerned, it is stated that, the Petitioner companies have already

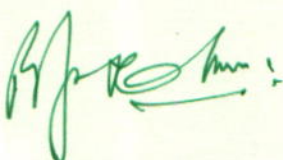


served the notice to the Income Tax Authorities and it has also served the acknowledgment copy of the service of notice to Regional Director and other Authorities with NCLT.

- f) Apropos the observation in paragraph IV (d) of the Report of the Regional Director, is concerned, it is submitted that the Petitioner Companies 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.
- g) Apropos the observation in paragraph IV (e) of the Report of the Regional Director, is concerned, it is submitted that the Transferee Company undertakes to comply with the applicable provisions of Section 232 (3) (i) of the Companies Act, 2013 as regards Combination of Authorised Share Capital.
- h) The Registrar of Companies, Mumbai, Maharashtra has submitted his representation dated 21.11.2017 to the Regional Director (Western Region), Ministry of Corporate Affairs, Mumbai, with a remark in column -9 his report, inter alia stating therein that:

9. "Whether the Main objects and main business being carried out by the transferor companies as disclosed in the scheme under rule 6(3)(ii)(g) read with rule 3(iii) are similar with the main objects of the transferee company. – Not Similar."

- i) Apropos the above observation of the ROC is concerned, it is submitted that all the transferor companies have deployed their surplus funds by way of Investment in shares and have received income by way of Dividends and that post amalgamation, the transferee company would evaluate the business conditions and devise suitable business proposition.
 - j) It is further submitted that, no objector has approached, neither to the Petitioner nor before the Tribunal, to oppose this Scheme.
 - k) The Official Liquidator has filed his report inter alia stating therein that the affairs of the Transferor Companies have been conducted in proper manner and further that the Transferor Companies may be ordered to dissolve without winding up.
9. From the material on record, the Scheme 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) Since the entire Issued, Subscribed and Paid-up Share Capital of the Transferor Companies is held by the Transferee Company, no consideration shall be issued after the Amalgamation of the Transferor Companies with the Transferee Company.
- d) All the transferor companies shall be dissolved without winding-up.
- 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) The Petitioner Companies to pay costs of ₹ 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of receipt of this order.
- h) The Transferor Companies (i.e. 1st, 2nd and 3rd Petitioner) to pay cost of ₹ 25,000/- to Official Liquidator, Mumbai. Costs to be paid within four weeks from the date of receipt of this 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 is 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 further clarification/direction under this Scheme.
- l) The Scheme is sanctioned hereby on above terms and directions. Further, the appointed date of the Scheme is fixed as 1st April, 2016.

10. Ordered accordingly. To be consigned to Records.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated: 22.12.2017

Avinash