

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

TCSP No. 158/230-232/NCLT/MB/MAH/2017

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Under section 230-232 of the Companies
Act, 2013

In the matter of

M/s SCIL Ventures Limited

.... Petitioner
(1st Transferor Company)

M/s Securities Analysis (India) Private
Limited

.... Petitioner
(2nd Transferor Company)

M/s Securities Research & Analysis
Private Limited

.... Petitioner
(Transferee Company)

Order delivered on: 09.08.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Sanjay Udeshi and Adv. Darshan Ashar, i/b. Sanjay Udeshi & Co.,
Advocates for the Petitioners

Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of M/s SCIL Ventures Limited (First Transferor Company), M/s Securities Analysis (India) Private Limited (Second Transferor Company), with M/s Securities Research & Analysis Private Limited, (Transferee Company).

Bhaskara Pantula Mohan

2. The Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:

- 1) Petitioner Company has complied with all requirements as per directions of the Hon'ble Bombay High Court and this 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.
- 2) The Regional Director has filed his Report dated 13th April, 2017 stating therein save and except as stated in para IV (a) to (k) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph IV (a) to (k) of the said Report, the Regional Director has stated that :
 - a) *In addition to compliance of AS-14 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 etc.*
 - b) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme for Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 24th November, 2016 has served a copy company petition No.666-668/2016 along with relevant orders etc., to IT Department. Further, this Directorate has also issued a reminder letter dated 03.04.2017, to IT Department. However, as on date there is no response from Income Tax Department.*
 - c) *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 filled by the transferee Company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner Company.*
 - d) *As per **Clause 4 (c) (e) & (h) Definitions of the Scheme** it is stated that "**The Appointed Date**" shall be same as effective date, "**Effective Date**" means the last of the*

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dates on which the sanctions / approvals or orders as specified in Clause No.21 of this Scheme have been obtained and filled and the **"Record Date"** is any date after the Effective Date to be fixed by the Board of Directors of the Transferee Company for issuing the shares of the Transferee Company to the shareholders of the Transferor Companies respectively. In this regard, it is submitted that the financials statements of all the company to the Scheme is as at 31.03.2016. Hence, in terms of provisions of section 232(6) of the Companies Act, 2013 the **Appointed Date should be 1st April 2016.**

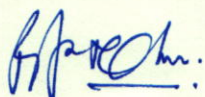
- e) As per **Clause 11 (a) (ii) of the Scheme**, any payment of Cash Equivalent to the fair value of the share of the Transferor No. 1 Company amounts to reduction of share capital. The transferee company to comply with the provisions of section 100 to 103 of the Companies Act, 1956 corresponding to Section 66 of the Companies Act, 2013.
- f) As per **Clause 11 (e) of the Scheme**, Unless otherwise determined by the Board of Directors or any committee thereof of the Transferee Company, issuance of Equity Shares in terms of Clause 11 herein shall be done within 90 days from the date of sanction of this Scheme by the Hon'ble Court or such other extended period as may be determined by the Board of Directors or any Committee of the Transferee Company. In this regard, it is submitted that for extension of period beyond 90 days from the date of sanction, should with the permission of this Hon'ble Tribunal.
- g) As per **Clause 11 (f) of the Scheme**, The issue and allotment of Equity Shares / Preference Shares by the Transferee Company as provided in the Scheme shall be deemed to have been carried out by following the procedure laid down under Section 42,55,62, and other applicable provisions of the Act. No separate sanction / compliance under the Act will be required to be carried out. In this regard, it is submitted that the issue and allotment of Equity Shares / Preference Shares by the Transferee Company as provided in the Scheme should be restricted to the existing shareholders.
- h) As per **Clause 12 of the Scheme** it is stated that **"Accounting Treatment of Assets, Liabilities and Reserves of the Transferor Companies"** In this regard, it is submitted that the Accounting Treatment of Assets, Liabilities and Reserves of should be that of the Transferee Company and not the Transferor Companies as mentioned in the Scheme. Accordingly, the scheme should be rectified.
- j) As per **Clause 12 (d) of the Scheme** it is stated that Subject to approval by the Hon'ble High Court, the Capital Reserve arising on the amalgamation becoming effective be treated and/or classified as Reserve / Free Reserves. In this regard, it is submitted that the law does not permit such conversion from one head to other head each reserve should be used for the purpose it is created. The in guise of scheme

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contravention of provisions of the Act is not permissible. Hence, the said clause should be deleted.

k) As per **Clause 20 (d) of the Scheme** it is stated that after the sanction of the Scheme and in spite of dissolution of M/s Scil Ventures Limited and M/s Securities Analysis (India) Private Limited Transferor Company No.1 & 2 respectively, **M/s Securities Research & Analysis Private Limited** (the Transferee Company) shall for a period of five years from the date of sanction of the Scheme, be also entitled to continue to operate existing Bank account(s) of Transferor Company No.1 & 2 for the purpose of depositing cheques, drafts, pay orders and/ or payment advances issued to or to be issued in favour of Transferor Company No.1 & 2 and for the purpose of transferring such deposits from the such accounts of Transferor Company No.1 & 2 into accounts of Transferee Company” In this regard, it is submitted that on the Scheme becoming effective, the Transferor Companies shall stand dissolved without being wound up, will not have any legal entity. Subsequent to dissolution of transferor companies, the transferee company cannot transact in any manner what so ever. **Hence, Clause 20 (d) of this Scheme should be deleted.**

