

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFER COMPANY SCHEME PETITION NO. 258 OF 2017

IEP ADVISORS PRIVATE LIMITED

..... Petitioner / Transferor Company

And

TRANSFER COMPANY SCHEME PETITION NO. 259 OF 2017

STARGAZE CONSULTING SERVICES PRIVATE LIMITED

..... Petitioner / Transferee Company

In the matter of the Companies Act, 1956 (1 of 1956) (or any re-enactment thereof upon effectiveness of companies Act, 2013);

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 (corresponding to Section 230 to 232 read with Section 66 of the Companies Act, 2013);

AND

In the matter of Scheme of Amalgamation between IEP Advisors Private Limited with Stargaze Consulting Services Private Limited and their Respective Shareholders

Called for Hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Petitioners in all the Petitions.

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

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

V. Nallasenapathy, Member (T)

DATE: 7th June 2017

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioners. No objector has come before the court to oppose the Petition and nor any party has controverted any

averments made in the Petition.

2. The sanction of this Tribunal is sought under Sections 391 to 394 read with Section 100 to 103 of the Companies Act, 1956 (corresponding to Section 230 to 232 read with Section 66 of the Companies Act, 2013), to the Scheme of Amalgamation between IEP Advisors Private Limited ('the Transferor Company') and Stargaze Consulting Services Private Limited ('the Transferee Company') and their respective shareholders.
3. The Counsel for the Petitioners submits that the Transferor Company is engaged in the business of providing management consultancy and the Transferee Company is engaged in the business of providing data management services.
4. The rationale behind the scheme is that this amalgamation will lead to creation of synergy and increase the operational as well as organizational efficiency of business. The management believes that the restructuring would benefit the companies and its stakeholders on account of operational rationalization, organizational efficiency and optimal utilization of various resources, simplification of the group structure, consolidation of businesses, maximize synergies, reduction of administrative, operative and marketing costs and greater administrative efficiency.
5. The Counsel for the Petitioners state that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing necessary board resolution which are annexed to the Company Scheme Petition.
6. The Counsel for the Petitioners further state that the Petitioner Companies

have complied with all the directions passed in Company Summons for Directions and that the Company Scheme Petition have been filed in consonance with the orders passed in Company Summons for Directions passed by the Hon'ble Bombay High Court.

7. The Counsel for the Petitioners further state that the Petitioners have complied with all requirements as per directions of the Hon'ble Bombay High Court and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the Rules made there under whichever applicable. The said undertaking is accepted.
8. The Official Liquidator has filed his report on 6th June, 2017 stating in the Transfer Company Scheme Petition No. 258 of 2017 stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his report dated 13th April, 2017 stating therein that, save and except as stated below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is 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 Standards 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 the company vide letter dated 5th December, 2016 & 13th December, 2016 has served a copy of company*

scheme petition No. 772 to 773/2016 along with relevant orders etc., further this Directorate has also issued a reminder on 06.04.2017, to IT Department.

- c. 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.*
- d. As per **Definitions 1.2 of the scheme. "The Appointed Date"** means **1st April, 2016** or such other date as the Hon'ble Court may direct. In this regards, it is submitted in terms of provisions of Section 232(6) of the Companies Act 2013 it should be **1st April, 2016**.*
- e. In view of the objection raised by the ROC Mumbai, mentioned in Para 11 above Hon'ble NCLT may pass appropriate order / orders as deem fit.*

The Registrar of Companies Mumbai has filed his report stating that No complaint, No prosecution, No Technical Scrutiny. However the ROC has mentioned at point 29 that:

- a. Company has proposed for reduction in capital also u/s/ 100 to 103 of the Act.*
- b. As per Rule 6(3)(1)(c) of the Companies (Compromises, Arrangement, Amalgamation) Rules, 2015 effective from 15.12.2016 the company is required to attach a certificate from, Auditor to the effect that the accounting treatment, if any, proposed in the scheme is in conformity with accounting standard prescribed u/s 133 of the Companies Act 2013. This may submitted by the company before proceeding in the case may startup.*

Further he has mentioned that the matter may be decided on merits.

10. As far as the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Petitioner Companies undertakes that in addition to compliance with Accounting Standard 14 - "Accounting for Amalgamations", the Transferee Company shall pass such accounting entries as may be necessary in connection with the scheme of Amalgamation to comply with any other applicable accounting standards including Accounting Standard 5. The Petitioners through their Counsel clarify that the Indian Accounting Standard ("IND AS") is not applicable to both the Companies since the Companies have net worth below the prescribed limit i.e. INR 500 Crores as contemplated under roadmap for convergence to IND AS.
11. In so far as observations made in paragraph IV (b) and (c) of the Report of Regional Director, the Petitioner Companies submits that the Petitioner Companies undertake to comply with all applicable provisions of the Income-tax Act 1961 and all tax issue arising out of the Scheme will be met and answered in accordance of law.
12. In so far as observations made in paragraph IV (d) of the Report of Regional Director, the Petitioner Companies clarify that the Appointed Date of the scheme shall be construed as 1st April 2016.
13. In so far as observation made in paragraph IV (e) of the Report of Regional Director in connection with point 29 of the Report of Registrar of Companies, the Auditors certificate stating that the accounting treatment proposed in the scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 has been filed with the office of Regional Director. The Auditor in his certificate has confirmed

that the accounting treatment contained in clause 7 of the scheme is in compliance with all the applicable Accounting Standards notified under section 133 of the Companies Act, 2013, read with the rule 7 of Companies (Accounts) Rule, 2014 and other Generally Accepted Accounting Policies.

14. The observation made by the Regional Director have been explained by this Petitioner Company in paragraph 10 to 13 above. The clarifications and undertakings given by the Petitioner Company are hereby accepted.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No 772 of 2016 filed by the Transferor Company are made absolute in terms of prayer clause (a) of the Petition and Company Scheme Petition No 773 of 2016 filed by the Transferee Company are made absolute in terms of prayer clause (a) and (b) of the Petition.
17. The Petitioner Companies to file a copy of this order and the Scheme duly certified 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.
18. 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.

19. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai in the Transfer Company Scheme Petition No 258 of 2017 to Transfer Company Scheme Petition No 259 of 2016 and costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No 258 of 2017. Costs to be paid within four weeks from the date of the order.
20. All authorities concerned to act on a certified copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench and the Form of Minutes as annexed to the Petition of the Transferee Company vide Exhibit – “J”.
21. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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