

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

TCSP 260/230-232/NCLT/MB/MAH/2017

TCSP 261/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Hamilton Consultants Private Limited

.....Petitioner in CSP 260/2017

(Transferor Company)

M/s. Ananya Realty Private Limited

.....Petitioner in CSP 261/2017

(Transferee Company)

Order delivered on : 07.09.2017

Coram :

Hon'ble M. K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. Hemant Sethi, Advocate i/b. Hemant Sethi & Co., Advocates for the Petitioners.

Per : Bhaskara Pantula Mohan, Member (J)

ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between M/s Hamilton Consultants Private Limited (Transferor Company), with M/s Ananya Realty Private Limited, (Transferee Company).
2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions and thereafter they have approached the Tribunal for sanction of the Scheme.
3. The Transferor Company is engaged in the business of financial consultancy and advisory services.
4. The Transferee Company is engaged in the business of real estate activities.
5. The rationale of the Scheme of Amalgamation is, it will lead to integration of the business operations and provide significant drive to the growth of the merged

A. Pantula Mohan :

company. The consolidation of the activities by way of a merger will result in economy of scale, synergies of operations, better, efficient and economical management and a stronger capital and financial base for future growth / expansion. Further, the proposed merger will result in reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources.

6. The Authorised, Issued, Paid-up and Subscribed Share Capital of the Transferor Company is ₹ 5,00,000/- comprising of 50,000 Equity Shares of ₹ 10/- each.
7. The Authorised Share Capital of the Transferee Company is ₹ 50,00,000/- comprising of 50,000 equity shares of ₹ 10/- each.
8. The issued, paid-up and subscribed share capital of the Transferee Company is ₹ 2,80,000/- comprising of 28,000 equity shares of ₹ 10/- each.
9. The averments made in the petitions and the submissions made by the Learned Representative for the Petitioners are:
 - a) The Petitioner Companies had complied with all requirements as per directions of the Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable.
 - b) The Regional Director has filed his report dated 30th July 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 6 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 Standard such as AS-5 (IND AS – 8) etc.,*

b) *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*

[Signature]

the company vide letter dated 6th December 2016 has served a copy company scheme petition No. 774 & 775 of 2016 along with the relevant orders etc. to IT Department. Further this

c) Directorate has also issued a reminder letter to Income Tax Department dated on 26.07.2017. However, as on date, there is no response from Income Tax Department.

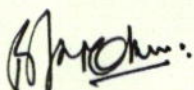
d) The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court may not deter the Income Tax Authority to scrutinize the tax return filed by the transferee company after giving effect to the scheme. The decision of the Income Tax Authority is binding on the petitioner company.

e) In view of the objection raised vide Point 29(a) by the ROC Mumbai, mentioned at para 11 above Honorable NCLT may pass appropriate orders/ orders as deem fit.

f) In view of the objection raised vide Point 29(b) by the ROC Mumbai, mentioned at para 11 as per F.No.5 dated 17.01.2009 the authorized capital of M/s. Ananya Realty Private Limited the Transferee Company has been raised from Rs.5,00,000/- to Rs.50,00,000/- Honorable NCLT may kindly direct the Company to amend the Scheme accordingly and pass appropriate orders/ orders as deem fit.

c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Counsel for the Petitioners stated that, the Transferee Company undertakes to compliance of AS -14 (IND AS – 103) and subsequently the Transferee Company will pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 (IND AS – 8) etc. as may be applicable.

d) Apropos observations made in paragraph IV (b), (c) and (d) of the Report of Regional Director is concerned, it is stated that, the Petitioner Companies undertakes to comply with all applicable provision of the Income Tax Act,

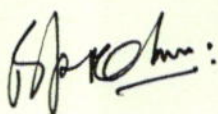


1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.

- e) Apropos observations made in paragraph IV (e) and (f) of the Report of Regional Director is concerned, the Learned Counsel for the Petitioners submitted that, there is typographical error in the Scheme. Hence, the amount of authorized equity shares capital in Clause 3.2 of the Scheme i.e. ₹ 5,00,000 be deleted and substituted by ₹ 50,00,000/-. It is further submitted that, the Tribunal may pass consequential order to amend the scheme to this effect.
- f) The learned Counsel for the Petitioners further submitted that the Appointed Date of the Scheme of Amalgamation was allowed to be changed from 1st April 2016 to 1st April 2017 pursuant to order dated 2nd May 2017 passed in the above Petition. It is further submitted that, the Tribunal may pass consequential order to amend the scheme to this effect.
- g) The Official Liquidator has filed his report dated 10th August, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company can be dissolved without winding up.
- h) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

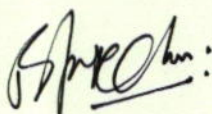
10. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

- a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company be transferred to the Transferee Company and accordingly the same shall pursuant to S. 232 of the Companies Act, 2013, be transferred to and become the liabilities and duties of the Transferee Company.
- b) The clarifications and undertakings given by the Learned Counsel for the Petitioners to the observations made in the Report of the Regional Director are considered by this Bench and those are hereby accepted. Subsequently,



this bench hereby directs petitioners to comply with the provisions/statements which the Petitioners undertakes herein.

- c) The leave is granted to amend the scheme, to the effect, mentioned (supra) under point 9 (e) and (f).
- d) It is further ordered that, in lieu of consideration for the said Scheme of Amalgamation, 1 (One) Non-Cumulative Non-Convertible Redeemable Preference Share of the face value of ₹ 10/- each of the Transferee Company shall be issued and allotted for every 1 (One) Equity Share of the face value of ₹ 10/- each held by such Member in the Transferor Company.
- e) Petitioner Companies are directed to file 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 the physical copy within 30 days from the date of issuance of the Order by the Registry, duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, of the National Company Law Tribunal, Mumbai Bench.
- f) The Petitioner Companies to lodge a copy of this Order and the Scheme duly Certified by the Deputy Director or the Assistant Registrar, as the case may be, 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.
- g) Each Petitioner Companies to pay cost of ₹ 25,000/- to the Regional Director, Western Region, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- h) Transferor Company i.e. Petitioner in CSP No. 260 of 2017 to pay cost of ₹ 25,000/- to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- i) All authorities concerned to act on a copy of this Order along with Scheme duly Certified by the Deputy Director or Assistant Registrar, as the case may be, National Company Law Tribunal, Mumbai Bench.



j) Any person interested is at liberty to apply to the Tribunal in these matters for any directions or modification that may be necessary.

k) The Scheme is sanctioned and the appointed date is fixed as 01.04.2017.

11. Ordered accordingly.

Sd/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

Sd/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 07th September, 2017