

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT MUMBAI
COMPANY SCHEME PETITION NO. 274 OF 2017
IN
COMPANY SCHEME APPLICATION NO. 48 OF 2017
(HIGH COURT TRANSFERRED COMPANY SUMMONS FOR DIRECTION (L) NO.
776 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 NOWROSJEE WADIA & SONS LTD. (PETITIONER)
Having its registered office at Neville House, J.N. Heredia Marg, Ballard Estate, Mumbai
400 001, Maharashtra**

Nowrosjee Wadia & Sons Ltd.

...Petitioner/Transferee Company

AND

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
BENCH AT MUMBAI
COMPANY SCHEME PETITION NO. 273 OF 2017
IN
COMPANY SCHEME APPLICATION NO. 49 OF 2017
(HIGH COURT TRANSFERRED COMPANY SUMMONS FOR DIRECTION (L) NO.
777 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 N.W. EXPORTS LIMITED (PETITIONER)
Having its registered office at Neville House, Currimbhoy Road, Ballard Estate, Mumbai
400 001, Maharashtra**

N.W. Exports Limited

...Petitioner/Transferor Company 1

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

BENCH AT MUMBAI

COMPANY SCHEME PETITION NO. 275 OF 2017

IN

COMPANY SCHEME APPLICATION NO. 50 OF 2017

**(HIGH COURT TRANSFERRED COMPANY SUMMONS FOR DIRECTION (L) NO.
778 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 SUNFLOWER INVESTMENTS & TEXTILES LIMITED
(PETITIONER)**

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

Sunflower Investments & Textiles Limited ...Petitioner/Transferor Company 2

Called for Hearing

Mr. Rohan Rajadhyaksha Counsel a/w Ms. Debashree Dey, Advocate i/b Desai & Diwanji,
Advocates for the Petitioners.

Mr. Ramesh Golap, Assistant Director in the Office the Regional Director, Western Region.

Mr. Santosh Dalvi, Representative of the Official Liquidator.

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

Date: 22 June 2017

MINUTES OF THE ORDER

1. Heard Advocates for the parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor any party has controverted any averments made in the Company Scheme Petitions.

2. The sanction of this Hon'ble Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013 to the Composite Scheme of Arrangement between Nowrosjee Wadia & Sons Ltd. ("**Transferee Company**"), N.W. Exports Limited ("**Transferor Company 1**") and Sunflower Investments & Textiles Limited ("**Transferor Company 2**") (Transferor Company 1 and Transferor Company 2 are hereinafter collectively referred to as "**Transferor Companies**") 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 Companies with the Transferee Company, as provided in the Scheme.
3. The Learned Counsel appearing on behalf of the Petitioner Companies states that the Transferor Company 1 is *inter alia*, engaged in the business of distribution of mutual funds and holds investments in Wadia Group companies and Transferor Company 2 holds investments in Wadia Group companies. Transferee Company is, *inter alia*, engaged in the business of providing, supplying, maintaining, operating all business administrative services, solutions, facilities to various persons and companies including but not limited to Wadia Group companies and holds investments in Wadia Group companies.
4. The background, rationale and benefits of the Scheme are *inter alia* as follows:
 - (i) *A consolidation of the Transferor Companies and the Transferee Company by way of amalgamation would lead to a more efficient utilization of capital.*
 - (ii) *The proposed Scheme aims at unlocking a better value for the shareholders of the Transferor Companies and the Transferee Company. As the entire undertaking of the Transferor Companies shall be 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 Companies.

- (iii) *The proposed amalgamation will result in administrative and organizational efficiencies, reduction in overheads and other expenses and optimal utilization of resources. It will prevent cost duplication that can affect financial efficiencies of the holding structure and the resultant operations would be substantially cost-efficient. Consequently, the Transferee Company will offer a strong financial structure to all creditors including the creditors of the Transferor Companies and achieve better cash flows. The synergies created by the amalgamation would increase operational efficiency and integrate business functions.*
- (iv) *The Scheme also envisages sub-division of the Transferee Company's share capital and internal reorganization of capital of the Transferee Company wherein inter alia the Securities Premium Account would be utilized in terms of clause 20(k) of the Scheme. The Scheme will enable the Transferee Company to right size its balance sheet. The reorganization of capital does not involve diminution of liability in respect of unpaid share capital or payment to any shareholder of any paid-up share capital. The shareholding and other rights of members and creditors of the Transferee Company will thus remain unaffected.*
- (v) *The creditors of the Transferor Companies 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 Companies are more than the liabilities of the Transferor Companies. Further, post the Scheme, the assets of the Transferee Company shall be greater than its liabilities.*

5. The Board of Directors of the Transferor Companies and the Transferee Company have approved the Scheme in their separate meetings held on 19 September 2016; copies of the Board Resolutions approving the Scheme are annexed to the Company Scheme Application of the Transferee Company (*at Exhibits H-1, H-2 and H-3*).
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. 48 of 2017 (*Transferee Company*), Company Scheme Application No. 49 of 2017 (*Transferor Company 1*) and Company Scheme Application No. 50 of 2017 (*Transferor Company 2*) 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 11 April 2017 ("**RD Report**"), *inter alia*, stating that save and except what is stated in paragraphs IV (a) to (e) of the RD Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public. Paragraphs IV (a) to (e) of the RD Report are reproduced hereunder:

"IV. The observation of the Regional directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:

