

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH AT MUMBAI

COMPANY SCHEME PETITION NO. 169 OF 2017
CONNECTED WITH
TRANSFER COMPANY SCHEME APPLICATION NO. 58 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 1045 OF 2016

**Basis Point Commodities Private Limited ...Petitioner Company/
First Transferor Company**

AND

COMPANY SCHEME PETITION NO. 170 OF 2017
CONNECTED WITH
TRANSFER COMPANY SCHEME APPLICATION NO. 59 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 1046 OF 2016

**Victory Insurance Brokers Private Limited ...Petitioner Company/
Second Transferor Company**

AND

COMPANY SCHEME PETITION NO. 171 OF 2017
CONNECTED WITH
TRANSFER COMPANY SCHEME APPLICATION NO. 60 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 1047 OF 2016

**Reliance Industries Holding Private Limited ...Petitioner Company/
Transferee Company**

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 the Scheme of
Amalgamation of Basis Point
Commodities Private Limited and
Victory Insurance Brokers Private
Limited and India Utilities And
Power Limited with Reliance
Industries Holding Private Limited

CALLED FOR HEARING

Mr. Sidharth Samantaray i/b M/s. Junnarkar & Associates, Advocates for
the Petitioner Companies in the Petitions.

Mr. Vinod Sharma, Official Liquidator, for Official Liquidator, in CSP Nos. 169 and 170 of 2017.

Ms. P. Sheela, Joint Regional Director for the Regional Director in CSP Nos. 169, 170 and 171 of 2017.

Coram : **Shri B.S.V. Prakash Kumar Hon'ble Member (Judicial)**
 Shri V. Nallasenapathy Hon'ble Member (Technical)

Date : **23rd March 2017**

1. Heard Learned Counsel for parties. No objector has come before the Tribunal to oppose the Scheme of Amalgamation and nor has any party controverted any averments made in the Petitions.

2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation of Basis Point Commodities Private Limited, Victory Insurance Brokers Private Limited and India Utilities And Power Limited (collectively the "Transferor Companies") with Reliance Industries Holding Private Limited (the "Transferee Company").

3. Learned Counsel for the Petitioner Companies states that the First Transferor Company was a commodity broker and held membership of Multi Commodity Exchange of India Limited (MCX), Indian Energy Exchange (IEX), National Commodity & Derivatives Exchange Limited (NCDEX) and National Multi Commodity Exchange of India Limited (NMCE). The First Transferor Company has surrendered all of its broking licenses and the First Transferor Company is presently holding certain investments. The Second Transferor Company has discontinued its insurance broking business and surrendered the direct broking license issued to it by Insurance Regulatory and Development Authority and the Second Transferor Company is presently holding certain

investments. The Transferee Company presently holds investments and its others activities are incidental thereto.

4. The First Transferor Company and the Second Transferor Company are wholly owned subsidiaries of the Transferee Company. The Transferee Company together with the First Transferor Company and the Second Transferor Company holds 100% of the equity share capital of India Utilities And Power Limited (the "Third Transferor Company"). The benefits of the Scheme of Amalgamation is that the amalgamation will cancel crossholdings and create a single unified entity enabling economy, better administration and efficiency of operations. The Transferor Companies presently hold investments and the Transferee Company also presently holds investments. The present activities of the Transferor Companies can be conveniently combined with the activities of the Transferee Company. The amalgamation will achieve consolidation of companies having holding-subsidary relationships and help reduce administrative costs, avoid duplication and result in internal economies.
5. All the Transferor Companies and the Transferee Company have approved the Scheme of Amalgamation by passing Board Resolutions, which are annexed to the respective Company Scheme Petitions.
6. Learned Counsel for the Petitioner Companies further states that by Orders dated 20th January 2017 passed by this Tribunal in each of the Transfer Company Scheme Application Nos. 58, 59 and 60 of 2017, the Tribunal directed separate meetings of equity shareholders and preference shareholders of the Petitioner Companies to be convened for the purpose of considering and if thought fit, for approving the Scheme of Amalgamation. The Learned Counsel for the Petitioner Companies states that pursuant to the Order dated 20th January 2017, meetings of the equity shareholders and preference shareholders of the First Transferor Company were convened and held on 25th January 2017 and the Scheme of Amalgamation was unanimously approved at the respective meetings by the equity shareholders and

