

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
BENCH AT MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 254 OF 2017

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 424 OF 2016

(HIGH COURT TRANSFERRED APPLICATION)

BM RETAILERS PRIVATE LIMITED .....Petitioner/Transferor Company No.1

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 255 OF 2017

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 425 OF 2016

(HIGH COURT TRANSFERRED APPLICATION)

MIDAS TRADERS PRIVATE LIMITED. ....Petitioner/Transferor Company No.2

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 256 OF 2017

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 426 OF 2016

(HIGH COURT TRANSFERRED APPLICATION)

SPIRAL TRAVELS PRIVATE LIMITED. ....Petitioner/Transferor Company No.3

WITH

TRANSFERRED COMPANY SCHEME PETITION NO. 257 OF 2017

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO.427 OF 2016

(HIGH COURT TRANSFERRED APPLICATION)

SHARVAH MULTITRADE COMPANY PRIVATE LIMITED.....Petitioner/Transferee Company

In the matter of the Companies Act, 2013 (18 of 2013)

AND

In the matter of the Companies Act I of 1956 and other  
relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the Companies Act,  
1956 AND Section 230 to 232 of the Companies act,2013;

AND

In the matter of Scheme of Amalgamation of  
BM RETAILERS PRIVATE LIMITED,  
MIDAS TRADERS PRIVATE LIMITED,  
SPIRAL TRAVELS PRIVATE LIMITED,

.....Petitioner/The Transferor Companies

With

SHARVAH MULTITRADE COMPANY PRIVATE  
LIMITED

..... Petitioner/The Transferee Company

**CALLED FOR HEARING**

Ms. Sara Sancheti i/b M/s. SANCHETI & SANCHETI., Advocates for the Petitioner Company.

Ms. Sheela, Joint Director for Regional Director,

Mr. R. Pola, Deputy Registrar of Companies,

Mr. Vinod Sharma, Official Liquidator.

Coram: Shri B.S.V. Prakash Kumar, Member (J) and Shri V. Nallasenapathy, Member (T)

Date : 23<sup>rd</sup> March, 2017.

**MINUTES OF ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Amalgamation of (1) BM Retailers Private Limited, (2) Midas Traders Private Limited, (3) Spiral Travels Private Limited, with Sharvah Multitrade Company Private Limited, the transferee Company.
2. The sanction of this Hon'ble Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of BM RETAILERS PRIVATE LIMITED, the Transferor Company No. 1 and MIDAS TRADERS PRIVATE LIMITED, the Transferor Company No. 2 and SPIRAL TRAVELS PRIVATE LIMITED, the Transferor Company No.3 with SHARVAH MULTITRADE COMPANY PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.

4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the orders passed in their Company Summons for Direction Nos. 424 of 2016, 425 of 2016, 426 of 2016 and 427 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court, and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Regional Director has filed his Report dated 6<sup>th</sup> March 2017, stating therein, save and except as stated in paragraph IV of the said Report, 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 directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-*

1. *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.*
2. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*  
*In this regard Petitioner may be asked to submit the certificate.*
3. *It is inter alia mentioned in Clause 11.3 that, the Transferee Company if required undertake to increase the Authorized Share Capital as may be necessary to satisfy its obligations under the Scheme.*  
*In this regard it is stated that the authorized share capital of the transferee company is not sufficient to issue and allot to the shareholders of the*

*Transferor companies as per the scheme. It is, therefore, requested that the company may be asked to file the concerned form with the Registrar of companies for increasing the capital as per the provisions of the Companies Act, 2013.*

4. *It is inter alia mentioned in Clause 11.2 that, no fractional coupons shall be issued by the Transferee Company in respect of the fractional entitlements, instead all such fractional entitlements will be consolidated and thereupon issue and allot equity shares to a Director or an Officer of the Transferee Company on the express understanding that such Director or Officer shall sell the same in the market at the best available price and pay to the transferee Company the net sale proceeds and then the Transferee Company shall distribute such net sale proceeds to the members of the Transferor Companies in proportion to the fractional entitlements.*

*In this regard petitioner may be asked to produce the compliance of the provisions of the Companies Act, 2013.*

*Hon'ble NCLT requested to decide on observation on point 2 to 4 on merits.*

5. *It may be submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities for comments. This office issued notice to Income Tax Authorities seeking comments vide letter dated 06.03.2017.*

6. *It is also submitted that the Petitioner Companies have not mentioned the Rationale for the Amalgamation in the Scheme. However the same has been mentioned in the Petition.*

7. So far as the observation in paragraph IV(1) of the Report of the Regional Director is concerned, the learned counsel for the petitioner companies submit that the tax implication, if any, arising out of scheme is subject to final decision of the Income Tax authorities and the decision of the Income Tax Authority shall be binding on the petitioners companies.

8. So far as the observation in paragraph IV(2) of the Report of the Regional Director, Western Region, Mumbai, is concerned, the learned counsel for the petitioners companies submits that the Transferee Company undertakes that in addition to compliance of AS-14 accounting treatment, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards in Compliance of Section 133 of the Companies Act, 2013. A Certificate of the Auditors have been tendered by the Petitioner.

9. So far as the observation in paragraph IV(3) of the Report of the Regional Director, Western Region, Mumbai, is concerned, the learned counsel for the petitioners state that the petitioner undertakes to increase the authorised capital of the transferee company, if required post amalgamation and post consolidation of the authorised capital, for issue of shares to the Shareholders of Transferor petitioner companies.
10. So far as the observation in paragraph IV(4) of the Report of the Regional Director, Western Region, Mumbai, is concerned, the learned counsel for the petitioners companies submits that Clause 11.2 of the Scheme provides for "No fractional Coupons to be issued". The Learned Advocate further states that the petitioner company undertakes to comply with all the statutory requirements relevant to "fractional coupons issue", if any as required under the Companies Act, 1956/2013.
11. So far as the observation in paragraph IV (5) of the Report of the Regional Director, Western Region, Mumbai, is concerned, the Learned advocate for the Petitioner submits that the Petitioner have served the copies of the Petition alongwith all annexures on respective Income Tax Authorities and necessary Affidavit of compliance have been filed.
12. So far as the observation in paragraph IV(6) of the Report of the Regional Director, Western Region, Mumbai is concerned, the Learned advocate for the Petitioner states that the management is of the opinion that merger will lead to synergies of operations and more particularly the following benefit that all the companies are under same management and it would be advantageous to combine the activities and operation in a single company and that 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 and that the amalgamated company will have the benefit of the combined assets and cash flows of all the companies and that 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.
13. The observations made by the Regional Director have been explained by the Petitioner Companies. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

14. The Official Liquidator has filed his report dated 17<sup>th</sup> March 2017 in Company Scheme Petition Nos. 254 of 2017, 255 of 2017, and 256 of 2017 inter alia, stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved, by this Tribunal.
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 Nos. 254 of 2017, 255 of 2017, and 256 of 2017 are made absolute in terms of prayer clauses (a) to (d). and 257 of 2017 is made absolute in terms of prayer clauses (a) to (e).
17. Petitioners are directed to lodge 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 physical copy, as per the relevant provision of the Companies Act 1956 / 2013, whichever is applicable.
18. The petitioner companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, 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. The Transferee Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Regional, Mumbai and to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of the receipt of the order.
20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-  
V. Nallasenapathy, Member (T)

Sd/-  
B.S.V. Prakash Kumar, Member (J)