

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO.266 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPICATION NO.8 OF 2017.

LENIENT FINVEST PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 267 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPICATION NO.125 OF 2017.

LUXURY LINK INDIA PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 269 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPICATION NO.126 OF 2017.

SAFARI MERCANTILE PRIVATE LIMITED

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 268 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPICATION NO.127 OF 2017.

VAHANVATI CONSULTANTS PRIVATE LIMITED

...Petitioner Company

In the matter of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 and other applicable
provisions of the Companies Act, 2013 And rules
made thereunder;

AND

In the matter of Scheme of Amalgamation of Lenient
Finvest Private Limited, The First Transferor
Company, Luxury Link India Private Limited, The
Second Transferor Company, Safari Mercantile
Private Limited, The Third Transferor Company With
Vahanvati Consultants Private Limited, the
Transferee Company.

CALLED FOR HEARING

Ms. Aplana Ghone i/b. Mr. Chandrakant Mhadeshwar, Advocates for the
Petitioner Company.

Mr. S. Ramakantha, Joint Director Legal for Regional Director.

Mr. Santosh Dalvi, Representative Official Liquidator.

Coram: Smt. Ina Malhotra Member (J)

Date: 19th June, 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.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of Lenient Finvest Private Limited, The First Transferor Company, Luxury Link India Private Limited, The Second Transferor Company, Safari Mercantile Private Limited, The Third Transferor Company With Vahanvati Consultants Private Limited, the Transferee Company.
3. The Petitioner Company and the Transferee Company 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 for the Petitioner Companies further states that the Transferor Companies and the Transferee Company are part of the Vahanvati group of companies, which are engaged in a broad range of investment activities, trading and providing consultancy services. The group has adopted a entity reduction program to identify and eliminate (through liquidations and mergers), entities which do not serve a useful purpose or whose operations could be combined with those of other companies in the group towards the end of achieving operational efficiency and cost

minimization through the reduction in the number of legal entities around the world that make up the Vahanvati group.

5. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

6. The Regional Director has filed his Report on 12th April 2017, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (5) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:

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 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. The Transferor Companies and the Transferee Company have submitted the proof of serving notice, upon the Income Tax Authorities dated 17.02.2017 for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 26.04.2017.

3. The Petitioner in clause 13 of the scheme inter alia mentioned that the main objects in the memorandum of association of the transferor companies shall be added to the main object of the memorandum of association of the transferee Company. Further, upon coming into effect of the Scheme, such other/ancillary clauses in the memorandum of association of the Transferor Companies shall be added to the Transferee Company, as may be considered necessary by the Board of

Directors of the transferee Company. In this regard petitioner has to undertake to file the prescribed form under Companies Act, 2013.

4. As per the provisions of Section 233 (10) of the Companies Act, 2013 a transferee company shall not on merger or amalgamation, hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company and all such shares shall be cancelled or extinguished on the merger or amalgamation. In this regard it is submitted that as per the list of shareholders provided by the Company i.e Transferor Company 1 1 shareholder is a Trust. Petitioner has to insert above para in the scheme.

5. The copies of chairman Report regarding result of the meeting directed to be convened by the petitioner companies are not provided. In this regard the Petitioner Company has to undertake to produce the Chairman Report.”

7. As far as the observation of the Regional Director stated in paragraph IV (1) and (2) of his report are concerned, the Petitioner Companies states that no objection so far has been received by them from the concerned Income Tax Office. In any event the Petitioner Companies undertake to comply with all applicable provisions of the Income Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.
8. As far as the observation of the Regional Director stated in paragraph IV (3) of his report is concerned, the Transferee Company undertake to file prescribed form under Companies Act, 2013 in respect of change in the memorandum of association of the transferee Company.
9. As far as the observation of the Regional Director stated in paragraph IV (4) of his report is concerned, counsel for the Petitioner Companies states that the Petitioner Companies have filed all Company Scheme Petitions under Sections 230 to 232 Companies Act, 2013. Without prejudice to the aforesaid, it is

submitted that provisions of Section 233 of the Companies Act, 2013 are not applicable. Upon amalgamation, the Transferee Company will not hold any shares in its own name or in the name of any trust either on its behalf or on behalf of any of its subsidiary or associate company. The said explanation is found to be satisfactory.

10. As far as the observation of the Regional Director stated in paragraph IV (5) of his report is concerned, the counsel for the Petitioner Companies states that all the Petitioner companies have filed their chairman reports in this Tribunal, inter alia, stating that the shareholders of all Petitioner Companies have unanimously approved the proposed Scheme. Copies of the Chairman Reports are annexed to the respective Petitions and also served upon the Regional Director.
11. The Official Liquidator has filed his report in the Company Scheme Petition Nos. 266 of 2017, 267 of 2017 and 269 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.
12. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
13. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition Nos. 266 of 2017 to 269 of 2017 are made absolute in terms of prayer clauses (a) to (c) of the respective Petitions.

14. Petitioner Company is 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.
15. The Petitioner Company 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.
16. The Petitioners in all the Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioners in the Company Scheme Petition No. 266 of 2017, 267 of 2017 to 269 of 2017 to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
17. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

Smt. Ina Malhotra Member (J)