

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

CSP NO. 695 OF 2017

AND

CSP NO. 697 OF 2017

AND

CSP NO. 698 OF 2017

AND

CSP NO. 696 OF 2017

AND

CSP NO. 701 OF 2017

AND

CSP NO. 699 OF 2017

AND

CSP NO. 700 OF 2017

ABJA CONSTRUCTIONS LIMITED

...Petitioner/ Transferor Company 1

AND

ABHIJIT PAWAR MEDIA LIMITED

...Petitioner/ Transferor Company 2

AND

MAGNECO METACHEM (INDIA) PRIVATE LIMITED

...Petitioner/ Transferor Company 3

AND

FOXBERRY EVENTS PRIVATE LIMITED

...Petitioner/ Transferor Company 4

AND

NEO TELEVISION PRIVATE LIMITED

...Petitioner/ Transferor Company 5

AND

APP ENGINEERING PRIVATE LIMITED

...Petitioner/ Transferor Company 6

AND

SAI LOGISTICS AND MATERIAL HANDLING PRIVATE LIMITED

...Petitioner/ Transferee Company

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 Scheme of Amalgamation of Abja Constructions Limited and Abhijit Pawar Media Limited and Magneco Metachem (India) Private Limited and Foxberry Events Private Limited and Neo Television Private Limited and APP Engineering Private Limited with Sai Logistics and Material Handling Private Limited 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 Petitioners

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

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the 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 Scheme of Amalgamation of Abja Constructions Limited and Abhijit Pawar Media Limited and Magneco Metachem (India) Private Limited and Foxberry Events Private Limited and Neo Television Private Limited and APP Engineering Private Limited with Sai Logistics and Material Handling Private Limited and their respective shareholders
3. Learned Counsel for the Petitioner Companies states that the Transferor Company 1 is primarily engaged in the business of granting intercorporate deposits to group companies and renting of immovable properties. The Transferor Company 2 is primarily engaged in the business of Public Relations Service & Media Service. The Transferor Company 3 is primarily engaged in the business of granting

intercorporate deposits to group companies. The Transferor Company 4 is currently not engaged in any business activities. The Transferor Company 5 is in the service industry and carries on the business of film editing. The Transferor Company 6 is primarily engaged in the business of trading in Aluminium Scrap and manufacturing activity from Fly Ash and Glass powder. The Transferee Company is primarily engaged in the business of renting immovable properties and giving intercorporate deposits to group companies.

4. The proposed Scheme of Amalgamation will achieve the following primary benefits (a) Achieving operational and management efficiency; (b) Consolidation and simplification of the group structure; (c) Enhancement of net worth of the combined business to capitalise on future growth potential, (d) Optimal utilisation of resources resulting into reduction in operational and compliance cost; and (e) Elimination of multiple entities in the group; which will eliminate duplication of administrative functions and reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Companies and the Transferee Company.
5. The Petitioner Companies have approved the said Scheme 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 Company Summons for Directions and that the Company Scheme Petitions 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 his report dated 22nd August 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, 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 2.2 Definitions of the scheme "Appointed Date" means the 1st day of April 2017 or such other date as may be fixed or approved by the National Company Law Tribunal. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April 2017.*
- c) *Regarding clause 15 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve Account and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against any other reserves of the Transferee Company.*
- d) *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 31st May 2017 has served a copy company scheme application No. 562, 565 to 570 of 2017 along with relevant orders etc., to the IT Department. Further, the Regional Director has also issued reminder letter dated 10th August 2017 to IT Department.*
- e) *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.*

- f) *In view of observation of ROC Pune mentioned in Para No. 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 the Accounting Treatment, if any, propose in the scheme is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013. Hon'ble Tribunal may pass appropriate orders/ orders as deem fit*
- g) *M/s Abja Constructions Limited and M/s App Engineering Private Limited have not submitted Annual Return and Balance Sheet for the financial year 2015-16. Hon'ble Tribunal may kindly direct the Companies to file the relevant returns with Registrar of Companies, and/ or pass appropriate orders as deem fit.*
9. In so far as observations made in paragraph IV (a) of the Report of Regional Director are concerned, the Transferee Company through its Counsel undertakes that 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 as may be applicable.
10. In so far as observations made in paragraph IV (b) of the Report of Regional Director are concerned, the Petitioner Companies through its Counsel confirms that the Appointed Date of the Scheme is 1st April 2017.
11. In so far as observations made in paragraph IV (c) of the Report of Regional Director are concerned, the Transferee Company through its Counsel clarifies that the Accounting Treatment as envisaged in the Scheme of Amalgamation is in consonance with the 'Pooling of interest method' specified in AS-14. In view of the above, the Transferee Company through its Counsel undertakes that they will pass all accounting entries to be in compliance with 'Pooling of interest method' as specified in AS-14.
12. In so far as observations made in paragraphs IV (d) & (e) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel

undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.

13. In so far as observations made in paragraph IV (f) of the Report of Regional Director is concerned, Transferee Company through its Counsel clarifies that the Transferee Company has obtained certificate from its auditor to the effect that the Accounting Treatment proposed in the scheme is in conformity with the Accounting Standard prescribed u/s 133 of the Companies Act, 2013. Certificate is attached with the Company Scheme Petition.
14. In so far as observations made in paragraph IV (g) of the Report of Regional Director are concerned, the Petitioner Company 1 and Petitioner Company 6 through its Counsel confirm that they have filed the relevant returns with Registrar of Companies for the financial year 2015-16.
15. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 14 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
16. The Official Liquidator has filed his report on 28th July 2017 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.
17. 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 forward to oppose the Scheme.
18. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 695, 697, 698, 696, 701, 699 & 700 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.

19. The Petitioner Companies to lodge a copy of this order and the amended 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.
20. Petitioner Companies are directed to file a copy of this order along with a copy of the amended 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.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition No 695, 697, 698, 696, 701 & 699 of 2017 to pay sum of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of Order.
22. All authorities concerned to act on a copy of this order along with amended 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)