

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 826 OF 2017

AND

CSP NO. 827 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation
between PRTL ENTERPRISES LIMITED, the
Transferor Company and PLANET TRADERS
LIMITED, the Transferee Company.

PRTL ENTERPRISES LIMITED

....Petitioner/ the Transferor Company
AND

PLANET TRADERS LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 28th 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 : B.S.V. Prakash Kumar Hon'ble Member (J)

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 between PRTL ENTERPRISES LIMITED, the Transferor Company and PLANET TRADERS LIMITED, the Transferee Company.

2. The sanction of the Tribunal is sought under Sections 230 to 232 and other applicable provisions of the Companies Act, 2013 to a Scheme of Amalgamation between PRTL ENTERPRISES LIMITED, the Transferor Company and PLANET TRADERS 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. 721 of 2017 and 722 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 directions 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, 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 Transferor Company presently is engaged in the business of trading in fabrics which include cloth, silk, linen, satin, satinatte, plush, velvet, velveteen, yarn, thread, etc. and the Transferee Company at present is engaged in the business of trading in all kinds of fabrics. As per the opinion of the management the Petitioner companies are under the same management. In order to consolidate and effectively manage the Companies in a single

entity, which will provide several benefits including synergy, economies of scale, attain efficiencies and cost competitiveness, it is intended that the Transferor Company be amalgamated with Transferee Company. The amalgamation of Transferor Company with Transferee Company would inter alia have the following benefits which is economies of scale, greater integration, greater flexibility, most effective network and greater market reach for the amalgamated entity, and will improve the competitive position of the combined entity and that Operational synergies to the amalgamated entity which can be put to the best advantage of the stakeholders. The amalgamation will be value accretive through realization of business synergies and that Cost savings, which are expected to flow from more focused operational efforts, standardization and simplification of business processes, productivity improvements, improved procurement and the elimination of duplication of administrative expenses and that Carrying on and conducting the business more efficiently and advantageously, more productive and optimum utilisation of various resources, strengthen its financial position and ability to raise resources for conducting business, stronger capital base for future expansion/growth and that Optimize the costs of associated complexities in operating two separate companies and that The amalgamation contemplated in this Scheme will help avoid duplication of administrative functions, resources, systems, skills and processes, reduce overall cost, improve synergies, enable the achievement of economies of scale, reduce administrative costs entailed by the conduct of businesses through separate entities, eliminate multiple record-keeping, provide enhanced flexibility in funding of expansion plans, promote management efficiency and optimize the resources of the amalgamated entity and that Improved organizational capability and leadership, arising from the pooling of human capital that has the diverse skills, talent and vast experience to compete successfully in an increasingly regulated and competitive industry and that Consolidation of entities will result in significant reduction in the multiplicity of legal and regulatory compliances required at present to be carried out by the Transferor Company and the Transferee Company.

7. The Regional Director has filed a Report on 23rd 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) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It is observed that the company vide letter dated 06.07.2017 has served a copy company scheme application No. 722 of 2017 along with relevant orders etc. Further this Directorate has also issued a reminder on 15.09.2017 to IT Department.*
- (b) 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 Petitioner Companies after giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.*
- (c) 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*
- (d) Petitioner in the clause 5.5.a of the scheme inter alia has mentioned that delivery and transfer of all the movable assets of the Transferor Company and the assets which are otherwise capable of transfer by physical delivery or endorsement and delivery shall be made on a date which shall be mutually agreed upon between the Transferor Company and the Transferee Company on or after the Effective Date. The Deponent prays that the above delivery and transfer be made on a date which shall be mutually agreed upon between the Transferor Company and the Transferee Company on or before the Effective Date.*

- (e) *Petitioner in the clause 12.2 of the scheme inter alia has mentioned that the Transferee Company shall record all the assets and liabilities of the Transferor Company vested in it pursuant to the Scheme as on the Appointed Date at their respective fair values (as may be decided by the Board of Directors of the Transferee company).*

In this regard it is submitted that the recording of assets and liabilities be done as per the Accounting Standards and not as per Board Decision.

- (f) *Petitioner in the clause 12.5 of the scheme inter alia has mentioned that in case of any difference in accounting policy between the Transferor Company and the Transferee Company, the accounting policies as may be prescribed by the Board of Directors of the Transferee Company will prevail and the impact of the same till the Appointed date will be quantified and adjusted in the balance lying on the Profit & Loss (Surplus) Account or any other reserve as may be determined by the Board of Directors of the Transferee Company.*

In this regard it is submitted that any other reserves should be read as Free Reserves. It is further submitted that the difference shall be quantified and adjusted as per the Accounting Standards and not as per the Board Decision.

- (g) *As per Clause 1.2 of the scheme, "Appointed Date" means April 1, 2017 or such other date directed by or stipulated by the National Company Law Tribunal (NCLT) as may be applicable. In this regard, it is submitted in terms of provisions of section 232(b) of the Companies Act, 2013 it should be 1st April, 2017.*

However, this aspect may be decided by the Hon'ble Tribunal taking into account its inherent powers.

8. So far as the observation in paragraph IV (a) and (b) of the Report of the Regional Director is 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.

9. So far as the observation in paragraph IV (c) 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, if applicable) for 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, if applicable).
10. So far as the observation in paragraph IV (d) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that delivery and transfer of movable assets of the Transferor Company and the assets which are otherwise capable of transfer by physical delivery or endorsement and delivery shall be possible only after merger become effective. Accordingly, said delivery and transfer be made on a date which shall be mutually agreed upon between the Transferor Company and the Transferee Company on or after the Effective Date. The said explanation is found to be satisfactory.
11. So far as the observation in paragraph IV (e) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company undertakes to comply with the Accounting Standard for recording of assets and liabilities.
12. So far as the observation in paragraph IV (f) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner

Companies submits that Transferee Company undertakes to comply with the relevant Accounting Standard for accounting any difference in accounting policy between the Transferor Company and the Transferee Company. Further, it is submitted that the word any other reserves in the clause 12.5 of the Scheme shall be read as free reserves.

13. So far as the observation in paragraph IV (g) of the Report of the Regional Director is concerned, this Tribunal directs the Petitioner Companies to comply with the said observation. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies shall abide by this direction. The Tribunal directs that the "Appointed Date" shall be 1st April 2017, as stipulated in the Scheme.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted by the Tribunal.
15. The Official Liquidator has filed his report on 26th September, 2017 in the Company Scheme Petition No. 826 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.
16. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law including but not limited to Companies Act, 2013; Income Tax Act; Accounting Standards and various other applicable statutory acts and is not contrary to public policy.

17. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 826 of 2017 is made absolute in terms of prayers clause (a) to (d) thereof and 827 of 2017 is made absolute in terms of prayer clauses (a) to (c) thereof.
18. 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 2013.
19. 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.
20. 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. 826 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.
21. All concerned regulatory authorities to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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