

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 714 OF 2017
AND
CSP NO. 721 OF 2017
AND
CSP NO. 720 OF 2017
AND
CSP NO. 717 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
CRESCENT INNOVATIVE PACKAGING
PRIVATE LIMITED, the First Transferor
Company and CRESCENT WATER
SOLUTIONS PRIVATE LIMITED, the Second
Transferor Company and CRESCENT POWER
SOLUTIONS PRIVATE LIMITED, the Third
Transferor Company with CRESCENT
ORGANICS PRIVATE LIMITED, the
Transferee Company.

CRESCENT INNOVATIVE PACKAGING PRIVATE LIMITED

....Petitioner/ the First Transferor Company
AND

CRESCENT WATER SOLUTIONS PRIVATE LIMITED

....Petitioner/ the Second Transferor Company
AND

CRESCENT POWER SOLUTIONS PRIVATE LIMITED

....Petitioner/ the Third Transferor Company
AND

CRESCENT ORGANICS PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 14th September, 2017

Coram:

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

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

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala

i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Per : B.S.V. Prakash Kumar Hon'ble Member (J)

ORDER:

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of CRESCENT INNOVATIVE PACKAGING PRIVATE LIMITED, the First Transferor Company and CRESCENT WATER SOLUTIONS PRIVATE LIMITED, the Second Transferor Company and CRESCENT POWER SOLUTIONS PRIVATE LIMITED, the Third Transferor Company with CRESCENT ORGANICS PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation of CRESCENT INNOVATIVE PACKAGING PRIVATE LIMITED, the First Transferor Company and CRESCENT WATER SOLUTIONS PRIVATE LIMITED, the Second Transferor Company and CRESCENT POWER SOLUTIONS PRIVATE LIMITED, the Third Transferor Company and with CRESCENT ORGANICS PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the Order passed in their Company Scheme Application Nos. 451 of 2017, 377 of 2017, 374 of 2017 and 386 of 2017 of the National Company Law Tribunal.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the National Company Law Tribunal, Mumbai Bench. Moreover, 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. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the First Transferor Company presently carrying on business as buyers, sellers, and general traders and the Second Transferor at present is carrying on business as buyers, sellers and general traders and the third Transferor Company at present is carrying on business as buyers, sellers and general traders and the Transferee Company at present is carrying on business buyers, sellers and general traders. As per the opinion of the management all the companies are under the same management and the shareholding owned and controlled by same promoters and that the management is of the opinion that the merger amalgamation will lead to synergies of operations and more particularly the following benefits and that all the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic

linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources and this will be reflected in the profitability of the Transferee Company and that this Scheme of Amalgamation would result in merger in the nature of Pooling of Interest as per the paragraphs 33 to 35 of the Accounting Standard 14 on Accounting for Amalgamations issued by the Institute of Chartered Accountants of India and thus on consolidation of business of all the Transferor Companies and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined assets and build a stronger sustainable business and specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies and that the merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of Amalgamation will result in cost saving for all the companies as they are capitalizing on each others core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company

7. The Regional Director has filed a Report on 12th day of September, , 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:

- 1. 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*
- 2. It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 19.05.2017 for comments. The office of the Directorate also has also issued reminder dated 22.08.2017.*
- 3. 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*
- 4. Petitioner in clause 11.5 of the scheme has inter alia mentioned that If necessary, the Transferee Company shall, before allotment as aforesaid of the equity shares in terms of the Scheme, increase its authorised capital by the creation of at least such numbers of equity shares of Rs. 100/- each as may be necessary to satisfy its obligation under the scheme.*

8. So far as the observation in paragraph IV (1) and (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company

/Transferee Company 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.

9. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 (corresponding Ind AS-103, if applicable) for accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5(corresponding Ind AS-8), if applicable etc.
10. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Authorised Capital of the Transferee company shall be sufficient to issue the shares to the shareholders of the transferor companies and thus, there is no need to increase the Authorised Capital of the company.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
12. The Official Liquidator has filed his report on 16th June, 2017 in the Company Scheme Petition No's. 714 of 2017, 721 of 2017 and 720 of 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Tribunal.

13. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 714 of 2017, 721 of 2017 and 720 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof and 717 of 2017 is made absolute in terms of prayer clauses (a) to (c) thereof .
15. Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act 2013.
16. The Petitioner Companies to lodge a copy of this Order and the Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within 60 days from the date of receipt of the order, if any.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition Nos. 714 of 2017, 721 of 2017 and 720 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.

18. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)