- “(a) In addition to the compliance of AS-14 (IND AS-103) the Transferee Company shall pass 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) Regarding part-IV Clause 20 of the Scheme it is submitted that the surplus if any arising out of the Scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Profit & Loss Account/Security Premium Account of the Transferee Company.*
- (c) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangement to the Income Tax Department for their comments. It appears that the company vide letter dated 23rd January, 2017 has served a copy company Scheme petition No. 48-50/2-17 along with relevant orders etc., to IT Department. Further, this Directorate has also issued a reminder letter dated 30.03.2017, to IT Department. However, as on date, there is no response from Income Tax Department.*
- (d) 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.*
- (e) As on date ROC Mumbai has not submitted his report. Hon’ble Tribunal may pass appropriate order(s) as deem fit.*

9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (a) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that in addition to compliance to AS-14, the Transferee Company

undertakes to pass such accounting entries which are necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5, etc. The Learned Counsel for the Petitioner Companies submits that the criteria of applicability of IND AS does not apply to the Transferee Company and therefore IND AS-103 and IND AS-8 are not applicable to the Transferee Company.

10. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (b) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that as per clause 20(k) of the Part IV of the Scheme, the balance to the credit of Amalgamation Adjustment Account arising from the Scheme shall be credited to the Amalgamation Reserve/Capital Reserve of the Transferee Company. However, in case of there being a debit balance in Amalgamation Adjustment Account; the question of adjusting the debit balance in the goodwill account does not arise since the Transferee Company does not have a goodwill account. The debit balance, if any, shall be adjusted against the balance or credit lying in the Securities Premium Account of the Transferee Company as an integral part of this Scheme pursuant to the provisions of Sections 100 to 103 of the Companies Act, 1956 read with Section 52 of the Companies Act, 2013 or any other applicable provisions of the Act. Since the aforesaid accounting treatment by the Transferee Company as certified by the Statutory Auditors is compliant with the applicable Accounting Standards specified under Section 133 of the Companies Act 2013 and other Generally Accepted Accounting Principles accepted in India, any debit balance in Amalgamation Adjustment Account shall be adjusted against the balance or credit lying in the Securities Premium Account of the Transferee Company. A certificate from the statutory auditors of the Transferee Company certifying the proposed accounting treatment contained in Clause 20 of the Scheme, in terms of the provisions of Section 391 to 394 read with Section 100 to 103 of the Companies Act, 1956, and Section 52 and Section 230 to 232 read together with Section 66 of the Companies Act, 2013, is in compliance with the

applicable Accounting Standards specified under Section 133 of the Companies Act,2013 and other Generally Accepted Accounting Principles accepted in India, has also been obtained.

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits, that the Petitioner Companies have noted the facts stated therein.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (d) 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.
13. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (e) of the RD Report is concerned, the Learned Counsel for the Petitioner Companies submits that the ROC Mumbai has submitted its report dated 13 June 2017 with this Hon'ble Tribunal.
14. The Registrar of Companies has filed a Report on 13 June 2017 ("**ROC Report**"), which does not make any adverse observations.
15. The observations of the Regional Director, Western Region have been explained by the Petitioner Companies in paragraph nos. 9 to 13 above. The observations made by the Registrar of Companies is explained by the Petitioner Companies in paragraph no. 14 above. The clarifications and undertakings provided by the Petitioner Companies are accepted.

16. The Official Liquidator has filed his report on 17 March 2017 in the Company Scheme Application No. 49 of 2017 with respect to Transferor Company 1 and Company Scheme Application No. 50 of 2017 with respect to Transferor Company 2 (“**OL Report**”) *inter alia*, stating that the affairs of the Transferor Company No.2 has been conducted in a proper manner. However, it appears that the OL Report in its concluding paragraph (*paragraph no. 7*) inadvertently as a typographical error does not mention Transferor Company 1. The Learned Counsel for the Petitioner Companies submits that this is clear from the report of M/s. S.U. Buch, (*the Chartered Accountant appointed vide order dated 16 February 2017*) annexed to the OL Report, which states that the affairs of the Transferor Company 1 and Transferor Company 2 have not been conducted in a manner prejudicial to the interest of the members or to the public interest. The OL Report has been prepared based on the report of M/s. S.U. Buch and therefore, it is clear that the omission of the Transferor Company 1 from the concluding paragraph of the OL Report is inadvertent and a typographical error. Therefore, the Learned Counsel for the Petitioner Companies submit that there is no adverse observation made in the OL Report. Mr. Santosh Dalvi, representative of the Official Liquidator, present in Court confirms that omission of Transferor Company 1 from the concluding paragraph of the OL Report is a typographical error.
17. The Transferor Companies may be dissolved without winding up.
18. 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.
19. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 274 of 2017 filed by the Transferee Company is made absolute in terms of prayer clauses 25 (a) to (d) and Company Scheme Petition No. 273 of 2017 of the

Transferor Company 1 and Company Scheme Petition No. 275 of 2017 of the Transferor Company 2 are also made absolute in terms of prayer clauses 25(a) to (d) and 26 (a) to (d) respectively.

20. 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.
21. 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. 273 of 2017 and Company Scheme Petition No. 275 of 2017 to pay cost of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of receipt of this order.
22. 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.
23. 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.
24. 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/-
V. Nallasenapathy, Member (T)

Sd/-
B.S.V. Prakash Kumar, Member (J)