

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 53 OF 2017  
**INTERNATIONAL SYNTHFABS PRIVATE LIMITED**

..... Petitioner / the Transferor Company 1  
AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 54 OF 2017  
**CRESENT TRADING PRIVATE LIMITED**

..... Petitioner / the Transferor Company 2

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

AND

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

AND

In the matter of Scheme of Amalgamation  
of International Synthfabs Private Limited  
and Cresent Trading Private Limited with  
Rightgrowth Trading Private Limited and  
their respective shareholders

**CALLED FOR HEARING**

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

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

DATE: 21<sup>st</sup> June, 2017

## **MINUTES OF ORDER**

1. Heard the learned counsel for the Petitioner Company. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of International Synthfabs Private Limited ("the Transferor Company 1") and Cresnet Trading Private Limited ("the Transferor Company 2") with Rightgrowth Trading Private Limited ("the Transferee Company") and their respective shareholders.
3. Learned Counsel for the Petitioner states that the Petitioner in Company Scheme Petition No. 53 of 2017 engaged in the business of trading yarn and fabrics and Petitioner in Scheme Petition No. 54 of 2017 and the Transferee Company are presently engaged in the business of providing consultancy on financial and other matters.
4. The rationale for the scheme is that amalgamation of the Petitioner Companies into the Transferee Company would lead to Consolidation and synergies in business operations; Enhancement of the scale of operations and reduction in overheads, operational, administrative, managerial and other expenditure, operational rationalization, organizational efficiency and optimal utilization of various resources; and reduce managerial overlaps, which are necessarily involved in running multiple entities.
5. Learned Advocate for the Petitioner states that the Petitioner Companies are directly or indirectly wholly owned subsidiary of the Transferee Company and after the Scheme being sanctioned, no new shares are required to be issued to the members of the Petitioner Companies by the Transferee Company and the entire share capital of the Petitioner Companies will stand cancelled and

in view of the judgement of this Court in Mahaamba Investments Limited Vs IDI Limited (2001) Company Cases 105, filing of a separate Company Summons for Direction and Company Scheme Petition by Rightgrowth Trading Private Limited, the Transferee Company was dispensed with, by order dated 9<sup>th</sup> December, 2016 passed in CSD NO. 935 and 936 of 2016 of the Bombay High Court.

6. The Petitioner Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petition have been filed in consonance with the orders passed in their respective Company Summons for Directions Nos. 935 and 936 of 2016 of the Bombay High Court.
8. The learned Counsel appearing on behalf of the Petitioner Companies has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in this Court. Moreover, the 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.
9. The Official Liquidator has filed his report on 6<sup>th</sup> March, 2017 *inter alia*, stating therein that the affairs of the Petitioner Companies has been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved.
10. The Regional Director has filed his report on 12<sup>th</sup> April, 2017, *inter alia*, 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. In

paragraph IV of the said report, 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 Standards 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 31<sup>st</sup> January, 2017 has served a copy company scheme petition No. 53 & 54/2017 along with relevant orders etc., Further this Directorate has also issued a reminder 10.04.2017, to IT 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) *As per Clause 1.1.2 Definitions of the Scheme. "The Appointed Date" means 15<sup>th</sup> October, 2016 or such other date as may be fixed or approved by the High Court 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 15<sup>th</sup> October, 2016.*

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of his report is concerned, the Transferee Company undertakes that it will

comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.

12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) & (c) of his report is concerned, the Petitioner Companies submits that the Petitioner Companies are bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) of his report is concerned, the Petitioner Companies state that in terms of provisions of section 232(6) of the Companies Act, 2013 the appointed date for the Scheme of Amalgamation shall be 15<sup>th</sup> October, 2016.
14. The Counsel for the Regional Director on instructions of Mr. S. Ramakant, Joint Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai states that they are satisfied with the explanations given by the Petitioner Company.
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 No. 53 and 54 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the Petitions.

17. Petitioners are 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 physical copy, within 30 days from the date of issuance of the order by the Registry.
18. 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.
19. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
20. 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)