

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH
COMPANY SCHEME PETITION NO. 451 OF 2017
AND

COMPANY SCHEME PETITION NO. 452 OF 2017

RASAYANI TRADERS PRIVATE LIMITED

...Transferor /Petitioner Company

CONNELL BROS COMPANY INDIA PRIVATE LIMITED

...Transferee /Petitioner Company

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956.

And

In the matter of Scheme of Amalgamation of RASAYANI TRADERS PRIVATE LIMITED ("Transferor Company") with CONNELL BROS COMPANY INDIA PRIVATE LIMITED ("Transferee Company") and their respective shareholders;

And

Their Respective Shareholders

Order delivered on 23rd August, 2017

Coram:

Hon'ble SH. B.S.V. Prakash Kumar, Member (J) and Hon'ble SH V. Nallasenapathy,
Member (T)

For the Petitioner(s): Ms. Alpana Ghone, Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per :SH. B.S.V. Prakash Kumar, Member (J)

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Rasayani Traders Private Limited and Connell Bros Company India Private Limited and their respective shareholders.
3. Learned counsel for the Petitioner Companies states that the Transferor Company is primarily engaged in the business of trading in bullion and also holds investments. Learned counsel for the Petitioner Companies further states that the proposed Scheme of Amalgamation will simplify corporate structure and will eliminate holding through multiple layers i.e. streamlining promoter holding. The Scheme will bring greater promoter focus and improved administrative control over the Transferee Company and greater transparency and visibility of operations by direct involvement of the promoters in the affairs of the Transferee Company. Besides there are limitations on investments that the Transferor Company can make, due to strategic reasons, which constrains any future infusions of funds as may be required in the Transferee Company. With the proposed amalgamation, the shareholders of the Transferor Company would be able to make such necessary investments as and when required.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the board resolutions which are annexed to their respective Company Scheme Petitions.
5. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 285 of 2017 and 286 of 2017 of the Hon'ble Tribunal.

6. 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 with Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.

7. The Regional Director has filed his report dated 14th August, 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:-
 - 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. *Regarding Clause 7 of the Scheme it is submitted that the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against reserves of the Transferee Company;*
 - c. *The scheme of amalgamation is silent with respect to safeguarding the interest of the employees/ workers/ staff of the Transferor Company. Hence the Petitioner Company may be directed to protect the interest of the employees/ workers/ staff of the Transferor Company. Accordingly, scheme needs to be amended.*
 - d. *In view of objection raised by the ROC Mumbai mentioned at para 11(b) above, Hon'ble NCLT may pass appropriate orders as deem fit;*
Para 11(b) of the report of ROC Mumbai:
"The appointed date has been provided as 01/03/2017 whereas the balance sheet of the companies change on 01/04/2017. Therefore, the appointed dated may be fixed as 01/04/2017 and not 01/03/2017. The Companies may also be directed to file their due balance sheet for the year ended 31/03/2017"
 - e. *As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 03.04.2017 has served a*

copy company scheme application No. 285 & 286 of 2017 along with relevant orders etc to IT Department. Further, this office has also issued remainder letter dated 27.07.2017 to the concerned Income Tax authorities;

- f. *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 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.*
8. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Transferee Company undertakes that it will comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Petitioner Companies submits that the accounting treatment prescribed in the Scheme is as per the Accounting Standard 14 - "Accounting for Amalgamations". The auditor of the Transferee Company has certified the accounting treatment and the said certificate is annexed as 'Exhibit D2' to the petition filed by the Transferee Company.
10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Transferor Company submits that there are no employees/ workers/ staff in employment with the Transferor Company. The amount reflected under employee benefit expenses consists of salary paid to directors of the Transferor Company and reimbursement to the associate company whose employees worked on part time assignments for the Transferor Company. Accordingly, since there are no employees on the payroll of the Transferor Company, the question of safeguarding their interest does not arise.

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Petitioner Companies submits that section 232(6) of the Companies Act, 2013 mandates that the Scheme should clearly indicate an appointed date and that the appointed date was agreed by the Board of Directors of the Petitioner Companies. Further, the equity shareholders of both the Petitioner Companies unanimously approved the entire Scheme (including the appointed date) at the meeting of the shareholders of the respective Petitioner Companies as directed by the Hon'ble Tribunal. Accordingly, it is submitted by the Petitioner Companies that the appointed date should be 1st March, 2017.
12. In so far as observations made in paragraph IV (e) and (f) 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.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. The Official Liquidator has filed his report dated 23rd day of June, 2017 in Company Scheme Petition Nos. 451 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by the Hon'ble Tribunal.
15. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
16. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 451 of 2017 is made absolute in terms of prayer clauses (a) to (d) and the Company Scheme Petition No. 452 of 2017 is made absolute in terms of prayer clauses (a) to (c).

17. The 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 order by the Registry.
18. 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, within a period of 60 days from the date of receipt of the order.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Transferor/Petitioner Company to pay costs of Rs. 25,000/- to the Official Liquidator. Costs to be paid within four weeks from the date of the receipt of the order.
20. 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),