

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

τ. COMPANY SCHEME PETITION NO. 237 OF 2017

Ensemble Infrastructure India Limited

.....Petitioner/Transferee Company

τ. COMPANY SCHEME PETITION NO. 231 OF 2017

Display Bazar. Com E Commerce Private Limited

..... Petitioner/Transferor Company I

τ. COMPANY SCHEME PETITION NO. 232 OF 2017

Multilink Properties Private Limited

..... Petitioner/Transferor Company II

τ. COMPANY SCHEME PETITION NO. 233 OF 2017

Multilink Estate Private Limited

..... Petitioner/Transferor Company III
AND

τ. COMPANY SCHEME PETITION NO. 234 OF 2017

Ensemble Furniture Limited

..... Petitioner/Transferor Company V
AND

τ. COMPANY SCHEME PETITION NO. 235 OF 2017

Ensemble Real Estate Limited

..... Petitioner/Transferor Company VI

τ. COMPANY SCHEME PETITION NO. 236 OF 2017

Ensemble India Private Limited

(Formerly Known as Ensemble Infracon Private Limited)

..... Petitioner/Transferor Company VII

In the matter of the Companies Act, 1956;

AND

In the matter of Sections 230 to 232 of the Companies Act,
2013;

AND

In the matter of Scheme of Arrangement and Amalgamation between Display Bazaar. Com E- Commerce Private Limited, ("Transferor Company 1"), and Multilink Properties Private Limited ("Transferor Company 2"), and Multilink Estate Private Limited, ("Transferor Company 3"), and Ensemble Furniture Solutions Private Limited, ("Transferor Company 4"), and Ensemble Furniture Limited ("Transferor Company 5"), and Ensemble Real Estate Limited ("Transferor Company 6") and Ensemble India Private Limited (formerly known as Ensemble Infracon Private Limited) ("Transferor Company 7") with Ensemble Infrastructure India Limited (the 'Transferee Company') and their respective Shareholders

Called for hearing

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners in all the Petitions.

Mr. Ramesh Gholap, Assistant Director in the office of Regional Director

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

DATE: 20th April, 2017

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Arrangement and Amalgamation between Display Bazaar. Com E- Commerce Private Limited, ("Transferor Company 1"), and Multilink Properties Private Limited ("Transferor Company 2"), and Multilink Estate Private Limited, ("Transferor Company 3"), and Ensemble Furniture Solutions Private Limited, ("Transferor Company 4"), and Ensemble Furniture Limited ("Transferor Company 5"), and Ensemble Real Estate Limited ("Transferor Company 6") and Ensemble India Private Limited (formerly known as Ensemble Infracon Private Limited) ("Transferor Company 7") with Ensemble Infrastructure India Limited (the 'Transferee Company') and their respective Shareholders.
3. The amalgamation of the Transferor Companies with the Transferee Company would *inter alia* have the following benefits:
 - a) The Rational for the Scheme is that the Transferor Companies and the Transferee Company are under the same management.
 - b) With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of the Transferor Companies into Transferee Company.
 - c) The amalgamation of all undertaking of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations.
 - d) Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially

reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.

4. Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
5. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
6. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court/Tribunal and they have filed necessary Affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all 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.
7. The Regional Director has filed his Report dated 11thApril, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that:
 - (a) *In addition to compliance of AS-14 (IND AS - 103) The Transferee Company shall pass such accounting entries which are necessary in connection with the scheme to comply with other applicable accounting standards such AS-5 (IND AS-8) etc;*
 - (b) *In view of para 5.1 of the Scheme (ROC Observation) regarding not fixing Record Date for issue of new shares, it is submitted that the Fixing of record date is essential as it effects declaration of dividend, issue bonus shares, right issue etc.. The petitioner companies be directed to fix the record date and amend the scheme accordingly:*
 - (c) *The Registered Office of the M-S Ensemble Furniture Solutions Private Limited, the Transferor Company No 4 is situated at 235-H, Bommasandra Industrial Area, Anekal Taluk, Electronic City, Bengaluru - 560099, is outside the jurisdiction of this Hon'able Tribunals and falls within the jurisdiction of this Hon'able Tribunal Bangalore. Accordingly,*

similar approval be obtained by the Transferor Company from Hon'ble Tribunal at Bangalore

- (d) *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 10th November 2016 has served a copy company petition No. 744 to 750/ 2016 along with relevant orders etc. Further the Regional Director has also issued a reminder 4th April 2017, to IT Department*
- (e) *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 the giving effect to the scheme. The decision of the Income Tax Authority is binding on the Petitioner Company.*
8. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with all applicable Accounting Standards such as AS-5 (IND AS -8).
9. As far as observations made in paragraph IV (b) of the Report of the Regional Director is concerned, the Transferee Company through their Counsel clarify that the record date will be 30 days from the date of filing of the order with the concerned Registrar of Companies. It is further clarified that there was no further allotment of shares by Transferor Company from Appointed date to the Record date.
10. As far as observations made in paragraph IV (c) of the Report of the Regional Director is concerned, the Counsel for the Petitioner clarify that similar approval will be obtained by Transferor Company No 4 from the National Company Law Tribunal, Bangalore Bench.
11. In so far as observations made in paragraph IV (d) & (e) of the Report of Regional Director is concerned, the Transferee Company through its Counsel undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.

12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 8 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report dated 10th March 2017 stating therein that the affairs of the Transferor Companies namely Display Bazaar. Com E-Commerce Private Limited, (“Transferor Company 1”), and Multilink Properties Private Limited (“Transferor Company 2”), and Multilink Estate Private Limited, (“Transferor Company 3”),and Ensemble Furniture Limited (“Transferor Company 5”), and Ensemble Real Estate Limited (“Transferor Company 6”) and Ensemble India Private Limited (formerly known as Ensemble Infracon Private Limited) (“Transferor Company 7”) have been conducted in a proper manner and the Transferor Companies may be ordered to be dissolved.
14. From the material on record, the Scheme appears to be fair and reasonable and is not in violation of any provisions of law and is not contrary to public policy. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, transferred Company Scheme Petition No. 231 to 237 of 2017 filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
16. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated 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 receipt of the order.
17. Petitioner Companies are directed to file a certified 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 the physical copy, within 30 days from the date of issuance of the order by the Registry.
18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioner in Company Scheme Petition Nos. 231 to 235 & 237 of 2017 to pay cost of Rs. 25,000/- to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of receipt of Order.

19. All authorities concerned to act on a certified copy of this order along with Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

B.S.V. Prakash Kumar, Member (J)