

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

COMPANY SCHEME PETITION NO. 105 OF 2017

PIVOTAL SECURITIES PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 106 OF 2017

GAZEBO ESTATES PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 107 OF 2017

SUNIDHI WEALTH ADVISORS PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 108 OF 2017

IMPERIAL CORPORATE FINANCE AND SERVICES PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 109 OF 2017

R.K. CHARI STOCK BROKING PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

COMPANY SCHEME PETITION NO. 110 OF 2017

JASVANTAL CHHOTALAL AND COMPANY PRIVATE LIMITED

...Petitioner/ Transferee Company

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

AND

In the matter of Section 230 to 232 and other applicable provisions of the Companies Act, 2013 read with Companies (Compromises, Arrangements and Amalgamations) Rules, 2016;

AND

In the matter of Scheme of Amalgamation ('Scheme') of Pivotal Securities Private Limited and Gazebo Estates Private Limited and Sunidhi

Wealth Advisors Private Limited and Imperial Corporate Finance and Services Private Limited and R K Chari Stock Broking Private Limited with Jasvantlal Chhotalal and Company Private Limited and their respective shareholders

Called for hearing

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners

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

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

V. Nallasenapathy, Member (Judicial)

DATED: 19th April, 2017

1. Heard the learned counsel for the Petitioner Companies. None appears before the Court to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of the Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Pivotal Securities Private Limited and Gazebo Estates Private Limited and Sunidhi Wealth Advisors Private Limited and Imperial Corporate Finance and Services Private Limited and R K Chari Stock Broking Private Limited with Jasvantlal Chhotalal and Company Private Limited and their respective shareholders.
3. Learned Counsel for the Petitioner Companies states that the First and Second Transferor Company is engaged in investment of securities such as shares and bonds. The Third Transferor Company had been engaged in activities of mutual fund distribution business, portfolio management services and investment in quoted and unquoted securities. The Fourth Transferor Company was incorporated with the objects of acting as merchant banker duly registered with SEBI and trading and investment in commodities and shares. The Fifth Transferor Company was incorporated with the objects of trading, exchange, barter of all kinds and types such as shares, stocks, securities, debentures. The Transferee Company was incorporated with the objects of carrying on the business of investment in securities, shares, stocks, debentures, bonds etc.

4. The proposed Scheme will lead to integration of the business operations and provide significant drive to the growth of the merged company. The consolidation of the activities by way of a merger will result in economy of scale, synergies of operations, better, efficient and economical management and a stronger capital and financial base for future growth / expansion. Further, the proposed merger will result in reduction in overheads, administrative, managerial and other expenditure, operational rationalization, organizational efficiency, and optimal utilization of various resources.
5. The Petitioner Companies have approved the said Scheme 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 Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
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 Court and they have filed necessary Affidavits of compliance in the Court. Moreover, the Petitioner Companies through their Counsel undertakes 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.
8. The Regional Director has filed a Report dated 29th March, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph 6 of the said Affidavit, the Regional Director has 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 Standard 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 9th February 2017 has served a copy company petition No. CSP 105 to*

110/2017 along with the relevant orders etc. further this directorate has also issued a reminder letter dated 24.03.2017 to IT Department. However, as on date there is no response from Income Tax 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) Further, ROC Mumbai at para 29 he has mentioned that Company to submit a certificate by its Auditor to the Tribunal in terms of proviso to Section 232(3) of the Companies Act, 2013. However, he has mentioned that the matter may be decided on its merits.*
9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes that in addition to compliance of AS -14 (IND AS – 103), the Transferee Company undertakes to ~~pass~~ pass such accounting entries which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5 (IND AS – 8) etc.
 10. In so far as observations made in paragraph IV (b) and (c) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
 11. In so far as observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies through its Counsel submits that the Petitioner Companies vide letter dated 8th March 2017 had submitted the certificate of Auditor as required under proviso to Section 232(3) of the Companies Act, 2013 with the Regional Director on 9th March 2017. Further, the Auditor certificate is enclosed as Annexure B1 to the Report of Regional Director filed with the Tribunal.
 12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
 13. The Official Liquidator has filed his report dated 23rd March, 2017 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 Court/ 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. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 105 to 110 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
16. The 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.
17. Petitioner Companies are directed to file a 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.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Company Scheme Petition No 105, 106, 107, 108 and 109 of 2017 to pay sum of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date receipt of Order.
19. 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.
20. 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)