

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT MUMBAI
COMPANY SCHEME PETITION NO. 270 OF 2017
IN
COMPANY SCHEME APPLICATION NO. 157 OF 2017**

**IN THE MATTER OF SECTION 230 to 232 OF THE COMPANIES ACT, 2013 "POWER
TO COMPROMISE OR MAKE ARRANGEMENTS WITH CREDITORS AND
MEMBERS"**

(See Rule 3 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016)

**IN THE MATTER OF THE BOMBAY DYEING & MANUFACTURING CO. LIMITED
(PETITIONER)**

**Having its registered office at Neville House, J.N. Heredia Marg, Ballard Estate, Mumbai 400
001, Maharashtra**

The Bombay Dyeing and Manufacturing Company Limited
...Petitioner/Transferee Company

AND

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT MUMBAI
COMPANY SCHEME PETITION NO. 244 OF 2017
IN**

COMPANY SCHEME APPLICATION NO. 12 OF 2017

**(HIGH COURT TRANSFERRED COMPANY SUMMONS FOR DIRECTION (L) NO.
1004 OF 2016)**

**IN THE MATTER OF SECTION 230 to 232 OF THE COMPANIES ACT, 2013 "POWER
TO COMPROMISE OR MAKE ARRANGEMENTS WITH CREDITORS AND
MEMBERS"**

(See Rule 3 of the Companies (Compromises, Arrangements and Amalgamation) Rules, 2016)

AND

**IN THE MATTER OF ARCHWAY INVESTMENT COMPANY LIMITED (PETITIONER)
Having its registered office at Neville House, J.N. Heredia Marg, Ballard Estate, Mumbai 400
001, Maharashtra**

Archway Investment Company Limited

...Petitioner/Transferor Company

Called for Hearing

Mr. Venkatesh Dhond, Senior Counsela/wMr. Rohan Rajadhyaksha, Counsel and Ms. Debashree
Dey, Advocate i/b Desai & Diwanji, Advocates for the Petitioners.

Mr. S. S. Ramakanthafor Joint Director for Regional Director.

Coram: Ms. Ina Malhotra, Hon'ble Member (J)

Date: 20 June 2017

MINUTES OF THE ORDER

1. Heard Advocates for the parties.
2. The sanction of this Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Scheme of Amalgamation between the Petitioner Companies, i.e. Archway Investment Company Limited ("**Archway**" or "**Transferor Company**") with The Bombay Dyeing & Manufacturing Co. Limited ("**Bombay Dyeing**" or "**Transferee Company**") and their respective shareholders (hereinafter referred to as "**Scheme**"), whereunder it is proposed to, *inter alia*, amalgamate, transfer and vest all assets, properties and liabilities of the Transferor Company with the Transferee Company.
3. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Transferor Company is, *inter alia*, an investment company and the Transferee Company is a public listed company, *inter alia*, engaged in the business of selling textiles, manufacture of Polyester Staple Fibre (PSF) and real estate development.
4. The background, rationale and benefits of the Scheme are *inter alia* as follows:
 - i. *The only business activity carried on by the Transferor Company is the activity of holding shares of companies that belong to the same group. This activity can even be carried on by the Transferee Company.*
 - ii. *As the entire share capital of the Transferor Company is held by the Transferee Company, it would be in order to amalgamate the Transferor Company with the Transferee Company.*
 - iii. *In the circumstances, as the Transferor Company is a wholly owned subsidiary of the Transferee Company, a consolidation of the Transferor Company and the Transferee*

Company by way of amalgamation would lead to a more efficient utilization of capital.

