

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

BENCH, AT MUMBAI

COMPANY SCHEME PETITION NO. 147 OF 2017

IN

COMPANY SCHEME PETITION NO. (Lodging) 841 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 863 OF 2016

Rabo India Finance Limited ... **Petitioner Company /
Transferor Company**

AND

COMPANY SCHEME PETITION NO. 148 OF 2017

IN

COMPANY SCHEME PETITION NO. (Lodging) 842 OF 2016

CONNECTED WITH

COMPANY SUMMONS FOR DIRECTION NO. 864 OF 2016

Rabo India Securities Private Limited ... **Petitioner Company /
Transferee Company**

In the matter of the Companies Act, 2013;

And

In the matter of Petitions under Sections 230 -
232, and other applicable provisions of
Companies Act, 2013;

And

In the matter of the Scheme of Amalgamation of
Rabo India Finance Limited with Rabo India
Securities Private Limited with their respective
shareholders and creditors.

Called for Hearing:

Mr. Tapan Deshpande along with Ms. Priya Patwa, Advocates of Cyril Amarchand Mangaldas, Advocates for the Petitioner Companies.

Coram: Ms. Ina Malhotra, Member (Judicial)
Date: 22nd June, 2017

MINUTES OF ORDER

1. Heard counsel for the Petitioner Companies. No objector appears before this Tribunal to oppose the Petitions and the Scheme nor has any party controverted the averments made in the Petitions.
2. The Advocate appearing for the Petitioner Company states that the Petition has been filed to seek sanction to the Scheme of Amalgamation of Rabo India Finance Limited ("Transferor Company") with Rabo India Securities Private Limited ("Transferee Company") (together referred to as the "Petitioner Companies") with their respective shareholders and creditors ("**Scheme**"), pursuant to the provisions of Sections 230 - 232 and other relevant provisions of the Companies Act, 2013.
3. The Transferor Company is engaged *inter alia* in the business of corporate lending, advisory and treasury operations i.e. investment activities in government security and funding & gapping of corporate loan products and also offers sector specific solutions with a special focus on media and internet, food and agri business, telecom, life sciences, renewable energy & carbon credits and corporate finance. The Transferee Company is engaged, *inter alia*, in the business of merchant banking and services related to corporate advisory, mergers and acquisitions and equity capital markets and is registered as Merchant Banker by Securities Exchange Board of India. The shares of the Petitioner Companies are not listed on any stock exchange. The Learned Advocate for the Petitioner Companies says that the background, circumstances, rationale and significant benefits

of the Scheme are as under: that as the Transferor Company and the Transferee Company are part of the same group of companies i.e. the Rabobank group (the "*Rabobank group*"). The Transferee Company is a wholly owned subsidiary of the Transferor Company. As a part of the Rabobank group reorganization and entity rationalization programme, it is the Rabobank group's preference to operate through as few entities as possible. As part of this internal restructuring process, the Rabobank group desires to consolidate its businesses in India and streamline its corporate structure by undertaking the amalgamation, which will lead to reduction of shareholding tiers and simplification of shareholding structure. Additionally, as a long term focus, it is expected that the group will further its focus in corporate advisory through Transferee Company and scale down its lending activities. Accordingly, the Transferee Company and the Transferor Company intend to reorganise, consolidate and integrate the Transferor Company's operations with the activities of the Transferee Company to focus on providing corporate advisory business through the Transferee Company. The Scheme will also benefit the group to achieve flexibility in terms of personnel deployment, recruitment and retention of personnel, leading to better administration and reduction of managerial overlaps; achieving operations efficiency and cost minimization; to avoid confusion in the market place; and also enhancing its ability to compete effectively in the highly competitive market in India by addition of assets accruing benefits of scale and translating into increased business opportunities and reduced expenses. The Board of Directors of the Transferor Company and the Transferee Company, have approved the said Scheme by passing their respective board resolutions which are annexed to the Petitions.



