

CSP NO 448 OF 2017
AND
CSP NO 449 OF 2017

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, MUMBAI

CSP NO. 448 OF 2017

AND

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ALPEX CORPORATE SERVICES AND MERCHANDISING PRIVATE LIMITED
.....Petitioner Company

AND

PIRAMAL WATER PRIVATE LIMITED

.....Petitioner Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies
Act, 2013;

AND

In the matter of Scheme of Amalgamation between
Alpex Corporate Services and Merchandising Private
Limited ("Alpex" or "the Transferor Company") with
Piramal Water Private Limited ("Piramal Water" or
"the Transferee Company") and their respective
Shareholders and Creditors

AND

In the matter of Sections 230 read with Section 232 of
the Companies Act, 2013 and other applicable
provisions of the Companies Act, 2013

Order delivered on 9th August 2017.

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co

Mr. Ramesh Golap, Assistant Director in the office of Regional
Director

Per: **V. Nallasenapathy, Member (T)**

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 present Scheme pertains to amalgamation of Alpex Corporate Services and Merchandising Private Limited, the Transferor Company with Piramal Water

Private Limited, the Transferee Company and their respective Shareholders . The Transferor Company is engaged in the business of business centres and providing facility management services and the Transferee Company is into the business of carrying on providing clean drinking water and designing and maintaining equipment for water treatment, waste water treatment water reuse etc.

3. Amalgamation of the Transferor Company will result in (a) Efficient allocation of resources / funding for activities of Piramal Water, (b) Simplification of group structure by consolidation of entities and avoiding cross held entities and (c) Reduction in administrative costs and duplication of expenses.
4. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The learned Counsel for the Petitioner Company further states that, the Petitioner Company has complied with all the directions passed in Company Scheme Application and that the Company Scheme Petition has been filed in consonance with the orders passed in the Company Scheme Application.
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 in the Hon'ble Tribunal. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking is accepted.
7. The Regional Director has filed his Report dated 31st day of July, 2017 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.

Paragraph IV, of the said Report reads as follows:

- (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 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 25th April, 2017 has served a copy*

company scheme application no 280 of 2017 along with relevant orders etc., further this Directorate has also issued a reminder 20.07.2017 to IT 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 filed 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 Part-I Definitions and Share Capital Clause 1.4 of the Scheme "Appointed Date" means 1st April, 2016 or such other date as may be fixed or approved by the NCLT (defined hereunder) or such other Appropriate Authority; 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.

8. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel 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. In so far as observations made in paragraph IV (b) and (c) of the Report of Regional Director is concerned, the Petitioner Company through its Counsel 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.
10. As far as observations made in paragraph IV (d) of the Report of the Regional Director is concerned, the Counsel for the Petitioner Company submits that the Appointed Date shall be 1st April, 2016.
11. The observations made by the Regional Director have been explained by the Petitioner Company in paragraphs 8 to 10 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
12. The Official Liquidator has filed his report on 23rd day of June, 2017 in Company Scheme Petition Nos. 448 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.

13. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 448 of 2017 are made absolute in terms of prayer clause (c) to (f) of the Petition.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition Nos. 449 of 2017 are made absolute in terms of prayer clause (c) to (e) of the Petition.
16. 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 certified copy of the Order by the Registry.
17. 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.
18. Both the Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company mentioned in Company Scheme Petition No. 448 of 2017 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the Order.
19. 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)