- iv. *The proposed Scheme aims at unlocking a better value for the public shareholders of the Transferee Company. As the entire undertaking of the Transferor Company shall transferred to the Transferee Company, the rights and interests of the shareholders or the creditors of the Transferee Company shall not be affected and the Scheme shall not be prejudicial to the interest of the shareholders of the Transferor Company.*
 - v. *The proposed amalgamation will result in administrative and operational rationalization, reduction in overheads and other expenses and prevent cost duplication. The synergies created by the amalgamation would increase operational efficiency and integrate business functions.*
 - vi. *The creditors of the Transferor Company will not be affected by the Scheme since the assets of the Transferor and Transferee Companies (taken together) are more than the liabilities of the Transferor and Transferee Companies (taken together). Further even the creditors of the Transferee Company will not be affected by the Scheme since the assets of the Transferor Company are more than the liabilities of the Transferor Company. Further, post the amalgamation, the assets of the Transferee Company shall be greater than its liabilities.*
5. The Board of Directors of the Transferor Company and the Transferee Company have approved the Scheme in their separate meetings held on 08 September 2016; copies of the Board Resolutions approving the Scheme are annexed to the Company Scheme Applications (at Exhibits F-1 and F-2 of the Transferor Company and Exhibits H-1 and H-2 of the Transferee Company).

6. The Learned Counsel for the Petitioner Companies states that, the Petitioner Companies have complied with all the directions given by this Hon'ble Tribunal vide its orders dated 16 February 2017 passed in Company Scheme Application No. 157 of 2017 (*Transferee Company*) and Company Scheme Application No. 12 of 2017 (*Transferor Company*) and that the captioned Company Scheme Petitions have been filed in terms of and in consonance with the orders dated 16 February 2017 passed in the abovementioned Company Scheme Applications.
7. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all directions of this Hon'ble Tribunal and have also filed necessary affidavits recording compliance of the aforesaid orders before this Hon'ble Tribunal. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and rules made thereunder, as may be applicable. The said undertaking is accepted.
8. The Regional Director has filed a Report on 20 March 2017 ("**RD Report**"), *inter alia*, stating that save and except what is stated in paragraphs IV (1) to (6) of the RD Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. Paragraphs IV (1) to (6) of the RD Report are reproduced hereunder:

"IV. The observation of the Regional Director on the proposed Scheme to be considered are as under:

"1. The tax implication if any arising out of the scheme is subject to final decision of Income Tax Authorities. The approval of this scheme by this Hon'ble Tribunal may not deter the Income Tax Authority to scrutinize the tax 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 Company and the Transferee Company have submitted the proof of serving notice respectively, upon the Income Tax Authorities dated 20.02.2017 & 21.02.2017 respectively for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 18.04.2017.*

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.*

In this regard it is requested that Petitioner undertake to submit the certificate to comply with the provisions of Section 232(3) proviso.

4. *Petitioner in clause 24 inter alia mentioned that Disclosure in terms of Stock Exchanges/SEBI's Observation letter dated 21.11.2016 are as under.*

Mr. R.A. Shah's matter

(a) Mr. R.A. Shah is presently an independent director of the Transferee Company.

(b) Non suit filed accounts (willful defaulter of Rs.1 crore and above as on 31.03.2016 as reflected in the CIBIL/RBI data base classifies one company viz. Essen Computers Pvt. Limited as a willful defaulter and that Mr. R.A. Shah was a director of Essen.

(c) Mr. R.A. Shah was appointed as an alternate director of Essen for a brief period of time and he ceased to be a director in 1992. Mr. R.A. Shah is professional solicitor and in that capacity, he acted as an alternate director of Essen for a short period of time without any financial interest or reward.

In this regards, it is submitted that as per the Directions of SEBI to bring the above declaration to the Hon'ble Tribunal, the same is mentioned.

5. *Observation has been given by BSE and NSE vide letter dated 21.11.2016. Transferor Company has to undertake to comply with the various provisions of the Circular referred in the letters and comply the requirements mentioned in the letter of BSE.*

6. *The transferor company does not have any provident fund and gratuity fund or any other special funds or schemes created or existing for the benefit of its employees.*

In this regards, it is submitted that the protection of interest of Transferor companies Staff, Workmen and Employees”

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (1) of the RD Report is concerned, the Learned Counsel for 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 will be met and answered in accordance with law.

10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (2) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have noted the facts stated therein.