4. The Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the directions passed by the Bombay High Court in the Company Summons for Direction Nos. 863 & 864 of 2016 and that the Company Scheme Petition (Lodging) Nos. 841 & 842 of 2016 have been filed in the Bombay High Court and now transferred to this Tribunal are in consonance with the orders passed in the said Company Summons for Direction.
5. The Advocate appearing for the Petitioner Companies have stated that the Petitioner Companies have complied with all the requirements as per the directions of the Bombay High Court and this Tribunal and it has filed necessary Affidavits of compliance in this Tribunal. Moreover the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made thereunder. The said undertaking is accepted.
6. The Regional Director has filed his Report dated 11th April, 2017 *inter alia* stating therein that save and except as stated in paragraph IV (1) to (7) of the said Report, it appears that the Scheme was not prejudicial to the interest of the shareholders and public. The observations made by the Regional Director in paragraph IV of the Report are for sake of ready reference reproduced hereunder:

IV. *The observations of the Regional Director on the proposed Scheme to be 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 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.

2. *The Transferor Company and the Transferee Company have submitted the proof of serving notice, upon the Income Tax Authorities dated 17.02.2017 for comments. This Directorate has also issued a reminder letter to the Income Tax Department dated 05.04.2017.*
3. *Petitioner has mentioned in clause 7(b) has inter alia mentioned that, the Employees who become the employees of the Transferee Company by virtue of this Scheme, shall not be entitled to the employment policies and shall not be entitled to avail of any schemes and benefits (including employee stock options) that may be applicable and available to any of the other employees of the Transferee Company unless otherwise determined by the Transferee Company.*

In this regard the Petitioner has to protect the interest of the employees.

4. *Petitioner in clause 2 (a) inter alia ha mentioned that currently, all equity shares of the Transferor Company are held by Rabobank International Holding, BV along with its nominees, namely, Green I B.V., Green II B.V., Green III B.V., Green IV B.V., Green V B.V. and Green VI B.V. Further, in terms of the proposed Rabobank group reorganization, equity shares of Transferor Company are proposed to be transferred to Rabo Merchant Bank N.V. and its nominees. An application is in the process of being*



filed with the RBI for the proposed transfer of shares in terms of the RBI circular dated July 9, 2015 in relation to 'Requirement for obtaining prior approval of the RBI in case of acquisition/transfer of control on a non-banking financial company'. The transfer of shareholding of the Transferor Company is proposed to be completed prior to the Effective Date.

5. *Petitioner in clause 17(b) and (c) inter alia mentioned that the Scheme can be effective subject to the grant of the merchant banking license to Cooperatieve Rabobank U.A., Mumbai Branch by SEBI in terms of the SEBI (Merchant Bankers) Regulations, 1992 and consequently, the surrender of the SEBI merchant banking license held by the Transferee Company OR the surrender of the NBFC certificate of registration number 14.011106 held by the Transferor Company; and receipt of the RBI approval for the proposed transfer of control of the Transferor Company in terms of the RBI circular dated July 9, 2015 in relation to 'Requirement for obtaining prior approval of the RBI in case of acquisition/ transfer of control on a non-banking financial company.*

In regard to para 3 & 4 above it is submitted the Petitioner Company shall undertake to comply with the conditions mentioned above.

6. *As per the list of shareholders provided by the Petitioner there are non-resident shareholders in the Transferor Company.*



In this regard the petitioner has to produce the proof of serving notice to the RBI.

7. *ROC in his report mentioned that paid up share capital of the Transferor Company is not tallying with the Scheme as per the master data.”*

7. As far as the observation in paragraph IV (1) of the said Report is concerned, the Advocate for the Petitioner Company on instructions states that the Scheme is in compliance with the Income Tax Act 1961. The tax implication, if any, arising out of the Scheme shall, in any event, be subject to final decision of the Income Tax Authority and the final orders, if any, of the appeals that may be preferred therein. Sanction to the Scheme by this Tribunal may not limit the powers of the Income Tax Authority to scrutinize the tax return filed by the Petitioner Company.
8. As far as the observation in paragraph IV (2) of the said Report is concerned, the Advocate for the Petitioner Company states that the notice of the hearing of the Petition has been given to the Income Tax Authorities and requisite affidavit proving service of the notice has been filed before this Tribunal.
9. As far as the observation in paragraph IV (3) of the said Report is concerned, the Advocate for the Petitioner Company states that no rights of the employees of the Transferor Company would be prejudiced upon sanction to the Scheme as set out in Clause 7 (a) of the Scheme and in clause 7 (b) of the Scheme it is only clarified that the existing policies and schemes, if any, available to the employees of the Transferee Company may not be available to the employees of the Transferor Company unless otherwise determined by the Transferee Company. The Transferee Company in any event undertakes to protect the interest of the employees of