- 3) As far as the observations made in paragraph IV (a) of the Report of the Regional Director is concerned, the Transferee Company undertakes to pass such accounting entries which are necessary in connection with the scheme and shall comply with other applicable Accounting Standards such as AS- 5 etc.
- 4) As far as the observations made in paragraph IV (b) and (c) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the copy of the scheme is already served upon the Income Tax Department and till date no response is received from the Income Tax Department. The Transferee Company also undertakes to comply with all applicable provisions of Income Tax Act and all the Tax issues arising out of the scheme and the same will be met in accordance with law.
- 5) As far as the observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Scheme is conditional upon and subject to the approvals set out in clause 20 of the scheme. The date on which all the approvals set out in clause 20 of the scheme, including filing of the order of this court with the Registrar of Companies, Mumbai is concerned, will be the Effective date as

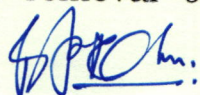


defined in the Scheme and in terms of the definition of the Appointed date, the effective date will be Appointed date.

6) Further the Learned Advocate for the Petitioners relied upon the two Judgements passed by the Hon'ble High Court at Bombay in which the issue of appointed date has been discussed. Wherein the Hon'ble High Court of Bombay is of the opinion that, the appointed date of the scheme can be as mentioned in the scheme itself. Those judgements are as :

- i. *Company Scheme Petition 91 of 2014 – Airtel Broadband Services Private Limited (Transferor Company) Judgement Delivered on 2nd May, 2014.*
- ii. *Company Scheme Petition 833 of 2013 – Essel Publishers Private Limited (Transferor Company) AND Zee Media Corporation Limited (Transferee Company) Judgement Delivered on 11th April, 2014.*

7) As far as the observations made in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that in the present scheme the petitioner company i.e. Transferee Company has given option to the Minority Shareholders to receive either Cash or Redeemable Preference shares. If any of the Minority shareholders has not exercised option to receive Redeemable Preference Share/s, then such shareholder shall be paid Cash. The Redeemable shares issued by the Petitioner Company shall be dealt with as per the terms of the issue and hence there is no first reduction of capital by Transferor Company or by the Transferee company post amalgamation. Furthermore, the Transferee company had not issued shares to minority and thereafter cancelling it for cash consideration and hence section 66 of Companies Act 2013 will not be applicable. In view of the above it is clear that there is no reduction of capital by Transferee company post amalgamation and hence provisions of section 100-103 of Companies Act 1956 and corresponding section 66 of Companies Act 2013 are not applicable. The learned counsel for the Petitioner further states that the section 230, which states that for the removal of doubts, it is hereby declared that the



provisions of section 66 shall not apply to the reduction of share capital effected in pursuance of the order of the Tribunal under this section.

- 8) As far as the observations made in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies agrees that the extension of period beyond 90 days from the date on sanction should be with the permission of the Hon'ble tribunal.
- 9) As far as the observations made in paragraph IV (g) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Transferee Company undertakes that issue and allotment of Equity Shares/Preference Shares by the Transferee Company as provided in the scheme shall be restricted to the existing shareholders.
- 10) As far as the observations made in paragraph IV (h) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Transferee Company undertakes that accounting treatment of Assets, Liabilities and Reserves should be that of the Transferee Company and not of the Transferor Company.
- 11) As far as the observations made in paragraph IV (j) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the capital reserves arising out of the amalgamation becoming effective will be treated as capital reserves and such reserves shall be used for the purpose it is created.
- 12) As far as the observations made in paragraph IV (k) of the Report of the Regional Director is concerned, the Learned Advocate for Petitioner Companies submits that the Transferee Company undertakes that on scheme becoming effective the Transferor Company shall stand dissolved without being wound up and will not have any entity subsequent to the dissolution of the Transferor Company and the Transferee Company will not continue to operate

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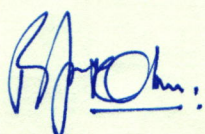
existing bank account of the Transferor Company for such any other purpose.

13) 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.

14) No objector has come before the Tribunal so far, to oppose the scheme.

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:

1. All the liabilities including taxes and charges, if any, and duties of the Transferor companies be transferred without further act or deed to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
2. To comply with the provisions which the Petitioners undertakes herein.
3. Petitioner Company is 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.
4. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated by the Deputy Director or the Assistant Registrar, as the case may be, 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.



5. Each Petitioner Companies to pay cost of ₹ 25,000/- (□ Twenty Five Thousand only) to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of this Order.
6. In Company Scheme Petition Nos. 158 of 2017 and 159 of 2017, i.e. Transferor Companies, each to pay cost of □ 25,000/- (□ Twenty Five Thousand Only) to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of receipt of this Order.
7. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.
8. Any person interested is at liberty to apply to the Tribunal in these matters for any directions that may be necessary.
9. The scheme will be effective from the appointed date as mentioned in the Scheme of Amalgamation.
10. Ordered accordingly.

Sd/-

Bhaskara Pantula Mohan
Member (Judicial)

Sd/-

M. K. Shrawat
Member (Judicial)

Dated : 09.08.2017