

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

CSP 678/230-232/NCLT/MB/MAH/2017

CSP 679/230-232/NCLT/MB/MAH/2017

Under section 230-232 of the Companies Act, 2013

In the matter of

M/s. Aristo Sales Agency Private Limited

.....Petitioner in CSP 679/2017

(Transferor Company)

M/s. Alive Ceramics Private Limited

.....Petitioner in CSP 678/2017

(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 :**

Mr. Rajesh Shah a/w. Mr. Ahmed Chunawala i/b. Rajesh Shah & Co., Advocates for the Petitioners

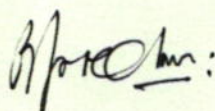
**For the Regional Director :**

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

*Per : Bhaskara Pantula Mohan, Member (J)*

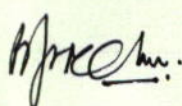
**ORDER**

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. Aristo Sales Agency Private Limited (Transferor Company) with M/s. Alive Ceramics 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. Both, the transferor company and the transferee company, are in the business of Manufacturing, marketing, supplying, importing all kinds of Building materials and cement.
4. As both the Companies are under same Management, hence, this Scheme of Amalgamation would be advantageous to combine the activities and operations in a single Company and further the, amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company. The amalgamated Company will also have the benefit of the combined assets and cash flows of the two companies and the combined resources of the amalgamated company will be conducive to enhance its capability to face competition in the market place more effectively and it will be conducive to better and more efficient and economical control and conduct of the Companies and with the enhanced capabilities and resources at its disposal, the amalgamated Company will have greater flexibility to compete more effectively and a larger and growing Company will mean enhanced financial and growth prospects for the people and organizations connected with the Company.
5. The Authorised Share Capital of the Transferor Company is ₹ 20,00,000 comprising of 20,000 equity shares of ₹ 100/- each and the Issued, Subscribed and Paid-up capital is ₹ 15,13,000/- comprising of 15,130 equity shares of ₹ 100/- each.
6. The Authorised Share Capital of the Transferee Company is ₹ 35,00,000/- comprising of 35,000 equity shares of ₹ 100/- each and the Issued, Subscribed and Paid-up capital is ₹ 33,00,000/- comprising of 33,000 equity shares of ₹ 100/- each.
7. 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 a Report on 1<sup>st</sup> 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:-

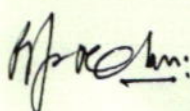
*"IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon'ble NCLT are as under:*

*(a) 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.*

*(b) It is submitted that the Petitioner Company have submitted the proof of serving notice upon the Income Tax Authorities dated 28.04.2017 for comments. The office of the Directorate has also issued a reminder 08.08.2017.*

*(c) In addition to compliance of AS-14 corresponding (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.*

- c) Apropos the observation in paragraph IV (a) and (b) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners 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.
- d) Apropos the observation in paragraph IV (c) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioners submits that, the Transferee Company undertakes that, in addition to compliance of AS-14 corresponding (IND AS-103) 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 etc.
- e) The Official Liquidator has filed his report dated 28<sup>th</sup> September, 2017 and stating therein that, the affairs of the Transferor Company have been conducted in a proper manner and accordingly the Transferor Company may be dissolved without winding up. Further it is submitted that, the Scheme is not prejudicial to the interest of public or shareholders.

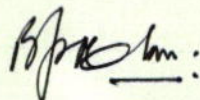




f) No objector has approached, neither to the Petitioners nor before Tribunal, to oppose this Scheme of Amalgamation.

8. 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, pursuant to S. 232 of the Companies Act, 2013, shall 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) In lieu of consideration of the Scheme, the Transferee Company shall issue and allot, 3 fully paid-up Equity Shares of ₹ 100/- each, for every 1 Equity Share of ₹ 100/- each, of the Transferor Company.
- d) Further, as the present Authorised Share Capital of the Transferee Company is not meeting up with the requirements after the Amalgamation, hence, the Transferee Company shall, on or before the allotment of shares in the Scheme of Amalgamation, increase its Authorised Share Capital by creation of such number of Equity Shares of ₹ 100/- each, as may be necessary to fulfil its obligations under the Scheme. And the Transferee Company shall comply with the applicable provisions of the Act and Rules therein, for raising of its Authorised Share Capital.
- 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. 679 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 of the Scheme is fixed as, 1<sup>st</sup> April, 2016.

9. Ordered accordingly.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

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

**Dated : 29.09.2017**