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (3) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits, that insofar as the compliance under the provisions of Section 232(3) of the Companies Act, 2013 is concerned, the Transferee Company has obtained a certificate

dated 08 September 2016 from Kalyaniwalla & Mistry, Chartered Accountants confirming that the accounting treatment, proposed in the Scheme is in conformity with the accounting standards prescribed under Section 133. A copy of the said certificate has been annexed at *Exhibit J* to the Company Scheme Petition No. 270 of 2017 filed by the Transferee Company.

12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(4) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that, the Learned Counsel for the Petitioner Companies states that the Transferee Company has already adequately complied with the observation of the Stock Exchanges/ SEBI's Observation letter dated 21 November 2016 and the same has been mentioned in paragraph 24 of the Scheme (*annexed at Exhibit A to the Company Scheme Petition No. 270 of 2017 of the Transferee Company and Company Scheme Petition No. 244 of 2017 of the Transferor Company*).
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (5) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies states that, the Transferee Company has adequately complied with the various provisions of the circular referred in the letters and the requirements mentioned in the letter of BSE and this has been taken into consideration in the RD Report in paragraph IV(4).
14. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(6) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that the interests of the employees of both the Petitioner Companies (*Transferor Company and the Transferee Company*), shall remain unaffected by the Scheme.
15. The Registrar of Companies has filed a Report on 25 April 2017 ("**ROC Report**"), which does not make any adverse observations.

16. As far as the observation of the Registrar of Companies as stated at point 11 of the ROC Report (*As per MCA Master data the Authorised and paid up Share Capital of the company is Rs. 50,00,00,000/- and Rs. 41,31,00,000/- respectively, however the paid-up capital of the company is not tally with scheme/Petition*) is concerned, the Learned Counsel for the Petitioner Companies submits that the Transferee Company has already addressed a letter dated 12 June 2017 to the Deputy Registrar of Companies requesting that the correct paid up capital be updated in the Master data of the Transferee Company in the Ministry of Corporate Affairs website.
17. The observations of the Regional Director, Western Region have been explained by the Petitioner Companies in paragraph nos. 9 to 14 above. The observations made by the Registrar of Companies is explained by the Petitioner Companies in paragraph no. 15 and 16 above. The clarifications and undertakings provided by the Petitioner Companies are accepted.
18. The Official Liquidator has filed his report on 22 March 2017 in the Company Scheme Application No. 12 of 2017 ("**OL Report**"), *inter alia*, stating that the affairs of the Transferor Company have been conducted in a proper manner. There is no adverse observation made in the OL Report.
19. The Transferor Company may be dissolved without winding up.
20. This Tribunal has received an objection from one shareholder, Mr. Dipak Kumar Jayantilal Shah (holding 40 shares in the Transferee Company, i.e. 0.000% of the total shareholding of the Transferee Company), who has filed an affidavit dated 08 April 2017 before this Hon'ble Tribunal. The Transferee Company has filed an Additional Affidavit dated 25 April 2017 in response to the said objection. After hearing the Learned Counsel for the Petitioners, the Tribunal is of the view that the objections raised by Mr. Dipak Kumar Jayantilal Shah do not come in the way of the sanction of the scheme by the Tribunal.

21. 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.
22. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 270 of 2017 filed by the Transferee Company is made absolute in terms of prayer clauses 23 (a) to (d) and the Company Scheme Petition No. 244 of 2017 filed by the Transferor Company is made absolute in terms of prayer clauses 23 (a) to (d).
23. The Petitioner Companies are directed to lodge 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 physical copy, as per the relevant provision of the Companies Act, 2013.
24. The Petitioner Companies to pay costs of Rs. 25,000/- (Rupees Twenty-Five Thousand only) each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No. 244 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of receipt of this order.
25. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, Hon'ble NCLT, with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable within a period of 60 days, if any from the date of receipt of this order.
26. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly authenticated by the Deputy Registrar, Hon'ble NCLT.
27. Any person interested shall be at liberty to apply to the Hon'ble NCLT in the above matter for any direction that may be necessary.

Sd/-
Ina Malhotra, Member (J)