

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 574 OF 2017

AND

CSP NO. 590 OF 2017

AND

CSP NO. 587 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
PSE SECURITIES LIMITED, the First
Transferor Company and VRAJ SHARE
SERVICES PRIVATE LIMITED, (earlier known
as VRAJ FINANCE PRIVATE LIMITED), the
Second Transferor Company and PUNE E-
STOCK BROKING PRIVATE LIMITED, the
Transferee Company

PSE SECURITIES LIMITED

....Petitioner/ the First Transferor Company
AND

VRAJ SHARE SERVICES PRIVATE LIMITED

....Petitioner/ the Second Transferor Company
AND

PUNE E-STOCK BROKING PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 21st 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 PSE SECURITIES LIMITED, the First Transferor Company and VRAJ SHARE SERVICES PRIVATE LIMITED, (earlier known as VRAJ FINANCE PRIVATE LIMITED), the Second Transferor Company and PUNE E-STOCK BROKING 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 PSE SECURITIES LIMITED, the First Transferor Company and VRAJ SHARE SERVICES PRIVATE LIMITED, (earlier known as VRAJ FINANCE PRIVATE LIMITED), the Second Transferor Company and PUNE E-STOCK BROKING 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. 251 of 2017, 248 of 2017 and 257 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 direction 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 First Transferor Company at present is carrying on the business as a member of Bombay Stock Exchange and National Stock Exchange, and share and stock brokers, securities brokers and depository participant (CDSL) and the Second Transferor Company at present is in the business of brokers and sub-brokers for sale or purchase transactions (including but not limited to future, options or derivatives) relating to stocks, shares, fixed deposits, units, mutual funds, bonds, debentures and investments and financial instruments whether in materialized or dematerialized form and to register with stock exchanges and/or respective bodies authorities and with Securities and Exchange Board of India and the Transferee Company at present is carrying on the business of and as member of Bombay Stock Exchange and National Stock Exchange, brokers, depository participant (CDSL) for sale or purchase transactions (including but not limited to future, options or derivatives) relating to stocks, shares, fixed deposits, units, mutual funds, bonds, debentures and investments and financial instruments whether in materialized or dematerialized form and to register with

stock exchanges and/or respective bodies authorities and with Securities and Exchange Board of India. Majority of the shareholding is owned and controlled by the same promoters and the management is of the opinion that the merger / amalgamation arrangement will lead to synergies of operations and more particularly the following benefits and the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and that 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 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. Specifically, the merger / amalgamation 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. 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 transferee Company.

7. The Regional Director has filed a Report on 19th 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:

(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 scheme to comply with other applicable Accounting Standards such as AS-5 (Ind As-8) etc

(b) As per Clause 3.5, Definitions of the scheme. “The Appointed Date” means 14th November 2016 or such other date as the National Company Law Tribunal (Tribunal) or other competent authority may otherwise direct / fix. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 14th November 2016;

(c) As per the existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 12th April 2017 has served a copy company scheme petition no. 248, 251 & 257 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder 8th August 2017 to IT Department.

(d) 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.

(e) In view of the objection raised by the ROC, Pune mentioned at para 11 above, it is submitted that petitioner has to comply with proviso to Section 230(7) read with Rule 6(3)(ix)(e) of the Companies (Compromise, Arrangements and Amalgamations) Rules, 2016 the auditor of the Company to issue certificate to the effect that Accounting Treatment, if any, propose in the scheme is in conformity with Accounting Standard

prescribed u/s 133 of the Companies Act, 2013. Hon'ble Tribunal may pass appropriate orders/orders as deemed fit

8. So far as the observation in paragraph IV (a) 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) 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 etc.
9. As far as the observation in paragraph IV (b) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the Appointed Date mentioned in the Scheme is 14th November, 2016.
10. So far as the observation in paragraph IV (c) and (d) of the Report of the Regional Director is/are 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.
11. As far as the observation in paragraph IV (e) of the report of Regional Director is concerned, the learned Counsel for the Petitioner Companies submits that the observations by the RoC have been dealt with and the certificate has already been submitted with the Company Scheme Petition.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in Paras 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
13. The Official Liquidator has filed his report on 6th June, 2017 in the Company Scheme Petition Nos. 574 & 590 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.
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.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 574 & 590 of 2017 is made absolute in terms of prayers clause (a) to (d) and 587 of 2017 is made absolute in terms of prayer clauses (a) to (c).
16. 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.
17. 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.

18. 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. 574 & 590 of 2017 to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
19. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member(T)

Sd/-

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