

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
BENCH, AT MUMBAI**

CSP No. 404 of 2017

In

CSA No. 35 of 2016

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 Sections 391 to 394 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of the Scheme of Amalgamation of Dhruva Holdings Private Limited (1st Transferor Company) and DKM Investment and Trading Private Limited (2nd Transferor Company) (hereinafter collectively referred to as "Transferor Companies") with Dhamm Steel Services Private Limited (Transferee Company) and their respective shareholders.

Dhruva Holdings Private Limited ... 1st Transferor Company

DKM Investment and Trading Private Limited ... 2nd Transferor Company

Dhamm Steel Services Private Limited... Petitioner Company / Transferee Company

Judgement / Order delivered on 21st September 2017

Coram:

Hon'ble **B.S.V. Prakash Kumar**, Member (J)

Hon'ble **V. Nallasenapthy**, Member (T)

For the Petitioner(s): Mr. Rahul R. Mahajan a/w Mr. Amit Surve i/b M/s. Fortitude Law Associates, Advocates for the Petitioner

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

ORDER

1. Heard Learned Counsel for parties. No objection has come before the Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petition to the Scheme of Amalgamation of Dhruva Holdings Private Limited (1st Transferor Company) and DKM Investment and Trading Private Limited (2nd Transferor Company) (hereinafter collectively referred to as "Transferor Companies") with Dhamm Steel Services Private Limited (Transferee Company) and their respective shareholders.
2. The sanction of the Tribunal is scheme under section 230 to 232 of Companies Act, 2013 to the Scheme of Amalgamation of Dhruva Holdings Private Limited (1st Transferor Company) and DKM Investment and Trading Private Limited (2nd Transferor Company) (hereinafter collectively referred to as "Transferor Companies") with Dhamm Steel Services Private Limited (Transferee Company) and their respective shareholders.
3. The Petitioner Company have approached the said Scheme of Amalgamation by passing the Board Resolutions, which is annexed to the Scheme Petition.
4. The Learned Counsel appearing on behalf of the Petitioner Company states that the Petition have been filed in consonance with the order passed in Company Scheme Application No. 35 of 2016 of the National Company Law Tribunal.
5. The Learned Counsel on behalf of the Petitioner Company further states that the Petitioner Company have complied with all requirements as per the directions of the National Company Law Tribunal, Mumbai Bench. Moreover, the Petitioner Company undertake to comply with all the statutory requirement if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Learned Counsel for the Petitioner Company states that the Dhruva Holdings Private Limited, 1st Transferor Company is engaged in the business of investment in properties, securities, etc. DKM Investment and Trading Private Limited, 2nd Transferor Company is engaged in the business of investment in properties, securities, etc. Dhamm Steel Services Private Limited, Transferee Company is engaged in the business of distribution and Trading of steel.
7. The Learned Counsel for the Petitioner Company states that the amalgamation of the Transferor Companies with the Transferee Company would have benefits of strengthening and consolidating the financial position of the Transferor Companies and the Transferee Company to develop and concentrate on the core competency, strong financial and operational structure capable of resource mobilization and financial

consolidation necessary to withstand the new competitive environment, benefit of stability of operations and economies of scale through efficient utilization of financial resources as the companies concerned would be able to combine their resources, expand their activities, rationalize and streamline their management, business and finances as well as eliminate duplication of work in areas like accounts, company law and tax assessments, common administrative services, reduction in regulatory/procedural compliances and accordingly lead to synchronization of efforts to achieve uniform corporate policy and ease in decision making at the group level to enhance the share value for the benefit of the shareholders and will be beneficial to the companies concerned, their shareholders and all other concerned.

8. The Regional directors has filed a Report on 15th September 2017 stating therein, save and except as stated 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 scheme to comply with other applicable Accounting Standards such as AS-5(IND AS-8) etc;*

(b) *As per Clause 1(iii) Definitions of the scheme. "Appointed Date" means opening of business hours 28th September 2016 or such other date as may be agreed between the Transferor Companies and the Transferee Company and approved by the High Courts. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be opening of business hours 28th September 2016;*

(c) *As per 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 9th March 2017 has served a copy company scheme application No. 35 of 2017 along with relevant orders etc., further the Regional Director has also issued a reminder 8th September 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) *The Registered Office of the M/s. Dhruva Holdings Private Limited ("Dhruva") (1st Transferor Company) and M/s. DKM Investment And Trading Private Limited ("DKM") (2nd Transferor Company) are situated 19, British Indian Street, Kolkata - 700 069, West Bengal, India is outside the jurisdiction of this Tribunal and falls within the jurisdiction of NCLT Kolkata Bench. Accordingly,*

9. In so far as observation made in paragraph IV (a) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes to 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, in addition to compliance of AS-14 (IND AS-103);
10. In so far as observation made in paragraph IV (b) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Transferee Company clarifies that the Appointed Date of the Scheme shall be construed as 28th September 2016.
11. In so far as observation made in paragraphs IV (c) and IV (d) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes to comply with all applicable provisions of the Income Tax Act 1961 and all the tax issue arising out of the Scheme will be met and answered in accordance of law.
12. In so far as observation made in paragraph IV (e) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioner Company submits that the Transferee Company undertakes to obtain similar approval from the Hon'ble National Company Law Tribunal, Kolkata Bench.
13. The observations made by the Regional Director have been explained by the Petitioner Company in Paragraph 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provision of law or contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Petition No 404 of 2017 is made absolute in terms of prayer clauses (a) and (b).
16. The Petitioner Company 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 Superintendents of Stamps, for the purpose of adjudication of stamp duty, if any, payable within 60 days from the date of receipt of the order.
17. The Petitioner Company are directed to file the certified copy of the order along with a copy of the 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 Registry.

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

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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