

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 112 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 572 OF 2016

NATVAR PARIKH INDUSTRIES PVT LTD

....Petitioner/ the First Demerged Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 113 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 573 OF 2016

INDUS CONTAINER LINES PVT LTD

....Petitioner/ the Second Demerged Company

AND

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 114 OF 2017

(HIGH COURT TRANSFERRED PETITION)

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 574 OF 2016

WADIBUNDER PROPERTIES PVT LTD

....Petitioner/ the Transferee Company

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

AND

In the matter of Sections 230 to 232 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013

AND

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

AND

In the matter of Scheme of Arrangement between NATVAR PARIKH INDUSTRIES PVT LTD, the First Demerged Company and INDUS CONTAINER LINES PVT LTD, the Second Demerged Company and WADIBUNDER PROPERTIES PVT LTD, 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.,  
Advocate for the Petitioner.

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

Date: 20<sup>th</sup> June, 2017

**MINUTES OF THE ORDER**

1. Heard learned counsel for parties. No objector has come before this Tribunal to oppose the Scheme and nor has any party controverted any averments made in the Petitions to the Scheme of Arrangement between NATVAR PARIKH INDUSTRIES PVT LTD, the First Demerged Company and INDUS CONTAINER LINES PVT LTD, the Second Demerged Company and WADIBUNDER PROPERTIES PVT LTD, the Resulting Company and their respective shareholders and creditors.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of the Companies Act, 1956 and Sections 230 to 232 of the Companies Act, 2013 to a Scheme of Arrangement between NATVAR PARIKH INDUSTRIES PVT LTD, the First Demerged Company and INDUS CONTAINER LINES PVT

LTD, the Second Demerged Company and WADIBUNDER PROPERTIES PVT LTD, the Resulting Company and their respective shareholders and creditors.

3. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the order passed in their Company Summons for Direction Nos. 572 of 2016 to 574 of 2016 of the Hon'ble Bombay High Court.
5. The Learned Advocate appearing on behalf of the Petitioners further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the Hon'ble Bombay High Court and National Company Law Tribunal, Mumbai Bench. Moreover, Petitioner Companies undertake to comply with all the 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.
6. The Learned Counsel for the Petitioners states that the Transferor Company has been carrying on business of handling, transporting, contracting, hiring, leasing and otherwise dealing of containers, warehousing of containers, container terminals, stuffing and destuffing of containers and the Second Demerged Company has been carrying on business of shippers, ship owners, ship operators, ship manager, characters, wharf and dock owners, ligthermen, shipping and general agents, ship brokers, merchants, general traders, forwarding agents,

wharfingers, warehousemen, stevedores and the Transferee Company has been carrying on the business of purchase, lease, exchange, hire or otherwise, land, building and hereditaments of any tenure and description and any estate or interest therein and any rights over. As per the opinion of the management the Demerged Undertaking – 1 of NPIPL and Demerger Undertaking – 2 of ICLPL have significant potential for growth and that the nature of risk, permissions and competition involved in this undertakings is distinct from other undertaking or businesses of NPIPL and ICLPL respectively and consequently these undertakings are capable of attracting different sets of investors, strategic partners, lenders and other stakeholders and in order to achieve a distinct focus of the investors to invest in some of the key businesses and to lend greater focus to the operation of Demerged Undertaking – 1 and Demerged Undertaking – 2 Undertaking, NPIPL and ICLPL proposes to re-organize and segregate, by way of demerger, it's Demerged Undertaking – 1 and Demerged Undertaking – 2 Undertaking respectively and that the proposed Scheme is in the interest of all the parties to the Scheme and their respective shareholders and creditors and will in the long term, be in the interest and welfare of the employees.

7. The Regional Director has filed a Report on 2<sup>nd</sup> day of May, 2017 stating therein, save and except as stated in paragraph IV, 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:-

*“III. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT are as under:*

1. As per Clause 1.2 of Definitions. “The Appointed Date” means 1<sup>st</sup> April, 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 provision of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2016.

2. 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 2<sup>nd</sup> September, 2016 has served a copy company petition No. 608/2016 along with relevant orders etc., further this Directorate has also issued a reminder 28.04.2017, to IT Department.
3. 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.
8. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph III (a) 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 1<sup>st</sup> April, 2016.
9. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph III (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.
10. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 & 9 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
11. 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.



12. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 112 and 113 of 2017 is made absolute in terms of prayers clause (a) to (d) and 114 of 2017 is made absolute in terms of prayer clauses (a) to (c).
13. Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act 1956 / 2013.
14. The Petitioner Companies to lodge a copy of this order and the Scheme duly certified by the Deputy Registrar, 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, if any.
15. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. Cost to be paid within four weeks from the date of receipt of the Order.
16. All concerned regulatory authorities to act on a copy of this order along with Scheme duly authenticated by the Deputy Registrar, National Company Law Tribunal, Mumbai.

Sd/-  
Ina Malhotra, Member (J)