preference shareholders of the First Transferor Company. The First Transferor Company has no secured and unsecured creditors and accordingly meetings of creditors did not arise. The Learned Counsel states that the First Transferor Company has complied with all directions passed by this Tribunal by Order dated 20th January 2017 in the Transfer Company Scheme Application No. 58 of 2017. The Learned Counsel for the Petitioner Companies states that pursuant to the Order dated 20th January 2017, a meeting of the equity shareholders of the Second Transferor Company was convened and held on 25th January 2017 and the Scheme of Amalgamation was unanimously approved at the meeting by the equity shareholders of the Second Transferor Company. The Second Transferor Company has no secured and unsecured creditors and accordingly meetings of creditors did not arise. The Learned Counsel states that the Second Transferor Company has complied with all directions passed by this Tribunal by Order dated 20th January 2017 in the Transfer Company Scheme Application No. 59 of 2017. The Learned Counsel for the Petitioner Companies states that pursuant to the Order dated 20th January 2017, meetings of the equity shareholders and preference shareholders of the Transferee Company were convened and held on 25th January 2017 and the Scheme of Amalgamation was unanimously approved at the respective meetings by the equity shareholders and preference shareholders of the Transferee Company. The Transferee Company has no secured and unsecured creditors and accordingly meetings of creditors did not arise. The Learned Counsel states that the Transferee Company has complied with all directions passed by this Tribunal by Order dated 20th January 2017 in the Transfer Company Scheme Application No. 60 of 2017. The Learned Counsel for the Petitioner Companies further states that the Company Scheme Petitions have been filed in consonance with the Orders dated 20th January 2017 passed in the said Transfer Company Scheme Applications. The Learned Counsel for the Petitioner Companies states that the Petitioner Companies have also complied with the directions of this Tribunal by Order dated 1st March 2017 admitting the

Petitions and have filed necessary Affidavits of compliance before this Tribunal. The Petitioner Companies through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 or, as the case may be, the Companies Act, 2013 and the Rules made thereunder, whichever is applicable. The said undertaking is accepted.

7. Learned Counsel for the Petitioner Companies states that the Third Transferor Company has its registered office in the State of Gujarat and has filed its Company Petition No. 13 of 2017 before the National Company Law Tribunal, Ahmedabad Bench and the said Petition is fixed for final hearing on 29th March 2017.
8. The Official Liquidator has filed his Report on 28th February 2017 in Company Scheme Petition Nos. 169 and 170 of 2017 stating therein that the affairs of the Transferor Companies have been conducted in a proper manner and the Transferor Companies may be ordered to be dissolved.
9. The Regional Director has filed his Report on 17th March 2017 before this Tribunal stating therein that save and except as stated in para IV (a) to (d), it appears that the Scheme is not prejudicial to the interest of shareholders and public. Para IV of the said Report, reads as under:

“IV. The observations of the Regional directors on the proposed Scheme to be considered by the Hon’ble NCLT are as under:-

- (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 the M/s India Utilities and Power Limited (IUPL –the Third Transferor Company) is registered with Registrar of Companies Ahmedabad, the State of Gujarat, and falls within the jurisdiction of Hon’ble NCLT Ahmedabad similar approval of Hon’ble NCLT at Ahmedabad is required.*

- (c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Amalgamation to the Income Tax Department for their comments. It appears that the company vide letter dated 23.01. 2017 has served a copy transfer company scheme application No. 58 to 60/2017 along with relevant orders etc., to IT Department. This Directorate has also issued reminder letter to the Income Tax Department dated on 14.03.2017 has been dispatched on 15.03.2017. However, as on date, there is no response from Income Tax 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 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."*

10. With respect to Para IV (a) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies states that the Transferee Company undertakes that it 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.
11. With respect to Para IV (b) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Third Transferor Company has filed its Company Petition before the National Company Law Tribunal, Ahmedabad Bench which is pending final hearing. The Learned Counsel states that the Scheme will be subject to approval of the Hon'ble NCLT, Ahmedabad Bench.
12. With respect to Paras IV (c) and (d) of the Report of the Regional Director, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of Income Tax Act, and the Transferee Company shall comply with and deal with all tax matters arising out of the Scheme in accordance with law.

13. Mr. A. K. Chaturvedi, Regional Director in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai for the Regional Director states that they are satisfied with the undertakings given by the Advocates for the Petitioner Companies. The undertakings / submissions on behalf of the Petitioner Companies as set out in paragraphs 10, 11 and 12 above have been considered and accepted by the Tribunal.
14. 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.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petitions are made absolute in terms of prayer clauses (a) to (h) and clause (j) [erroneously numbered as (e)] of Company Scheme Petition Nos. 169 and 170 of 2017 and clauses (a) to (k) and clause (m) of Company Scheme Petition No. 171 of 2017. The Scheme is sanctioned subject to the sanction of the NCLT, Ahmedabad Bench in the Company Petition filed by the Third Transferor Company.
16. The Transferee Company 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 (sixty) days from the date of the Order.
17. The Petitioner Companies are directed to file a copy of this Order alongwith a copy of the Scheme of Amalgamation with the concerned Registrar of Companies, electronically, alongwith E-Form INC 28 in addition to the physical copy, as per relevant provision of the Companies Act, 1956 or Companies Act, 2013, whichever is applicable.
18. The Petitioner Companies in all the Company Scheme Petitions to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner

Companies in Company Scheme Petition Nos. 169 and 170 of 2017 to pay costs of Rs. 25,000/- each to the Official Liquidator. Costs to be paid within four weeks from the date of the Order.

19. All concerned regulatory authorities to act on a copy of this Order alongwith Scheme, duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (Technical)