

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO 669 OF 2017
AND
CSP NO 670 OF 2017

In The Matter Of The Companies Act, 2013;

And

In the Matter Of Sections 230 to 232 of the Companies Act,
2013;

And

In the matter of Scheme of Amalgamation of Aureos India
Advisers Private Limited ("Transferor Company") with Abraaj
Capital Advisors Private Limited ("Transferee Company") and
their respective Shareholders and Creditors

Aureos India Advisers Private Limited Petitioner Company/Transferor Company

AND

Abraaj Capital Advisors Private Limited Petitioner Company/ Transferee Company

Judgment/Order delivered on 21st September, 2017

Coram:

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

Hon'ble **V. Nallasenapathy** Hon'ble, Member (T)

For the Petitioner(s): Mr. Hemant Sethi i/b Hemant Sethi & Co
Mr. Ramesh Gholap, Assistant Director in the office of Regional
Director

Per: **B.S.V. Prakash Kumar, Member (J)**

Order

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition or to the amendments made to the Scheme of Amalgamation of Aureos India Advisers Private Limited ("Transferor Company") with Abraaj Capital Advisors Private Limited ("Transferee Company") and their respective Shareholders and creditors.

2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Aureos India Advisers Private Limited ("Transferor Company") with Abraaj Capital Advisers Private Limited ("Transferee Company") and their respective Shareholders and creditors.
3. The learned Counsel for the Petitioners submit that Transferee Company and Transferor Company both are engaged in providing financial advisory services.
4. The amalgamation of the Transferor Company with the Transferee Company would *inter alia* have the following benefits:
 - a. consolidation of entities;
 - b. achieving operational and managerial efficiency;
 - c. management focus and enhanced flexibility;
 - d. simplification of group structure; and
 - e. to bring synergy in operations and optimum utilisation of common resources.
5. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in Company Scheme Applications and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Scheme Applications.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Tribunal and they have filed necessary Affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the rules made there under. The said undertaking is accepted.
8. The Regional Director has filed his Report dated 15th September, 2017, stating therein that save and except as stated in paragraph IV (1) to (4), it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

1. *The tax implications if any arising out of the Scheme is subject to the final decision of Income tax Authorities. The approval of the 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 08.05.2017 for comments. The office of the Directorate also has issued reminder dated 04.09.2017.*
3. *It is submitted that as per reply of the company, Transferee Company is holding 99.99% shares in Transferor Company and only one share is to be issued remaining shareholder that is Abraaj Mauritius Limited.*
It this regard, it is submitted that the petitioner companies have to undertake to serve notice to RBI under section 230(5) of the Companies Act, 2013.
4. *Petitioner in clause 10 of the scheme has inter alia also mentioned that upon the scheme coming into effect of this Scheme and with effect from Appointed Date, the transferee company will credit the difference between the net assets and recorded in the books of transferee as per the High Court Order to the capital reserve and incase of short fall to the goodwill account. The amount of inter-company balance or investment shall stand cancelled. In case of difference in accounting policy the same will be quantified and adjusted in reserves.*
9. In so far as observations made in paragraph IV (1) of the Report of Regional Director is concerned, the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
10. In so far as observations made in paragraph IV (2) of the Report of Regional Director is concerned, the Petitioner Companies have complied with the requirements of sending notices to the Income tax authorities.
11. In so far as observations made in paragraph IV (3) of the Report of Regional Director is concerned, the Petitioner Companies state that it is not required to serve any notice to RBI under section 230(5) as the company is not regulated by RBI. Further, the Petitioner Company undertakes to file requisite forms and comply with relevant regulations for the purpose of issue of shares to the non-resident shareholder.
12. In so far as observations made in paragraph IV (4) of the Report of Regional Director is concerned, the Petitioner Companies shall comply with the accounting treatment as provided in the Scheme.
13. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

14. The Registrar of Companies, Maharashtra has filed his Report dated 3rd August, 2017 wherein the RoC has mentioned that there are no complaints, prosecution and scrutiny and matter may be decided on merits.
15. The Official Liquidator has filed his report dated 4th August, 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and the Transferor Company may be ordered to be dissolved without winding up.
16. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 669 of 2017 and Company Scheme Petition No. 670 of 2017 filed by the Petitioner Companies are accordingly made absolute.
18. Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by the Deputy Director, 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.
19. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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.
20. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition No. 669 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.
21. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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