

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP No. 414/230-232/NCLT/MB/MAH/2017

CSP No. 420/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Astha Technical Services Limited

.....Petitioner in CSP 414/2017
(Transferor Company)

M/s. Total Water Management Services (India)
Limited

.....Petitioner in CSP 420/2017
(Transferee Company)

Order delivered on: 24.08.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Adv. Rajesh Shah a/w. Adv. Ahmed Chunawala i/b. Rajesh Shah & 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, Scheme of Amalgamation of M/s. Astha Technical Services Limited (Transferor Company) with M/s. Total Water Management Services (India) Limited (Transferee Company).
2. The Transferor Company 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.
3. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of drawing, designing and engineering of projects.



4. The Transferee Company has been carrying on the business in the field of water management, treatment, recycling, pollution control, recovery of waste water, corrosion prevention, environment pollution and control.
5. The rationale of the Scheme is as the Transferor Company and the Transferee Company are under the same management this merger will lead to synergies of operations and more particularly it would be advantageous to combine the activities and operations in a single Company and further the said amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions, the related activities and operations along with contribution to the profitability of the amalgamated Company. Further the amalgamated Company will have the benefit of the combined assets and cash flows of the two companies and that the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place and it will be conducive to better and more efficient as well as economical control and conduct of the Companies and with this enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete in the market and a larger growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.
6. The Authorised Share Capital of the Transferor Company is ₹ 50,00,000 comprising of 5,00,000 Equity Shares of ₹ 10/- each and the Issued, Subscribed and Paid Up Share Capital is ₹ 49,00,000/- comprising of 4,90,000 Equity Shares of ₹ 10 each.
7. The Authorised, Issued, Subscribed and Paid Up Share Capital of the Transferee Company is ₹ 5,00,000/- comprising of 50,000 Equity Shares of ₹ 10 each.
8. The averments made in the petitions and the submissions made by the Learned Counsel 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 Companies 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 a Report on 15th day of July, 2017 stating therein, save and except as stated in paragraph IV, 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:

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).,

b. As per clause 1.2, Definitions of the scheme "Appointed Date" means 1st April, 2017 or such other date by or stipulated by the National Company Law Tribunal as may be applicable. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2017.

c. 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 15th March, 2017 has served a copy Company Scheme Application no 223 & 226 of 2017 along with relevant order etc., further this Directorate has also issued a reminder 04/07/2017 to IT Department.

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 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.

e. As per Clause 16 of the Scheme (Change in object clause of the Transferee Company) The main Objects of the Company to be pursued by The Company on Its Incorporation are:

Clause 3:- to render services drawing, designing, consultation, advisory, back office, outsourcing, placement, contracting, logistic, marketing, national and international tendering, collaboration, arbitration, negotiation, for engineering industry specially various

type of power generation project, petrochemical and other process industry, its distribution, economic use, consistent supply, machinery designing, fabrication and maintenance in the fields of mechanical, electronic, bio-science and space research, for Army, navy, Air, Force scientific organization, within India or Abroad. In this regard it is submitted that Defense sector is not opened to Public Companies to operate.

Clause- 4:- to arrange of training facility for updating, up-grading knowledge and experience of technically qualified persons to undertake such projects for clients in Govt. Organization private sector, Educational institutions. In this regard it is submitted that the object is too general and vague.

Hence, both the object clauses needs to delete. Accordingly, Hon'ble NCLT may pass appropriate order/orders as deem fit and proper.

- c) Apropos the observation in paragraph IV (a) of the Report of the Regional Director is concerned, the Learned Counsel for the Transferee Company submits that the Petitioner Company undertakes that 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).
- d) Apropos the observation in paragraph IV (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Appointed Date will be 1st April, 2017.
- e) Apropos the observation in paragraph IV (c) and (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law
- f) Apropos the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that they have explained the contents in their further Affidavit in reply to the Regional Director, Western Region, Mumbai and have also



filed the same with this Hon'ble Bench and in the said affidavit it is submitted that both the clauses will be deleted.

- g) The Official Liquidator has filed his report on 22nd June, 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the said Scheme is not prejudicial to the interest of Public. It is further stated that the Transferor Company may be ordered to be dissolved without winding up by this Tribunal.
- h) Further the Learned Counsel for the Petitioners submitted that, neither the Petitioners nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Company and Transferee Company.

9. 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 Company be transferred 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.
- 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 and further this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.
- c) Further this Bench hereby orders that, as the Share Capital of the Transferee Company is Fully Paid up, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorized Share Capital by creation of such number of new Equity Shares of ₹ 10/- each as may be necessary to fulfil its obligations under the said clause of Scheme including filing of



prescribed form on increase of capital as per the Act, read with the rules, if any.

- d) Transferor Company to be dissolved without winding up from the date of said Scheme becomes effective.
- 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 authenticated 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 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.
- g) 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 the duly Authenticated Copy of this Order.
- h) Transferor Company i.e. Petitioner in CSP No. 414 of 2017 to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Authenticated Copy of this Order.
- i) 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.
- j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.



- k) The scheme is hereby approved. The scheme will be effective from the date which is undertaken by the Learned Counsel for the Petitioners to the observation made by the Regional Director, supra, i.e. from 1st April, 2017.

10. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 24th August, 2017