

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH AT MUMBAI

TRANSFER COMPANY SCHEME PETITION NO. 224/(MAH)/2017

CONNECTED WITH

HIGH COURT COMPANY SCHEME PETITION NO. 736 OF 2016

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO 534 OF 2016

ZAWAR SALES LIMITED ... Petitioner / Transferor Company-I

AND

TRANSFER COMPANY SCHEME PETITION NO. 225/(MAH)/2017

CONNECTED WITH

HIGH COURT COMPANY SCHEME PETITION NO. 737 OF 2016

CONNECTED WITH

HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 535 OF 2016

ZAWAR FOODS PRIVATE LIMITED ... Petitioner / Transferor

Company-II

In the matter of the Companies Act,
1956 (I of 1956)

And

In the matter of Sections 391 to 394 of
the Companies Act, 1956 read with
Sections 230 to 232 of the Companies
Act, 2013;

And

In the matter of the Scheme of
Amalgamation of

Zawar Sales Limited (“**Transferor
Company-I**”)

And

Zawar Sales Private Limited

(“**Transferor Company- II**”)

With

Jaibalaji Business Corporation Private

Limited (“**Transferee Company**”)

And their respective Shareholders and

Creditors.

Called for Hearing

Mr. Ajinkya Kurdukar, Advocate for the Petitioner Companies in the Petition.

Mr. Pola Raghunath, Deputy Registrar of Companies.

Mr. Ramesh Gholap, Assistant Director for Regional Director.

Coram : B.S.V Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date : 16TH March, 2017.

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Petitions nor has any party contravened averments made in the Petition.
2. The sanction of this Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 to the Scheme of Amalgamation of Zawar Sales Limited (the "Transferor Company-I") and Zawar Foods Private Limited, (the "Transferor Company-II") with Jaibalaji Business Corporation Limited (the "Transferee Company") and their respective shareholders.
3. Learned Counsel for the Petitioner Companies states that the Transferor Company-I is engaged in the business of selling, purchase, import, export, brokerage, distribution, stocking and supplying all kinds of construction materials. The Transferor Company-II is engaged in the business of manufacturing, storing, trading, procuring of food and food products and The Transferee Company is engaged in the business of generating, selling, purchasing, developing, dealing, trading export, import, manufacturing, acting as an agent, and distribution of conventional and non-conventional energy, manufacturing, distribution, of cement and cement product and dealing in all sorts of present and future ores, mining, minerals etc..

In view of commonality of business interest and commonality of shareholding in the Transferor Company-I/II and Transferee Company, and enabling the Transferor Company-I/II and the Transferee Company to consolidate their business operations and provide significant impetus to their growth, resulting in enhancing the scale of operations and reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources, resulting in improved shareholder value for the Transferor as well as Transferee Companies by way of improved financial structure and cash flows, increased asset base and stronger

consolidated revenue and profitability and in enhanced leveraging capability of the combined entity which in turn will allow the combined entity to undertake future expansion strategies and to tap bigger opportunities in the industry thereby consolidation of the managerial expertise of the companies involved, thereby giving additional strength to the operations and management of the Petitioner Company post-amalgamation and other reasons which are enumerated in the Petition.

5. The Petitioner Companies approved the said Scheme by passing the Board Resolution in their respective meetings and which are annexed to the respective Company Scheme Petition.
6. Learned Counsel for the Petitioners further states that the Petitioners have complied with all requirements as per the directions passed by the Hon'ble High Court of Judicature at Bombay by Order dated 1st July 2016 in Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the Order passed in the said Company Summons for Direction. The Learned Counsel for the Petitioners states that the Petitioner Companies has also complied with the directions of the Hon'ble High Court by Order dated 27th October 2016 admitting the Petition and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioners 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.
7. The learned Counsel for the Regional Director on instruction from Mr. A.K. Chaturvedi, Regional Director, in the office of Regional Director, Ministry of Corporate Affairs filed his Affidavit in the given matter on 02nd March 2017 and has recorded that:

IV. The observations of the Regional Director on the proposed Scheme to be considered are as under:-

' The Tax implication arising, if any, out of this scheme shall be subject to final decision of the Income Tax Authority and approval of the Scheme by the Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.'

' Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the Scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133 of the Companies Act, 2013 is not available.

In this regard Petitioner maybe asked to submit the Certificate.

Hon'ble NCLT maybe requested to decide on observation no.2 on merits.'

8. So far as the observation in the paragraph IV(1) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the tax implications, if any, arising out of the scheme is subject to final decision of the Income Tax Authorities and the decision of the Income Tax Authorities shall be binding on the Petitioner Companies .
9. So far as the observation in the paragraph IV(2) of the Affidavit of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies has placed on record a certificate dated 14th March, 2017 issued by M/S Shah & Taparia, being the Statutory Auditor of the Petitioners certifying and confirming the accounting treatment followed. The operative part of the Certificate is reproduced as follows:

“We confirm that the above accounting treatment contained in the Draft Scheme is in compliance with applicable provisions of the Act and the Rules issued thereunder, and the accounting treatment is in conformity with the applicable Accounting Standards to the extent notified and applicable.”

10. Mr. Ramesh Gholap, Assistant Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai is satisfied with the undertaking given by the Petitioner Companies. The said undertaking given by the Petitioner Companies is accepted by the Assistant Director.
11. The Official Liquidator has filed his report dated 6th March 2017 stating therein that the affairs of the Petitioner/Transferor Companies has been conducted in a proper manner and that the Petitioner/Transferor Companies may be ordered to be dissolved by this Court.
12. 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.
12. Since all the requisite statutory compliances have been fulfilled, all the Company Scheme Petitions are made absolute in terms of prayer clauses (a), (b) and (c) of the respective Petitions.
13. The Petitioner Companies to file a copy of this order and the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai, with the concerned Superintendent of Stamps for the purpose of adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of receipt of the Order.

14. Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of companies, electronically, along with E-form INC-28 in addition to the physical copy, within 30 (thirty) days from the date of issuance of the order by the Registry.
15. The Petitioners in Company Scheme Petition 736 & 737 of 2016 i.e. TCSP No. 224, 225 & 226 of 2017 to pay costs of Rs 25,000 each to the Regional Director, Western Region Mumbai and the Petitioner in Company Scheme Petition 736 & 737 of 2016 i.e. TCSP No. 224, 225 of 2017 filed by Transferor Company to pay cost of Rs. 25,000 to the Official Liquidator, High Court, Bombay. The costs will be paid within four weeks from the date of Order.
16. All concerned regulatory authorities to act on a copy of this Order along with Scheme and form of minutes annexed to the Petition duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-
B.S.V. Prakash Kumar

Member (Judicial)

Sd/-
V. Nallasenapathy
Member (Technical)