

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH

CSP NO. 481 OF 2017

AND

CSP NO. 479 OF 2017

AND

CSP NO. 475 OF 2017

AND

CSP NO. 480 OF 2017

AND

CSP NO. 468 OF 2017

Under Section 230-232 of the Companies
Act, 2013

In the matter of Scheme of Amalgamation of
VARDMAN TRADELINKS PRIVATE LIMITED,
the First Transferor Company and
MAGNOLIA AGENCIES PRIVATE LIMITED,
the Second Transferor Company and
SOUMIL EXPORT PRIVATE LIMITED, the
Third Transferor Company and
RADHAKRISHNA MULTITRADE PRIVATE
LIMITED, the Fourth Transferor Company
with BIHARIJI SHARE TRADING PRIVATE
LIMITED, the Transferee Company.

VARDMAN TRADELINKS PRIVATE LIMITED

....Petitioner/ the First Transferor Company

AND

MAGNOLIA AGENCIES PRIVATE LIMITED

....Petitioner/ the Second Transferor Company

AND

SOUMIL EXPORT PRIVATE LIMITED

....Petitioner/ the Third Transferor Company

AND

RADHAKRISHNA MULTITRADE PRIVATE LIMITED

....Petitioner/ the Fourth Transferor Company

AND

BIHARIJI SHARE TRADING PRIVATE LIMITED

....Petitioner/ the Transferee Company

Judgement/ order delivered on 3rd August, 2017

Coram:

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

Hon'ble Mr. V. Nallasenapathy, 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 : V. Nallasenapathy, Member (T)

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 Amalgamation of VARDMAN TRADELINKS PRIVATE LIMITED, the First Transferor Company and MAGNOLIA AGENCIES PRIVATE LIMITED, the Second Transferor Company and SOUMIL EXPORT PRIVATE LIMITED, the Third Transferor Company and RADHAKRISHNA MULTITRADE PRIVATE LIMITED, the Fourth Transferor Company with BIHARIJI SHARE TRADING PRIVATE LIMITED, the Transferee 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 Amalgamation of VARDMAN TRADELINKS PRIVATE LIMITED, the First Transferor Company and MAGNOLIA AGENCIES PRIVATE LIMITED, the Second Transferor Company and

SOUMIL EXPORT PRIVATE LIMITED, the Third Transferor Company and RADHAKRISHNA MULTITRADE PRIVATE LIMITED, the Fourth Transferor Company with BIHARIJI SHARE TRADING PRIVATE LIMITED, the Transferee 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. 215,216,214, 210 & 213 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 First Transferor Company has presently carrying on business as buyers, sellers, and general traders and the Second Transferor Company at present is carrying on business as buyers, sellers and general traders and the Third Transferor Company at present is carrying on business as buyers, sellers and general traders and the Fourth Transferor Company at present is

carrying on business as buyers, sellers and general traders and the Transferee Company at present is carrying on business buyers, sellers and general traders. All the companies are under the same management and the shareholding owned and controlled by same promoters and that the management is of the opinion that the merger arrangement will lead to synergies of operations and more particularly the following benefits and all the Companies are under same Management and it would be advantageous to combine the activities and operations in a single Company and that the amalgamation would provide synergistic linkages besides economies in costs by combining the total business functions and the related activities and operations and thus contribute to the profitability of the amalgamated Company and that the amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of all companies into a single Company for synergistic linkages and the benefit of combined financial resources and that this will be reflected in the profitability of the Transferee Company and that this Scheme of amalgamation would result in merger in the nature of Pooling of Interest as per the paragraphs 33 to 35 of the Accounting Standard 14 on Accounting for Amalgamations issued by the Institute of Chartered Accountants of India and thus on consolidation of business of all the Transferor Companies and the Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business and availability of a common operating platform and that the Amalgamation of the Transferor Companies with the Transferee Company will also provide an opportunity to leverage combined

assets and build a stronger sustainable business and specifically, the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage strong assets, capabilities, experience, expertise and infrastructure of all the companies. The merged entity will also have sufficient funds required for meeting its long term capital needs as provided for in the scheme and that the Scheme of amalgamation will result in cost saving for all the companies as they are capitalizing on each others core competency and resources which are expected to result in stability of operations, cost savings and higher profitability levels for the Amalgamated Company.

7. The Regional Director has filed a Report on 24th day of July, 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. It is submitted that the Petitioner Companies have submitted the proof of serving notice upon the Income Tax Authorities dated 20.04.2017, 04.04.2017, 22.04.2017, 27.04.2017 for comments. The office of the Directorate also issued reminder dated 19.07.2017.*
- 3. It is submitted that the Petitioner in clause 14 of the scheme has not mentioned that of Accounting treatment proposed is in accordance with applicable Accounting Standard as provided under section 133 of the Companies Act, 2013.*
- 4. Petitioner in clause 11 of the scheme has inter alia mentioned that face value of equity shares of Transferee*

Company is Rs. 10/- whereas face value of Transferor Company 3 & 4 is Rs. 100/- per share.

It is observed that approval of shareholders have not been obtain separately under section 61 of the companies Cat, 2013.

8. So far as the observation in paragraph IV (1) and (2) 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 (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.
10. 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 Transferee Company will issue shares in the face value of Rs. 10/- for the Transferor Company 3 and 4. The Petitioner Company will issue shares as per the valuation done by the Auditors.
11. The observations made by the Regional Director have been explained by the Petitioner Companies in Para 8 to 10 above. The

clarifications and undertakings given by the Petitioner Companies are accepted.

12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Petition Nos. 481, 479, 475 & 480 of 2017 is made absolute in terms of prayers clause (a) to (c) and 468 of 2017 is made absolute in terms of prayer clauses (a) to (d).
14. 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.
15. 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.
16. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and the Petitioner in the Company Petition Nos. 481, 479, 475 & 480 of 2017 to pay costs of Rs.25,000/- to the Official Liquidator, High Court, Bombay. Cost to be paid within four weeks from the date of receipt of the Order.

17. 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)