

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP No. 722 of 2017

TO

CSP No. 726 of 2017

In The Matter Of Companies Act, 2013;

And

In the matter of Section 230 to 232 of the Companies Act, 2013;

And

In the matter of Scheme of Amalgamation of Dharmi Sales Private Limited, the First Transferor Company and Kevin Impex Private Limited, the Second Transferor Company and Glitorium Infratrade (India) Private Limited, the Third Transferor Company and Dominion Infra Resources Private Limited, the Fourth Transferor Company with Mann Infra Resources Private Limited, the Transferee Company

Dharmi Sales Private Limited

....Petitioner/ the First Transferor Company

AND

Kevin Impex Private Limited

....Petitioner/ the Second Transferor Company

AND

Glitorium Infratrade (India) Private Limited

....Petitioner/ the Third Transferor Company

AND

Dominion Infra Resources Private Limited

....Petitioner/ the Fourth Transferor Company

AND

Mann Infra Resources Private Limited

....Petitioner/ the Transferee Company

Judgement/Order delivered on 28th September, 2017

Coram:

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

Hon'ble V. Nallasenapathy, Member (T)

For the Petitioner(s): Shri. Ashish O. Lalpuria with Kamal Lahoty and Karishma Bhandari i/b Ashish O. Lalpuria & Co., Practising Company Secretaries for the Applicant.

Mrs. P. Sheela, Joint Director in the Office of Regional Director.

Per: V. Nallasenapathy, Member (T)

ORDER

1. Heard learned Practising Company Secretary 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 DHARMI SALES PRIVATE LIMITED, the First Transferor Company and KEVIN IMPEX PRIVATE LIMITED, the Second Transferor Company and GLITORIUM INFRATRADE (INDIA) PRIVATE LIMITED, the Third Transferor Company and DOMINION INFRA RESOURCES PRIVATE LIMITED, the Fourth Transferor Company with MANN INFRA RESOURCES PRIVATE LIMITED, the Transferee Company.
2. The sanction of the Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Amalgamation of DHARMI SALES PRIVATE LIMITED, the First Transferor Company and KEVIN IMPEX PRIVATE LIMITED, the Second Transferor Company and GLITORIUM INFRATRADE (INDIA) PRIVATE LIMITED, the Third Transferor Company and DOMINION INFRA RESOURCES PRIVATE LIMITED, the Fourth Transferor Company with MANN INFRA RESOURCES 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 Practising Company Secretary appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all the directions passed in respective Company Scheme Application and the respective Company Scheme Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 658 to 662 of 2017 of the Hon'ble National Company Law Tribunal, Mumbai Bench.
5. The Learned Practising Company Secretary appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of this Tribunal, and they have filed necessary affidavits of compliance in the Tribunal. Moreover, Petitioner Companies undertake to comply with all the statutory requirements if any, as required under the Companies Act, 2013 and the Rules made thereunder whichever is applicable. The said undertakings given by the Petitioner Companies are accepted.
6. The Learned Practising Company Secretary for the Petitioners states that the First Transferor Company at present is in the business of trading in plywood and metals. The Second Transferor Company at present is in the business of trading in merchandise. The Third Transferor Company at present is in the business of trading of building materials. The Fourth Transferor Company at present is in the business of trading of building materials. The Transferee Company at present is in the business of trading of metals. In the opinion of the management, the combined operations shall offer better business opportunities owing to economies of scale, integrated operations and reduction in costs and the arrangement would enable optimum utilization of funds and resources and that the arrangement would also enable the Transferee Company to grow much faster with consolidated resources and that the arrangement will integrate all activities of management functions thereby achieving reduction in overhead

costs and it will also lead to administrative convenience and greater internal controls.

7. The Regional Director has filed his Representation dated 25th 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:

- 1. The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of 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 14.06.2017 and 15.06.2017 for comments. The office of the Directorate also has issued reminder dated 08.09.2017.*
- 3. Petitioner in clause 12 of the scheme has inter alia mentioned that Upon the Scheme become effective and with effect from appointed date, the accounting treatment shall be subject to subject to such other corrections and adjustments as may in the opinion of the Board of Directors of the Transferee Company be required and except to the extent required by law.*

In this regard, it is submitted that the Petitioner Companies in addition to compliance of AS-14 (IND AS-103) the transferee Company shall only 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-108) etc.

8. So far as the observation in paragraph IV (1) and (2) of the Report of the Regional Director is concerned, the Learned Practising Company Secretary 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 (3) of the Report of the Regional Director is concerned, the Learned Practising Company Secretary for the Petitioner Companies submits that the Petitioner Company/Transferee Company undertakes that it shall make compliance of AS-14 (IND AS-103) and also pass such accounting entries which are necessary in connection with the scheme to comply with other Accounting Standards such as AS-5 (IND AS-108) and to ensure that the financial statements of the Transferee Company do not impair the true and fair view of the financial statements of the Transferee Company post Amalgamation.
10. The Official Liquidator has filed his representation dated 1st September, 2017 in the Company Petition No. 722, 724, 725 and 726 of 2017 inter alia, submitted that the Para 17 of the respective report of Chartered Accountant be taken into consideration vis-a-vis the scheme as proposed and the representation of the Official Liquidator may be taken on record.
11. 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.
12. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 722 to 726 of 2017 filed by the Petitioner Companies is made absolute in terms of prayer clause 44 of the respective petitions.
13. 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.

14. 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 No. 722, 724, 725 and 726 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 the Order.
15. 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, if any.
16. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-

V. Nallasenapathy Member (T)

Sd/-

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