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the Transferor Company transferred to the Transferee Company under the sanctioned Scheme and the employees of the Transferor Company shall be entitled to avail all Schemes and benefits (including employee stock options) that are applicable and available to the employees of the Transferee Company.

10. As far as the observation in paragraph IV (4) of the said Report is concerned, the Advocate for the Petitioner Company on instructions states that the Transferor Company has surrendered the NBFC certificate of registration number 14.011106, held by it and therefore, the circular dated 9th July, 2015 issued by the Reserve Bank of India (which is applicable to Non Banking Financial Companies) is not applicable to the Transferor Company. The Transferor Company and Transferee Company further undertake to comply with all regulations, rules, directions, stipulations that have been prescribed by the Reserve Bank of India, including the regulations issued under the Foreign Exchange Management Act, 1999, for the issue of shares of the Transferee Company to the foreign shareholders of the Transferor Company.
11. As far as the observation in paragraph IV (5) of the said Report is concerned, the Advocate for the Petitioner Company on instructions states that procedure/conditions set out in clause 17(b) and (c) of the Scheme have been complied with as the Transferor Company has surrendered the NBFC certificate of registration number 14.011106, held by it.
12. As far as the observation in paragraph IV (6) of the said Report is concerned, the Advocate for the Petitioner Company on instructions states that the Transferor Company has served a Notice on the RBI on 17th February, 2017 and has filed an Affidavit of service in this Tribunal.



13. As far as the observation in paragraph IV (7) of the said Report is concerned, the Advocate for the Petitioner Company on instructions states that the paid up capital of the Transferor Company mentioned in clause 2(a) (C) of the Scheme was rounded off to "5,15,86,24,000" instead of exact figure of "5,15,86,23,570" for the sake of convenience. However since the Registrar of Companies has raised an issue, the Transferor Company undertakes to this Tribunal, to correct the paid up capital figure of the Transferor Company mentioned in the Scheme as "5,15,86,23,570" to reflect the paid up capital figure in the Master Company Data of the Transferor Company in the records of the Registrar of Companies. The Transferor Company is granted leave to correct the figure in the paid up capital of the Transferor Company in the Scheme.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraph (7) to (13) above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
15. The Official Liquidator has filed his Report dated 4th April, 2017 stating that the affairs of the Transferor Company have been conducted in a proper manner.
16. 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.
17. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 147 of 2017 filed by the Transferor Company is made absolute in terms of prayer clauses (a) to (c) and Company Scheme Petition No. 148 of 2017 filed by the Transferee Company is made absolute in terms of prayer clauses (a) and (b).



18. The Transferee Company to lodge a copy of this order along with the sanctioned Scheme attached thereto with the concerned Collector of Stamps, for the purpose of adjudication of stamp duty payable, if any, within 60 days from the date of receipt of the certified copy of this order.
19. The respective Petitioner Companies are directed to file copy of this order alongwith a copy of the sanctioned Scheme attached thereto with the concerned Registrar of Companies, electronically, along with e-form INC 28 in addition to physical copy within 30 days of receipt of certified copy of this order along with the sanctioned Scheme.
20. The Petitioner Companies to individually pay costs of the respective Company Scheme Petition of INR 25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Company in Company Scheme Petition No. 147 of 2017 to pay costs of the Petition of INR 25,000/- to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the order.
21. Filing and issuance of the drawn up order is dispensed with.
22. All concerned authorities to act on a copy of this order along with the sanctioned Scheme, duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-
Ms. Ina Malhotra
Member (Judicial)