

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 60 OF 2017

YOGESH AGENCIES AND INVESTMENTS PRIVATE LIMITED

...Demerged/Petitioner Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 61 OF 2017

ASTRA COATED FABRICS PRIVATE LIMITED

... Resulting/Petitioner Company

In the matter of the Companies Act, 1956 (1 of 1956) and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with Section 66 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

In the matter of Scheme of Arrangement

BETWEEN

Yogesh Agencies and Investments Private Limited ('the Demerged Company')

AND

Astra Coated Fabrics Private Limited ('the Resulting Company')

AND

their respective shareholders and creditors

CALLED FOR HEARING:

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b M/s. Rajesh Shah & Co.,
Advocates for the Petitioner Company.

Coram: Shri. B.S.V. Prakash Kumar, Hon'ble Member (J) and Shri. V. Nallasenapathy,
Hon'ble Member (T)

Date: 21st June, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The sanction of the tribunal is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 and sections 391 to 394 read with Sections 100 to 103 of the Companies Act, 1956 to a Scheme of Arrangement between Yogesh Agencies and Investments Private Limited ('the Demerged Company') and Astra Coated Fabrics Private Limited ('the Resulting Company') and their respective shareholders and creditors.
3. Learned counsel for the Petitioners states that the Demerged Company is in multiple businesses which includes buying and selling of commodities, holding long term strategic stake in operating companies, investing in Real Estate, investing in Mutual Funds, Bonds, providing Inter Corporate deposits and investing in renewable energy and the Resulting Company is incorporated to carry out the business of processing, converting, designing and manufacture of textile products and fabrics.
4. Learned counsel for the Petitioners further states that the Arrangement between the Demerged Company and Resulting Company for integration of the Demerged Undertaking of the Demerged Company into the Resulting Company would lead to businesswise segregation of companies thereby ensuring focused management, providing greater flexibility to the entities in operations and create long term value, operational rationalization, organizational efficiency and optimal utilization of various resources; and ability to leverage financial and operational resources of each company.
5. The Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned Advocate appearing on behalf of the Petitioner Companies states that the Petitions have been filed in consonance with the order passed in Company Summons for Direction Nos. 889 of 2016 and 890 of 2016 of the Bombay High Court.
7. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the

Hon'ble Bombay High Court and Hon'ble Tribunal and they have filed necessary Affidavits of compliance with Hon'ble Tribunal. 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. The said undertaking is accepted.

8. Pursuant to transfer of the Company Scheme Petitions to this Hon'ble Tribunal, the Regional Director, Western Region, Mumbai has filed his Report on 13th April, 2017 stating therein that 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.

Paragraph IV, of the said Report reads as follows:

- 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 Definitions 1.3 of the Scheme the "appointed date" Means 1st October, 2016 or such other date as may be fixed or approved by the High Court of Judicature at Bombay or National Company Law Tribunal (NCLT), if and when made operational or such other competent authority. In this regard it is submitted in terms of provisions of Section 232(6) of the Companies Act, 2013 it should be 1st October, 2016.*
 - c) *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 is observed that the Company vide letter dated 25/01/2017 has served a copy of the company scheme petition No. 60 & 61/2017 along with relevant order etc., further, the Regional Director has also issued a reminder on 5th April 2017 to IT Department.*
 - d) *The tax implication if any arising out of the Scheme is subject to the final decision of the 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.*
9. As far as observation of the Regional Director, as stated in paragraph IV (a) of his report is concerned, the Petitioner Companies submit that in addition to

compliance of AS -14 (IND AS -103), the Petitioner Companies 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.

10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of his report is concerned, the Petitioner Companies submits that the Appointed date for the Scheme of Arrangement shall be 1st October, 2016.
11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) and (d) of his report are concerned, the Petitioner Companies submit that the Petitioner Companies undertakes to comply with all applicable provisions of the Income-tax Act and all tax implications arising out of the Scheme of Arrangement will be met and answered in accordance with applicable law.
12. The observations made by the Regional Director, Western Region, Mumbai, in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai have been explained by the Petitioner Companies in Para 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
13. From the material on record, the Scheme appears to be fair, reasonable and is not violative to any provisions of law nor is contrary to public interest.
14. Since all the requisite statutory compliances have been fulfilled, the Transferred Company Scheme Petition Nos. 60 and 61 of 2017 are made absolute in terms of prayer clauses (a) and (b).
15. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with e-Form INC-28, in addition to physical copy, within 30 days from the date of issuance of the order by the Registry.

16. The Petitioner Companies to lodge 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 within, 60 days from the date of receipt of the order.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the receipt of the order.
18. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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