

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 557 OF 2017

AND

CSP NO. 556 OF 2017

Under Sections 230 to 232 read with Section 52 and Section 66 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 along with the Companies Act, 1956

AND

In the matter of Scheme of Amalgamation of AAA ALLIED SERVICES PRIVATE LIMITED, the Transferor Company with AAA & SONS ENTERPRISES PRIVATE LIMITED, the Transferee Company and their respective shareholders and creditors.

AAA ALLIED SERVICES PRIVATE LIMITED

....Petitioner/ the Transferor Company

AND

AAA & SONS ENTERPRISES PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 7th 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 : V. Nallasenapathy Hon'ble Member (T)

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 AAA ALLIED SERVICES PRIVATE LIMITED, the Transferor Company with AAA & SONS ENTERPRISES PRIVATE LIMITED, the Transferee Company and their respective shareholders and creditors.
2. The sanction of the Tribunal is sought under Sections 230 to 232 read with Section 52 and Section 66 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation of AAA ALLIED SERVICES PRIVATE LIMITED, the Transferor Company with AAA & SONS ENTERPRISES PRIVATE LIMITED, the Transferee Company and their respective shareholders and creditors.
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. 287 & 288 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, 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 to undertake the business of providing consultancy services and the Transferee Company has been engaged in the business of generation of Electricity through windmills. The Petitioner Company and the Transferee Company are under the same management. The management is of the opinion that the merger will lead to synergies of operations and more particularly the following benefits that is that the amalgamation will enable the Transferee Company to consolidate the businesses, reduce the number of companies under the same Management and thus lead to reduction in administration efforts and it would be advantageous to combine the activities and operations of both the Companies into a single Company for leveraging financial and operational resources and reflecting stronger financial position and for the benefit of lesser compliance issues and that the Scheme of amalgamation will result in cost saving for both the Companies and is expected to result in administrative efficiency and higher profitability levels for the Transferee Company and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively.
7. The Regional Director has filed a Report on 14th day of August, 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 03.05.2017 for comments. The office of the Directorate also has issued reminder dated 02.08.2017.*
- 3. Petitioner companies have to undertake to submit respective Chairman's Report.*
- 4. Petitioner in clause 2.3.8 of the scheme has inter alia mentioned that Board of Directors of the Transferee Company in consultation with the statutory auditors, is authorized to account for the any of the balances in any other manner, if such accounting treatment is considered to be more appropriate.*

In this regard, it is submitted that the accounting treatment proposed shall be only in accordance with prescribed and notified accounting standards as under section 133 of the companies Act, 2013.

- 5. Petitioner Transferee Company equity shares are held by the foreign entity whereas proof of serving notice to RBI is not submitted.*
- 6. Valuation report is submitted by M/s Sethi & Associates, Chartered Accountants dated 25.01.2017 recommending 220 10% non-convertible non-cumulative preference shares of Transferee Company for every one share held in the transferor Company. Whereas in the Petitioner in clause 2.2 of the scheme has inter alia mentioned that upon this scheme becoming operative, the transferee company shall issue and allot 210, 10% non-convertible non-cumulative redeemable preference shares of face value of Rs.1/- each of the transferee company in respect of every one equity share of Rs.10/- each held in the transferor company.*

Petitioner have to undertake to agree with ratio recommended by the Statutory Auditors or as decided by the Tribunal.

7. *It is submitted that in the balance sheet of the petitioner Transferor Company only borrowings and investments are disclosed.*
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 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
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 they have filed the chairman's report in the NCLT, Mumbai Bench with the above mentioned Company Scheme Petitions.
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 Petitioner Company undertakes that the accounting treatment proposed shall be in accordance with prescribed accounting standards under section 133 of the companies Act, 2013.
11. So far as observation in Para IV (5) of the report is concerned, the Petitioner Company submits none of the equity shares of the Transferee Company are held by the foreign entity. The Petitioner Company further submits that Preference Shareholders are the foreign shareholders in the Transferee Company which are not

effected in any way. The Petitioner Company further undertakes to comply with all the RBI guidelines.

12. So far as observation in Para IV (6) of the report is concerned, the Petitioner Company submits that the Petitioner Companies have obtained the share issuance report from M. S. Sethi & Associates, Chartered Accountants recommending 220, 10% non-convertible non-cumulative preference shares of transferee company for every one share held in the transferor company. The Petitioner Company undertakes to agree with above ratio recommended by the Chartered Accountants or as decided by the Tribunal.
13. So far as observation in Para IV (7) of the report is concerned, the Petitioner Company submits that the Petitioner Companies have appropriately disclosed the financial position in the balance sheet. The Petitioner/ Transferor Company has earned dividend from Mutual Funds and Interest on Fixed Deposit and incurred administrative expenses during the period ended 31st Dec, 2016 and same has been has been appropriately disclosed in statement of Profit & Loss. Further, apart from investment and borrowings, the Company has also appropriately disclosed other assets and liabilities in its financials in accordance with the generally accepted accounting principles in India and provisions of the Companies Act, 2013.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 9 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.

15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 557 of 2017 is made absolute in terms of prayers clause (a) to (d) and 556 of 2017 is made absolute in terms of prayer clauses (a) to (c).
17. The Official Liquidator has filed his report on 11th day of June, 2017 in the Company Scheme Petition No. 557 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.
18. 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.
19. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified 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 within 60 days from the date of receipt of the order, if any.
20. 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. 557 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.

21. 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)