

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 246 OF 2017

SASHAKTA MULTITRADE PRIVATE LIMITED

...Petitioner /Transferor Company

CONNECTED WITH

COMPANY SCHEME PETITION NO. 245 OF 2017

TEEJ IMPEX PRIVATE LIMITED

...Petitioner/ Transferee Company

In the matter of the Company Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Company Act, 1956 AND Sections 230 to 232 of the Company Act, 2013;

AND

In the matter of Scheme of Amalgamation

OF

Sashakta Multitrade Private Limited ('the Transferor Company')

WITH

Teej Impex Private Limited ('the Transferee Company')

AND

Their respective shareholders

CALLED FOR HEARING:

Rajesh Shah, Advocate; Ahmed M. Chunawala, Advocate; i/b Rajesh Shah & Co.,
Advocates for the Petitioner

Coram: Smt. Ina Malhotra, Member (Judicial)

Date: 23rd June, 2017

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 Company Scheme Petition.
2. The present Scheme of Amalgamation pertains to merger of Sashakta Multitrade Private Limited (Transferor Company) with Teej Impex Private Limited (Transferee Company) and their respective shareholders with effect from the Appointed Date in terms of the Scheme. Petitioner / Transferor Company is

engaged in the business of merchant trading and Petitioner/ Transferee Company is engaged in the business of Vanaspati Ghee, Butter oils, Coal, wheat, seeds and other commodities. Amalgamation of the companies will simplify the Group structure, minimize cost of administration of two legal entities, for better and more economic and efficient management, control and running of the businesses of the companies concerned and to pool the resources of both the companies for growth.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petition.
4. The Learned Advocate appearing on behalf of the Petitioner states that the Company Scheme Petitions have been filed in consonance with the order passed in Company Scheme Application Nos. 53 & 54 of 2017.
5. The Learned Advocate appearing on behalf of the Petitioners states that the Petitioner Companies have complied with all requirements as per directions of the NCLT, Mumbai Bench and they have filed necessary Affidavits of compliance in the NCLT, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all statutory requirements if any, as required under the Company Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
6. The Regional Director has filed his Report on 14th June, 2017 stating therein that save and except as stated in paragraph IV (1) to (5) of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV (1) to (5), of the said Report reads as follows:

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 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.*
2. *The Petitioner Companies have not submitted the proof of serving notice, upon the Income Tax Authorities for comments.*
3. *Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

4. *Applicant Company not submitted Minutes of order of the Hon'ble NCLT.*
5. *Applicant has not provided of alteration of memorandum with respect to merger of capital of both the companies and consequential effect upon merger.*
7. As far as observation of the Regional Director, as stated in paragraph IV (1) of his Report is concerned, the Petitioner Company through their Learned Advocate undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues (if any) arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
8. As far as observation of the Regional Director, as stated in paragraph IV (2) of his Report is concerned, the Petitioner Companies through their Learned Advocate states that the Petitioner Companies have already served the notice to the Income Tax Authorities on 2nd March, 2017 and it has also served the acknowledgement copy of service of notice before Regional Director and to Hon'ble NCLT.
9. As far as observation of the Regional Director, as stated in paragraph IV (3) of his Report is concerned, the Petitioner Company through their Learned Advocate states that the Petitioner Companies has already filed an affidavit for the Company Auditor certificate stating that the accounting treatment for the proposed scheme of amalgamation in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013, with the Hon'ble NCLT.
10. As far as observation of the Registrar Director as stated in paragraph IV (4) of his Report, the Petitioner Companies through their Learned Advocate undertakes that the Petitioner Companies has already served the Minutes of Order of the NCLT with Regional Director on 2 March, 2017 along with the Notice & explanatory statement for the shareholders meeting. It has again served the same with the Regional Director on 20th June, 2017.
11. As far as observation of the Registrar Director as stated in paragraph IV (5) of his Report, the Petitioner Company through their Learned Advocate undertakes that the Scheme does not provide for merger of capital of the both the companies and hence the question of alteration of the Memorandum of both the companies does not arise.
12. The Official Liquidator has filed his report on 22nd June, 2017 in Company Scheme Petition No.246 of 2017 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by this Hon'ble Tribunal.

13. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy.
14. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 245 is made absolute in terms of prayer clauses (a) to (c) and the Company Scheme Petition No. 246 is made absolute in terms of prayers clauses (a) to (d).
15. The Petitioner Companies are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Company, 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, if any, on the same within 60 days from the date of the receipt of the order.
17. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner Company in Company Scheme Petition No. 246 of 2017 to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. 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/-

Ina Malhotra, Member (J)