

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH AT MUMBAI

COMPANY SCHEME PETITION NO.348 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO. 18 OF 2017

Enam Financial Consultants Private Limited.....the Petitioner/ Demerged Company.

AND

COMPANY SCHEME PETITION NO.349 OF 2017

CONNECTED WITH

COMPANY SCHEME APPLICATION NO.19 OF 2017

Enam Infrastructure Trusteeship Services

Private Limited.... the Petitioner/Resulting Company.

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

AND

In the matter of Sections 230 to 232 read with Section 66 of the Companies Act,2013 and other relevant provisions of the Companies Act,2013.

AND

In the matter of the Scheme of Arrangement between:

Enam Financial Consultants Private Limited.

AND

Enam Infrastructure Trusteeship Services Private Limited.

AND

their respective Shareholders.

Called for Hearing

Mr. Rajesh Shah, Advocate i/b by Rajesh Shah & Co, Advocate for the Petitioner in both the Petition.

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

Coram: B. S. V. Prakash Kumar Member (J)

and V. Nallasenapathy Member (T)

Date: 5th July, 2017

MINUTES OF ORDER

1. Heard learned counsel for parties. No objector has come before the Hon'ble Tribunal to oppose the Scheme of Arrangement nor has any party controverted any averments made in the Company Scheme Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Sections 230 to 232 read with Section 66 of the Companies Act, 2013 and other relevant provisions of the Companies Act, 2013 to a Scheme of Arrangement between Enam Financial

Consultants Private Limited, the Demerged Company and Enam Infrastructure Trusteeship Services Private Limited, the Resulting Company and their respective shareholders (both the Companies hereinafter referred to as “the Petitioner Companies”) for Demerger of “Property Leasing and Investment Business” of Enam Financial Consultants Private Limited into Enam Infrastructure Trusteeship Services Private Limited and reduction and cancellation of equity shares of Enam Infrastructure Trusteeship Services Private Limited.

3. The Learned counsel for the Petitioner Companies states that the Demerged Company is presently carrying activities of investment in shares and securities and is also earning rental income from leasing of properties and the Resulting Company is presently not carrying on any business activities.
4. The Learned counsel for the Petitioner Companies states that the circumstances that have necessitated or benefits of Scheme of Arrangement are as follows:-
 - a) The Resulting Company will take over the “Property Leasing Business along with all investments excluding assets and liabilities which are part of the Remaining Business on going concern basis from the Demerged Company.
 - b) Demerger would facilitate to pursue inorganic and organic growth opportunities by the respective management.
 - c) Efficient management control and system
 - d) Enhance values of all stake holders in the long run..
 - e) The Resulting Company shall issue and allot equity shares to all the shareholders of the Demerged Company upon transfer of the said undertaking in proportion to their shareholding in the Demerged Company which would result in the mirror image of the existing shareholding pattern. Upon the scheme coming into effect, the Resulting Company shall cease to be a wholly owned subsidiary of the Demerged Company.

5. The Learned counsel for the Petitioner Companies states that the Board of Director of the Petitioner Companies have approved the said Scheme of Arrangement by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The Learned counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all the directions passed in the respective Company Scheme Application and that the respective Company Scheme Petitions have been filed in consonance with the Orders passed in respective Company Scheme Application.
7. The Learned counsel appearing on behalf of the Petitioner Companies states that the Petitioner Companies have complied with all requirements as per directions of the Tribunal and they have filed necessary affidavits of compliance in the Tribunal. Moreover, the Petitioner Companies undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and rules made there under whichever are applicable. The said undertakings given by the Petitioner Companies are accepted.
8. The Regional Director has filed his Report dated 18th April, 2017 stating therein that save and except the observations stated in para IV (1) to (4) of the report, it appears that Scheme is not prejudicial to the interest of shareholders and public. The Tribunal may take this report on record and consider the observation made in para IV (1) to (4) and pass such other order or orders as deem fit in the facts and circumstances of the case. In paragraphs IV of the said Report, the Regional Director, has observed that:
 1. *Decision of Income Tax Authorities. The approval of the scheme by this Hon 'ble Tribunal 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. *Petitioner in clause 10.7 of the scheme inter alia has mentioned that the board of directors of the demerged company and the resulting company in consultation with the statutory auditors of the company account any of these balances or items in any manner as may be deemed fit or to make such adjustments as may be necessities including reclassification as deemed fit in accordance with the prescribed accounting standards issued by the institute of the Chartered Accountants of India or the Central Government and Applicable Generally Accepted Accounting Principles.*

In this regard the petitioner has to undertake to adopt accounting standard instead of two options.

3. *Petitioner in clause 7 of the scheme inter alia mentioned that upon the scheme becoming effective, employees of the demerged company, if any and in direct service of the demerged company specifically on the effective date shall be deemed to be employees of the resulting company without any break in service.*

In this regard Petitioner Company to undertake to protect the interest of the employees of the demerged company

4. *It is mentioned in Definition below 2.8.5 under explanation that any question that may arise as to whether a specific asset or liability pertains or does not pertain to demerged undertaking or arise out of its operations or activities or not will be mutually decided by the board of the petitioner companies. In this regard it is submitted that the petitioner undertake to hold Board meeting and decide the assets and liabilities as already share exchange ratio has been decided as per the clause 8 of the scheme.*

In this regard petitioner companies undertake to submit the same.

9. As far as the observations made in paragraph IV(1) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes to comply with all applicable provisions of the Income Tax Act, 1961 and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law.
10. As far as the observations made in paragraph IV(2) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel undertakes to comply with prescribed accounting standards issued by the Institute of the Chartered Accountants of India and applicable Generally Accepted Accounting Principles in view of the certificate from the company auditors being obtained and filed the Tribunal and Regional Director office about the accounting treatment proposed in the scheme of arrangement being in conformity with the accounting standards. The clause 10.7 of the Scheme will have no adverse implication as it has become redundant. The Petitioner Companies through its Learned Counsel undertakes that clause 10.7 will not be implemented by the Transferee Company.
11. As far as the observations made in paragraph IV(3) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel states that clause 13.2 of the Scheme protects the interest of the remaining employees of the Demerged Company.
12. As far as the observations made in paragraph IV(4) of Regional Director Report is concerned, the Petitioner Companies through its Learned Counsel submits that explanation mentioned below clause 2.8.5 “any question that may arise as to whether a specific asset or liability pertains or does not pertain to demerged undertaking or arise out of its operations or activities or not will be mutually decided by the board of the petitioner companies” is more of clarificatory in nature and is not giving any additional power to the board of directors of the Petitioner Companies to change the nature of assets and liabilities. In case of

any amendment/changes in the scheme the Board of Directors of the Petitioner Companies are bound to call Board Meeting and also seek the approval of National Company Law Tribunal.

13. The observations made by the Regional Director have been explained by Petitioner Companies in paragraphs 9 to 12 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
14. 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. None of the parties concerned have come forward to oppose the Scheme of Arrangement.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No.348 of 2017 & 349 of 2017 filed by the Demerged Company and the Resulting Company are made absolute in terms of prayer clause (a) & (b).
16. The Petitioner Companies are directed to lodge a copy of this order and the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai 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 receipt of this order.
17. The Petitioner Companies are further directed to file a copy of this order along with a copy of the Scheme of Arrangement with the concerned Registrar of Companies, electronically, along with E-Form INC-28, in addition to 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 in Company Scheme Petition No.348 & 349 of 2017. Costs to be paid within four weeks from the date of the Order.

19. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench, Mumbai.
20. Any person interested shall be at liberty to apply to this 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)