

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

CSP NO. 511 OF 2017
AND
CSP NO. 521 OF 2017

Abbie Infraventures Private Limited

.....Petitioner/ Second Transferee Company / Resulting Company

AND

Micronet Real Estate Private Limited

...Petitioner/ Transferor Company

AND

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the Companies Act 2013;

AND

In the matter of Composite Scheme of Amalgamation and Arrangement between Micronet Real Estate Private Limited having CIN U73100MH2011PTC221908 (Transferor Company) and Trans Fleet Limited having CIN U60231DD1994PLC001687 (First Transferee Company or Demerged Company) and Abbie Infraventures Private Limited having CIN U70109MH2013PTC247622 (Second Transferee Company or Resulting Company) and their respective Shareholders.

Order delivered on 21st September 2017

Coram:

Hon'ble **B.S.V Prakash Kumar**, Member (J)
Hon'ble **V. Nallasenapathy**, Member (T)

For the Petitioner (s): Mr. Hemant Sethi i/b Hemant Sethi & Co. Advocates for Petitioner

Per: . Nallasenapathy, Member (T)

ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Composite Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Composite Scheme of Amalgamation and Arrangement between

Micronet Real Estate Private Limited and Trans Fleet Limited and Abbie Infraventures Private Limited and their respective Shareholders.

3. Learned Counsel for the Petitioner Companies states that the Transferor Company/ Petitioner Company is primarily engaged in the business of builders, contractors, erectors, constructor of buildings, houses, apartments, structures or residential, office, industrial, institutional and to act as sub-contractors for undertaking the aforesaid activities, the First Transferee Company or Demerged Company is primarily engaged in the business of warehousing, logistics and trading and the Second Transferee Company / Resulting Company / Petitioner Company is primarily engaged in the business of builders, contractors, erectors, constructor of buildings, houses, apartments, structures or residential, office, industrial, institutional and to act as sub-contractors for undertaking the aforesaid activities.
4. The proposed Composite Scheme would *inter alia* have the following benefits:
 - (a) Amalgamation would result in reducing the number of entities in the Group and thereby reducing the administrative cost and hassle of maintaining company in the ever-changing regulatory environment.
 - (b) Demerger would enable Trans Fleet to focus on its core business of cold storage and warehousing.
 - (c) Post arrangement, the non-core assets and liabilities of Trans Fleet be demerged into Abbie, and Trans Fleet would be left with assets relating to its core business which would give comfort for the lenders.
 - (d) Post demerger Abbie would have the trading operation and investment related to infrastructure business.
 - (e) Demerger would enable fund raising for the entities, including raising of capital through strategic or private equity transaction or listing of the companies on a standalone basis.
 - (f) The proposed demerger would enhance the value of all the stake holders including creditors and shareholders at large.
 - (g) Pursuant to the Composite Scheme, the shareholders of the Transferor Company will get shares of the Petitioner Company and the shareholders of the Petitioner Company would receive shares from the Resulting Company as a result of the Demerger. There will be no change in economic interest of any of the shareholders of the Petitioner Company pre-and-post Composite Scheme.
5. The Petitioner Companies have approved the said Composite Scheme by passing the Board Resolutions which are annexed to the Company Scheme Petition.

6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Company have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all 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.
8. The Regional Director has filed an Affidavit dated 13th September, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Composite Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated 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 05.05.2017 for comments. The office of the Directorate also has issued reminder dated 24.08.2017.*
 3. *Petitioner in clause 18 of Part-III of the scheme has inter alia mentioned that upon the coming into effect and with effect from the Appointed Date the excess if any of the net assets over liabilities after amount of equity shares issued and considering the adjustment for reduction of capital as mentioned will be credit to reserves .*
In this regards, Petitioner Company have to undertake to specify "reserves" and it is submitted that reserves should be read as "Free Reserves".
 4. *Petitioner in clause 19 of the scheme has inter alia mentioned that upon the Scheme coming into effect and without any act or deed or action the authorized share capital of the Second Transferee Company shall, stand*

increased from the present sum of Rs.1,00,000/-(Rupees One lacs) divided into 10,000 equity shares of Rs.10 each. Clause V (A) of the Memorandum of Association of the Second Transferee Company shall be amended by deleting the clause and replacing it by the following:

"The Authorised Share Capital of the Company is Rs. 5,00,000 (Rupees Five Lacs only) divided into 50,000 equity shares of Rs. 10 each, all of which share capital shall be capable of being increased or reduced in accordance with the Company's regulations and legislative provisions for the time being in force in that behalf, with power to divided the shares in the capital for the time being into equity share capital and preference share capital, to attach thereto respectively any preferential, qualified, deferred or special assets, or by the allotment of fully or partly paid shares, or by a call or option on shares, debentures, debenture-stock, or securities of this or any other consideration or at a fair or concessional value and divest the ownership of any property of the Company to or in favour of any Public or Local Body or Authority or Central or the State Government or any Public Institution or Trust engaged in the programme of rural development."

In this regards, Petitioner Company have to undertake to comply with the provisions of Companies Act,2013 read with rules for increasing in authorized capital from 1lacs to 5 lacs

5. *The Registered Office of the Trans Fleet Limited ("Trans Fleet" or the "First Transferee Company" or the "Demerged Company") is at 23 Bharat Industrial Estate , Bhimpore Daman, DD-396210 which is outside the jurisdiction of this Tribunal and falls within the jurisdiction of NCLT Ahmedabad. Accordingly, similar approval be obtained by the Transferee Company from Hon'ble NCLT Ahmedabad.*

6. *It is submitted that as the petitioner companies are into real estate business :*

In this regards, Petitioner Company have to undertake to serve notice to Real estate Regulatory under Real Estate (Regulatory And Development Act)2016 read with rules to the Hon'ble NCLT and to the Directorate.

9. *In so far as observations made in paragraph IV. (1) & (2) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Composite Scheme will be met and answered in accordance with law.*

10. In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes that the Petitioner Companies will specify /read/treat "reserves" as "Free Reserves".
11. In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertake to comply with provisions of Companies Act, 2013 read with rules for increasing in authorized share capital by filing requisite forms .
12. In so far as observations made in paragraph IV. (5) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that Trans Fleet Limited ("First Transferee Company" or the "Demerged Company" has filed petition before Hon'ble NCLT at Ahmedabad and the same is pending for final hearing.
13. In so far as observations made in paragraph IV. (6) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel states that since there are no projects undertaken by the Petitioner Companies the provisions of Real Estate (Regulatory And Development Act), 2016 and Rules made thereunder does not apply in case of the Petitioner Companies.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 and 13 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. From the material on record, the Composite 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 forward to oppose the Composite Scheme.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 511 of 2017 and Company Scheme Petition No. 521 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a), (b) and (c) of the respective Petitions.
17. The Petitioner Companies to lodge a copy of this order and the Composite 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.

18. Petitioner Companies are directed to file a copy of this order along with a copy of the Composite 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.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The costs to be paid within four weeks from the date of Order.
20. All authorities concerned to act on a copy of this order along with Composite Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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