

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CSP No. 559/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Stellar Credit and E-Trading Private
Limited

.....1st Petitioner
(1st Transferor Company)

M/s. Gaji Mercantile Private Limited

.....2nd Petitioner
(2nd Transferor Company)

M/s. Gyanshankar Investment and Trading Co.
Private Limited

.....3rd Petitioner
(Transferee Company)

Order delivered on: 29.09.2017

Coram :

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

Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

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

For the Regional Director :

Mr. Ramesh Gholap – Asst. Director (WR).

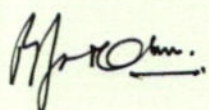
Per : Bhaskara Pantula Mohan, Member (J)

COMMON ORDER

1. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, Scheme of Amalgamation of M/s. Stellar Credit and E-Trading Private Limited (1st Transferor Company) and M/s. Gaji Mercantile Private Limited (2nd Transferor Company) with M/s. Gyanshankar Investment and Trading Co. Private Limited (Transferee Company).

Approved:

2. The Transferor Company and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
3. The 1st Transferor Company is engaged in the business of e-commerce, e-business including buying, selling, marketing, trading and otherwise dealing in various kinds of products and dealing in shares and securities.
4. The 2nd Transferor Company is presently not engaged in any business activities. But previously it was engaged in business of deal in Electrical Hardware Items, Dry Fruits, Foodstuffs, cloth of all kinds, Textile and Yarns of all kinds and many more.
5. The Transferee Company is engaged in the business of dealing in the movable and immovable assets, and trade and deal in goods of every description including shares and derivatives.
6. The amalgamation of the Transferor Companies with the Transferee Company would *inter alia* have the following benefits:
 - Simplify management structure, leading to better administration and a reduction in costs from more focused operational efforts, rationalization, standardization and simplification of business process, and the elimination of duplication, and rationalization of administrative expenses;
 - Simplify shareholding structure and reduce shareholding tiers; and
 - Direct and indirect tax efficiencies.
7. The Authorised Share Capital of the 1st Transferor Company is ₹ 10,00,000/- comprising of 96,000 Equity Shares of ₹ 10/- each and 4,000 Preference Shares of ₹ 10/- each.
8. The Issued, Subscribed and Paid-Up Share Capital of the 1st Transferor Company is ₹ 5,42,500/- comprising of 54,250 Equity Shares of ₹ 10/- each.
9. The Authorised Share Capital of the 2nd Transferor Company is ₹ 5,00,000/- comprising of 30,000 Equity Shares of ₹ 10/- each and 20,000 Preference Shares of ₹ 10/- each.
10. The Authorised Share Capital of the Transferee Company is 80,00,000/- comprising of 8,00,000 Equity Shares of ₹ 10/- each.



11. The Issued, Subscribed and Paid-Up Share Capital of the Transferee Company is ₹ 20,80,200/- comprising of 2,08,020 Equity Shares of ₹ 10/- each
12. The averments made in the petitions and the submissions made by the Learned Counsel 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 Companies 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 on 15th September, 2017 stating therein that, save and except as stated in paragraph IV (a) to (e) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

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 Definitions & Share Capital 1.5 of the Scheme "Appointed Date" for the purposes of this Scheme and for Income Tax Act, 1961, the "Appointed Date" means April 1, 2016 or such other date as may be approved by the Honorable 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, 2016.

c) 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 8th May 2017 has served a copy Company Scheme Application No. 245 of 2017 along with

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relevant orders etc., further the Regional Director has also issued a reminder 21/08/2017 to IT 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 observation of ROC Mumbai, mentioned at para 11:

i. 11 (i) &(ii) Hon'ble Tribunal may kindly direct the petitioners Companies to submit NOC from RBI and pass appropriate order(s) as deem fit.

ii. 11 (iii) Hon'ble Tribunal may pass appropriate order(s) as deem fit.

- c) Apropos observations made in paragraph IV (a) of the Report of Regional Director is concerned, it is submitted that, the Petitioners undertakes to comply and 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) Apropos observations made in paragraph IV (b) of the Report of Regional Director is concerned, it is submitted that, the Appointed date for the purposes of this Scheme and for Income Tax Act, 1961 and in terms of provisions of section 232(6) of the Companies Act, 2013 will be **1st April, 2016**.
- e) Apropos observations made in paragraph IV (c) and (d) of the Report of Regional Director is concerned, it is submitted that, the Petitioners 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.
- f) Apropos observations made in paragraph IV (e) (i) & (ii) of the Report of Regional Director is concerned, it is submitted that, the 1st Transferor Company

[Signature]

and Transferee Company does not have lending clause and does not wish to do NBFC activities and presently the 2nd Transferor Company is not engaged in any business activities. It is further submitted that, with regards to the 2nd Transferor Company, the Company has the words "shares and securities" in main Object Clause of Memorandum and Articles of Association of the company, so the Ultra vires of the business activities does not arise and are as per the Main object of the company as stated in MOA. 2nd Transferor Company does not have lending clause and does not wish to do NBFC activities therefore the NBFC rules are not applicable and NOC is not required from RBI.

g) It is further submitted that, the Company have adopted the Pooling of Interest Method and any excess or deficiency will be adjusted in reserves in the financial statements of the transferee company in compliance with AS-14.

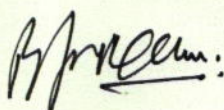
h) The Official Liquidator has filed his report on 17th July, 2017 inter alia, stating therein that, the affairs of the Transferor Companies have been conducted in a proper manner and the said Scheme is not prejudicial to the interest of Public. It is further stated that the Transferor Companies may be ordered to be dissolved without winding up.

i) Further the Learned Counsel for the Petitioners submitted that, neither the Petitioners nor the Tribunal has received any objection to the said Scheme of Amalgamation between the Transferor Company and Transferee Company.

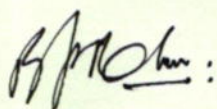
13. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy. And hereby this Bench, to the Petitioner Companies, **do Order that:**

a) All the liabilities including taxes and charges, if any, and duties of the Transferor Company, 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) Transferor Companies to be dissolved without winding up from the date of said Scheme becomes effective.
- d) As regards to the shareholders of the 1st Transferor Company, in lieu of Consideration of the Scheme, the Transferee Company shall issue and allot 269 Equity Shares of ₹ 10/- each credited as fully paid-up for every 100 Equity Shares of ₹ 10/- each, held by the such Member in the Company.
- e) As regards to the shareholders of the 2nd Transferor Company, in lieu of consideration of the Scheme, the Transferee Company shall issue and allot 1987 Equity Shares ₹ 10/- each credited as fully paid-up for every 100 Equity Shares of ₹ 10/- each, held by such Member in the Company.
- f) 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.
- g) 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.
- h) Each Petitioner Companies to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) 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.
- i) 1st Transferor Company and 2nd Transferor Company, each, to pay cost of ₹ 25,000/- (₹ Twenty Five Thousand only) to the Official Liquidator, Mumbai to be paid within four weeks from the date of receipt of the duly Certified Copy of this Order.
- j) 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.



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

l) The Scheme is hereby sanctioned and the appointed date of the Scheme is fixed as 1st April, 2016.

14. Ordered accordingly. Consigned to Records.

Sd/-

**BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT
MEMBER (JUDICIAL)**

Dated : 29th September, 2017

