

IN THE NATIONAL COMPANY LAW TRIBUNAL,  
MUMBAI BENCH

CSP NO. 316 OF 2017  
AND  
CSP NO. 315 OF 2017

Under Section 230-232 of the Companies Act, 2013  
In the matter of Scheme of Arrangement between  
GLOBAL AVIATION SERVICES PRIVATE  
LIMITED (the Demerged Company) and AQUA  
FINCAP ADVISORS PRIVATE LIMITED (the  
Resulting Company).

GLOBAL AVIATION SERVICES PRIVATE LIMITED

....Petitioner/ the Demerged Company

AND

AQUA FINCAP ADVISORS PRIVATE LIMITED

....Petitioner/ the Resulting Company

Judgement/ order delivered on 19th July, 2017

Coram:

Hon'ble B.S.V. Prakash Kumar Hon'ble Member (J)

Hon'ble V. Nallasenapathy Hon'ble Member (T)

For the Petitioner(s): Mr. Rajesh Shah with Mr. Ahmed M Chunawala

i/b M/s. Rajesh Shah & Co., Advocate for the Petitioner.

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

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 GLOBAL AVIATION

SERVICES PRIVATE LIMITED (the Demerged Company) and AQUA FINCAP ADVISORS PRIVATE LIMITED (the Resulting Company).

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 GLOBAL AVIATION SERVICES PRIVATE LIMITED (the Demerged Company) and AQUA FINCAP ADVISORS PRIVATE LIMITED (the Resulting Company).
3. The Petitioner Companies have approved the said Scheme of Arrangement 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 Scheme Application Nos. 141 to 142 of 2017 of the National Company Law Tribunal.
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 National Company Law Tribunal, Mumbai Bench and they have filed necessary affidavits of compliance in the 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 Demerged Company has been *inter alia* carrying business of Cargo/ Passenger agents and/or General Sales Agents of national or international airlines for passenger and cargo transportation and to provide for all logistic services and support required in

connection with freight forwarding business, transportation and delivery of goods and the Resulting Company has been engaged in business of financial advisors, management consultants and provide advice, services, consultancy in various fields, general administrative, secretarial, commercial, financial legal, economic, labour, industrial, public relations, scientific, technical, direct and indirect taxation. The management of Demerged Company and Resulting Company believe that the Scheme of Arrangement would benefit the respective companies and other stake holders of respective companies on account of the following reasons that the Properties and Investments Undertaking of GASPL has potential for development and that the nature of risk, permissions and competition involved in this undertaking is distinct from other undertaking / business of GASPL and consequently, the Properties and Investment Undertaking as also the remaining business of GASPL are capable of attracting different sets of investors, strategic partners, lenders and other stakeholders. In order to achieve this, GASPL proposes to re-organize and segregate by way of demerger, its Properties and Investments Undertaking and that the proposed Scheme is in the interest of all the parties to the Scheme and their respective shareholders and creditors and that the remaining undertaking / business of GASPL also has tremendous growth and profitability potential and requires focused leadership and management attention and it is believed that the proposed segregation of businesses will create enhanced value for shareholders and allow a focused strategy in operations, which would be in the best interest of GASPL, its shareholders, creditors and all persons connected with GASPL and that the demerger will also provide scope for independent collaboration and expansion without committing the existing organization in its entirety and that the Board of Directors of the Demerged Company is of the opinion that the demerger would benefit the shareholders, employees and other stakeholders

of the Demerged Company and that the proposed Scheme is not prejudicial to the interest of the creditors or the employees of the Demerged Company.

7. The Regional Director has filed a Report on 20<sup>th</sup> day of June, 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:-

*“IV. The observations of the Regional Director on the proposed Scheme to be considered by the Hon’ble NCLT 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 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. The Petitioner Companies have not submitted the proof of serving notice, upon the Income Tax Authorities for comments.*

*In this regard, Petitioner Companies have to undertake to serve notice to the Income Tax Authorities and produce acknowledgement copy of service of notice before Regional Director and Hon’ble NCLT.*

- 3. Certificate by the Company's Auditor stating that the accounting treatment if any proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013 is not available.*

*In this regard, Petitioner Companies undertake to provide the same.*

- 4. The Transferee company is inter alia engaged in the business to act as financial advisors, management consultant and provide advice services consultancy in various fields to invest and deal in shares and also to carry on the business of purchasing and letting on lease or hire in any part of India or abroad etc. Further, the petitioner in clause A of the scheme of arrangement has inter alia mentioned that the scheme provides for the demerger of the Properties and Investments Undertaking of the Demerged Company GASPL into the Resulting Company AFAPL.*

*In this regard, petitioner to submit proof of serving notice to RBI along with their comments.*

- 5. Petitioner in clause 3 of the has inter alia mentioned that any question that may arise as to whether any specific asset or liabilities pertain to or whether it arises out of the activities or operations of the Demerged Company undertaking shall be decided by mutual agreement between the Board of Directors of GASPL and AFAPL.*

6. *Minutes of order is not provided along with the application.*

*In this regard petitioner companies undertake to submit Minutes of Order.*

8. So far as the observation in paragraph IV (1) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company undertakes to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Arrangement will be met and answered in accordance with law
9. So far as the observation in paragraph IV (2) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Company have served copy of notice upon the Income Tax Authorities for their comments and the same is filed by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal with the same.
10. So far as the observation in paragraph IV (3) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies has submitted to this Hon'ble Tribunal the Certificate from the Auditors stating that the accounting treatment proposed in the Scheme is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.
11. So far as the observation in paragraph IV (4) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies that they are not engaged in any financial activities and they are carrying business of Cargo/ Passenger agents and/or General Sales Agents of national or international airlines for passenger and cargo transportation and to provide for all logistic services and support required in connection with freight

forwarding business, transportation and delivery of goods. Hence they are not required to give notice to RBI and not required to register with the Reserve Bank of India were enclosed by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal for the same.

12. So far as the observation in paragraph IV (5) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the question which arise in respect of any specific asset or liabilities pertain to or whether it arises out of the activities or operations of the Demerged undertaking shall be decided as per the scheme and not by mutual agreement between the parties. The said undertaking is submitted by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal regarding the same
13. So far as the observation in paragraph IV (6) of the Report of the Regional Director is concerned, the Learned Counsel for the Petitioner Companies submits that the Petitioner Companies have submitted the minutes of the order. The same has been given by way of Affidavit-in-reply to Regional Director and the National Company Law Tribunal.
14. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 13 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
15. 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.
16. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 316 of 2017 is made absolute in terms of prayers clause (a) to (c) and 315 of 2017 is made absolute in terms of prayer clauses (a) to (c).

17. Petitioners are directed to lodge 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, as per the relevant provisions of the Companies Act 1956 / 2013.
18. 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.
19. 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 the receipt of the Order.
20. 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/-

V. Nallasenapathy, Member(T)

Sd/-

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