

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
TRANSFERRED COMPANY SCHEME PETITION NO. 48 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 955 OF 2016  
(HIGH COURT TRANSFERRED PETITION).  
ILLUSION DENTAL LABORATORY PRIVATE LIMITED  
....Petitioner/ the Transferor Company

AND  
BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH  
COMPANY SCHEME PETITION NO. 49 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 954 OF 2016  
(HIGH COURT TRANSFERRED PETITION)  
LAXMI DENTAL EXPORT PRIVATE LIMITED

....Petitioner/ the Transferee Company  
In the matter of the Companies Act, 2013 (18 of 2013);

AND

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

AND

In the matter of Sections 391 to 394 of the Companies  
Act, 1956 and other relevant provisions of the  
Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of ILLUSION  
DENTAL LABORATORY PRIVATE LIMITED, the  
Transferor Company with LAXMI DENTAL EXPORT  
PRIVATE LIMITED, the Transferee Company.

Called for hearing

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

Mr. Pola Raghunath, Deputy Registrar of Companies

Mr. Santosh Dalvi, representing from the office of Official Liquidator.

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

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

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

Date: 13<sup>th</sup> April, 2017

**MINUTES OF THE 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 ILLUSION DENTAL LABORATORY PRIVATE LIMITED, the Transferor Company with LAXMI DENTAL EXPORT PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of ILLUSION DENTAL LABORATORY PRIVATE LIMITED, the Transferor Company with LAXMI DENTAL EXPORT 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 Summons for Direction Nos. 954 of 2016 and 955 of 2016 of the Hon'ble Bombay High Court.
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 Hon'ble Bombay High Court and Hon'ble National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and Hon'ble 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, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on the business of purchase, sell, import, export, fabricate, prepare and to deal in all types of artificial dentures, full and partial acrylic dentures, acrylic and metallic fixed bridges, removable cast partial dentures, metallic and acrylic crowns, all types of ceramic dental prosthesis and the Transferee Company has been carrying on the business of purchase, sell, import, export, fabricate, prepare and to deal in all types of artificial dentures, full and partial acrylic dentures, acrylic and metallic fixed bridges, removable cast partial dentures, metallic and acrylic crowns, all types of ceramic dental prosthesis. As per the opinion of the management both the

Companies are under the 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 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 more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and that with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.

7. The Regional Director has filed a Report on 31<sup>st</sup> day of March, 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 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 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.*

- 2. Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

*In this regard it is requested that Petitioner has to submit the certificate.*

- 3. The Petitioner Companies have submitted the proof of serving notice, dated, 02.02.2017, upon the Income Tax Authorities for comments. This Directorate has also issued a reminder letter to the Income Tax Authorities dated 31.03.2017".*

- 8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies 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 (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted to this Hon'ble Tribunal the Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.*

10. 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 they have already issued the notice to the Income Tax Department on 02.02.2017.
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.
12. The Official Liquidator has filed his report on 6<sup>th</sup> day of March, 2017 in the Company Petition No. 48 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 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 and is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, Company Petition No. 48 of 2017 is made absolute in terms of prayers clause (a) to (d) and 49 of 2017 is made absolute in terms of prayer clauses (a) to (c).
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 1956 / 2013.



16. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, Hon'ble National Company Law Tribunal, Mumbai Bench, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, 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 No. 48 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 the Order.
18. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, Hon'ble National Company Law Tribunal, Mumbai.

Sd/-  
V. Nallasenapathy, Member (T)

Sd/- 13/11/17  
M. K Shrawat, Member (J)