

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH AT MUMBAI

COMPANY SCHEME PETITION NO.277 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 131 OF 2017

Wise Trading and Advisory Private Limitedthe Petitioner/Transferor Company.

AND

COMPANY SCHEME PETITION NO.278 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 132 OF 2017

Purvaj Advisors Private Limitedthe Petitioner/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 the Scheme of Amalgamation of:
Wise Trading and Advisory Private Limited.

WITH

Purvaj Advisors Private Limited.

AND

their respective Shareholders.

Called for Hearing

Mr. Nitin Gutka, Chartered Accountants for the Petitioner in both the Petition.

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

Mr. Santosh Dalvi, Representative of Official Liquidator present in Company Scheme Petition No. 277 of 2017.

Coram: M.K.Shrawat, Member (J)

Date : 30th June,2017

MINUTES OF ORDER

1. Heard learned counsel for parties. No objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Company Scheme Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act,2013 and other relevant provisions of the Companies Act,2013 to a Scheme of Amalgamation of Wise Trading and Advisory Private Limited, the Transferor Company with Purvaj Advisors Private Limited, the Transferee



Company and their respective shareholders (hereinafter for brevity's sake both the Companies are collectively referred to as "the Petitioner Companies").

3. The Learned Counsel for the Petitioner Companies states that the Transferor Company and Transferee Company are presently engaged in business of Financial Consultants & Invest surplus funds in shares & securities.
4. The Learned Counsel for the Petitioner Companies states that the circumstances that have necessitated or benefits of Scheme of Amalgamation are as follows :-
 - a) Integration of operations.
 - b) To consolidate its business operation and provide significant impetus to growth of the Transferee Company business.
 - c) The amalgamation would result in optimum utilization of resources which would reduce the administrative costs and other overheads which are presently being multiplied because of separate entities.
 - d) The Transferee Company will have net worth and resources to commence its activities relating to financial advisory.
 - e) Enhance values of all stake holders in the long run.
5. The Learned Counsel for the Petitioner Companies states that the Board of Director of the Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Application and that the respective Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies undertakes to comply with all

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statutory requirements, if any, as required under the Companies Act, 2013 and rules made there under whichever are applicable. The said undertakings given by the Petitioner Companies are accepted.

8. The Regional Director has filed his Report dated 23rd June, 2017 stating therein that save and except the observations stated in para IV (1) to (4) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. The Tribunal may take this report on record and consider the observation made in para IV (1) to (4) and pass such other order or orders as deem fit in the facts and circumstances of the case. In paragraphs IV of the said Report, the Regional Director, has observed that :

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 24.2.2017 and dated 27.02.2017. This office has issued reminder dated 20.06.2017.*

3. *Petitioner in clause 11 has inter alia mentioned that the Board of the transferee company in consultation with its statutory Auditor authorized to account any of these balances or other balances or items in any manner whatsoever as may be deemed fit or to make adjustment. In this regard petitioner companies undertake to comply only the accounting, standards adopted only.*

4. *Petitioner in clause 10 of the scheme has inter alia mentioned that Upon the scheme becoming, finally effective and in consideration of the transfer and vesting of the undertaking of the Transferor Companies in the Transferee Company in terms of the Scheme, the*

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consideration in respect of such transfer shall, subject to the provisions of the Scheme, be paid and satisfied by the Transferee Company as follows.

- a) Equity Shareholders of the Transferee Company will be issued and allotted 1 (One) Equity Share of the face value of Rs. 10/- each of the Transferee Company for every 1 (One) Equity Shares of the face value Rs. 10/- each held by them in the Transferor Company.
- b) 0% Convertible Redeemable Preference Shareholders of the Transferor Company will be issued 204 (Two Hundred and Four) Equity Shares of face value of Rs. 10/- each for every 1000 (One Thousand) 0% Convertible Redeemable Preference Shares of Rs. 10/- each held by member in the Transferor Company.
- c) 10% Non-Convertible Redeemable Preference Shareholders of the Transferor Company will be issued 1(one) 6% Non-Convertible Redeemable. Preference shares of Rs. 10/- each for every 1(one) 10% Non-Convertible Redeemable Preference Shares of Rs. 10/- each held by member in the Transferor Company.

