

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, BENCH, AT
MUMBAI
COMPANY SCHEME PETITION NO. 37 OF 2017
CONNECTED WITH
COMPANY SUMMONS FOR DIRECTIONS NO. 1018 OF 2016**

In the matter of Companies Act, 1956 and any re-enactment thereof;

And

In the matter of application under Sections 230 to 232 of the Companies Act, 2013 or any re-enactment thereof;

And

In the matter of Scheme of Amalgamation of Bharavi Laboratories Private Limited and USV Private Limited and their respective shareholders and creditors;

Bharavi Laboratories Private Limited)
[CIN: U24119MH1996PTC263265], a company)
incorporated under the Companies Act, 1956, and)
having its Registered Office at A. V. Gandhi)
Chowk, BSD Marg, Station Road, Govandi, Near)
Railway Station, Mumbai 400 088) ... Petitioner Company

Mr. Gauraj Shah a/w Mr. Vishnu Peri i/b M/s Dhru & co. Advocates for the Petitioner Company

CORAM: Shri. B.S.V. Prakash Kumar, Member (Judicial)
Shri. V. Nallasenapathy, Member (Technical)

DATE: July 6, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for the parties. No objector has come before the Tribunal to oppose the Scheme and nor has any party controverted abt averments made in the Petition.

2. The sanction of this tribunal is sought under Section 230 and 232 of the Companies Act, 2013, to a Scheme of Amalgamation between Bharavi Laboratories Private Limited and USV Private Limited and their respective shareholders and creditors (Scheme).
3. The Petitioner Company has approved the said Scheme by passing Board Resolution which is annexed to the Company Scheme Petition.
4. The Learned Advocate for the Petitioner Company states that the said Scheme will have benefit as under
 - a. As the Petitioner and the Transferee Company deal in the same or similar business, the Scheme of Amalgamation will make available to the Transferee Company the combined technical resources with backward integration benefits. The Transferee Company will have a strong operational structure, which will result in good operational synergy. The arrangement would bring synergistic linkages through combined technological capillaries, besides savings in administration and management cost in addition to savings from income tax, sales tax and the like. The amalgamation will entail carrying on of all business activities of the Petitioner by the Transferee Company, leading to improvement in operating efficiency having regard to the business activities being same or like that of the Transferee Company. This will substantially reduce duplication of administrative responsibility and multiplicity of records and legal compliances. The amalgamation will provide an appropriate platform to business that will grow significantly in the future. Such an integrated and synergistic approach would also be essential to function more effectively in an increasingly competitive environment. The Transferee Company and its shareholders would thus benefit from the growth, focus and the transparency created by the amalgamation. On the other hand, the Petitioner will benefit from the financial resources and brand name of the Transferee Company in as much as the same will be used in furtherance of the technical expertise provided by the Petitioner.
 - b. On amalgamation, the Transferee Company would have the benefits of centralizing activities by way of economies of scale, reduction in overheads and other expenses, reduction in administration and procedural work and more and better utilization of manpower and other resources.

5. The Learned Advocate appearing on behalf of the Petitioners has stated that the Petitioner Company has complied with all requirements as per directions of this Tribunal and it has filed necessary Affidavits in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.

6. The Regional Director has filed his Report dated June 14, 2017, inter alia stating therein that save and except as stated in Paragraphs IV (a) to (f) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Report, the Regional Director has stated that:
 - 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 said Scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8).*

 - b. *Regarding Clause D-9 of the Scheme it is submitted that the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same will be debited to Godwill Account of the Transferee Company.*

 - c. *As per existing practice, the Petitioner Company is required to serve Notice of Scheme to the Income Tax Department for their comments. It appears that the Petitioner Company vide letter dated March 25, 2017 has served a copy of the Company Scheme Application 37 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder dated June 8, 2017 to IT Department.*

 - d. *The tax implication if any arising out of the said Scheme is subject to final decision of Income Tax Authorities. The approval of 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.*

- e. That in view of observations made by the Registrar of Companies, Mumbai mentioned at 10 (c) Hon'ble Tribunal may kindly direct the Company to submit certificate from auditor of the Company in terms of proviso to Section 232(3) of the Companies Act, 2013.,*
- f. As per Clause-A(ii) of Scheme 'the Appointed Date' means the commencement of business hours on April 1, 2015. In view of the objection raised by the ROC Mumbai, mentioned in para 10 (d) it is submitted that Hon'ble NCLT may kindly direct the Petitioner to file Annual Accounts for the financial year 2015-16 and accordingly fix the appointed date as 1st April, 2016 or pass appropriate orders as deem fit;*
7. As far as the observation of the Regional Director stated in paragraph IV (a), (b), (c) and (d) of his report is concerned, the Petitioner Company undertakes to comply with all applicable Accounting Standards and procedural requirement and further undertakes to comply with all applicable provisions of the Income Tax Act and in the circumstances, all issues arising out of the Scheme will be met and answered in accordance with law.
8. As far as the observation of the Regional Director stated in paragraph IV (e) of his report is concerned, it is submitted that the Auditor of the Petitioner Company has certified that the accounting treatment as proposed in the said Scheme is in accordance with generally accepted accounting principles and Standards.
9. As far as the observation of the Regional Director stated in paragraph IV (f) of his report is concerned, the Petitioner Company agrees to the change in Appointment Date from April 1, 2015 to April 1, 2016 in view of the objections raised by ROC Mumbai and as suggested by the Regional Director in his report.
10. From the material on record, the said Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
11. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition 37 of 2017 are made absolute in terms of prayer clause a and b of the Petition.

12. Petitioner Company is directed to file a copy of this Order along with a copy of the said Scheme 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.
13. The Petitioner Company to lodge a copy of this Order and the Scheme duly authenticated 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, if any, on the same within 60 days from the date of receipt of the Order.
14. The Petitioner in the present Company Scheme Petition to pay costs of INR. 25,000 to the Regional Director, Western Region, Mumbai. Costs to be paid within 4 weeks from today.
15. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (Technical)

Sd/-

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