And Petitioner in clause 16 of the scheme has inter alia mentioned that The Transferee Company shall take necessary steps to reclassify its Authorised Share Capital, to enable it to give effect to the reorganization of share capital as provided in Clause 4 of this scheme.

- a) Consequent to the reclassification and clubbing of the Authorized Share Capital of the Transferor Company with the Transferee Company, the Authorized Share Capital of the Transferee Company shall be increased to Rs. 9,79,00,000 (Rupees Nine Crores Seventy-Nine Lacs only). Further, such incremental authorized share capital of the Transferee

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Company amounting to Rs. 9,79,00,000 (Rupees Nine Crores Seventy-Nine Lacs only) shall be re-classified as 66,90,000 Equity shares of Rs. 10/- each, 31,00,000 Preference Shares of Rs.10/- each.

Further, it is submitted that pursuant to section 230 (7) of the Companies Act, 2013 provides that where the compromise or arrangement provides for conclusion of preference shares with equity shares such preference shareholders shall be such an option to either obtain arrears of dividend in cash or accept equity share equal to the value of the divided payable, whereas petitioner has not provided anything in this regards in the scheme.

In this regard, it is submitted that petitioner not mentioned in the classification of shares about 10% non-convertible redeemable preference shares as mentioned in clause 10.1.3 of the scheme.

9. As far as the observations made in paragraph IV (1) & (2) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
10. As far as the observations made in paragraph IV (3) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel states that in view of the certificate from the company auditors being obtained and filed the Tribunal and Regional Director office about the accounting treatment proposed in the scheme of amalgamation being in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013. The clause 11.5 of the Scheme will have no adverse implication as it has become redundant. The Learned counsel for the Petitioner Companies undertakes that the Transferee Company will comply with accounting standards prescribed under section 133 of

the Companies Act, 2013 and that clause 11.5 of the Scheme will not be implemented by the Transferee Company.

11. As far as the observations made in paragraph IV(4) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel submits that Section 230 (7) is not applicable as Equity Shares are proposed to be issued by the Transferee Company against 0 % Convertible Redeemable Preference Shares of the Transferor Company which has no entitlement of dividend. The Learned Counsel further submits that as per Section 43 of the Companies Act,2013 the Authorised Share Capital has to be of two kinds only viz Equity Shares Capital and Preference Share Capital. The Company can offer and issue Equity Shares and Preference Shares with various terms and conditions viz different rate of dividend,different voting rights, different repayment period etc. The classification of Preference Shares can only be made after shares are issued to the shareholders of the Transferor Company pursuant to the Scheme. Hence Classification of Preference Shares is not required at this stage.
12. The observations made by the Regional Director have been explained by Petitioner Companies in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report dated 24th April,2017 in the Company Scheme Petition No 277 of 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved by this Tribunal.
14. 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. None of the parties concerned have come forwarded to oppose the Scheme of Amalgamation.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.277 of 2017 & 278 of 2017 filed by the Transferor Company

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and the Transferee Company are made absolute in terms of prayer clauses (a) & (b).

16. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of this order.
17. The Petitioner Companies are further 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 issuance of the order by the Registry
18. The Petitioner Companies to pay costs of Rs 25,000/- each to the Regional Director, Western Region, Mumbai in Company Scheme Petition No.277 & 278 of 2017 and costs of Rs. 25,000/- to Official Liquidator, High Court, Bombay in Company Scheme Petition No. 277 of 2017. Costs to be paid within four weeks from the date of the Order.
19. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
20. Any person interested shall be at liberty to apply to this Tribunal in the above matter for any direction that may be necessary.

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