

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

COMPANY SCHEME PETITION NO. 230 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 104 OF 2017.

DUKE PUBLISHERS PRIVATE LIMITED,

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 217 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 104 OF 2017.

MODERN TRADING BUSINESS PRIVATE LIMITED,

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 233 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 106 OF 2017.

WAYFORWARD TRADERS LIMITED,

...Petitioner Company

AND

COMPANY SCHEME PETITION NO. 216 OF 2017.
CONNECTED WITH
COMPANY SCHEME APPLICATION NO. 122 OF 2017.

CARRON INVESTMENTS PRIVATE LIMITED

...Petitioner Company

In the matter of the Companies Act, 2013 and
to the Companies Act, 1956 as applicable ;

AND

In the matter of Sections 230 to 232 of the
Companies Act, 2013 (corresponding Sections
391 to 394 of the Companies Act, 1956);

AND

In the matter of Scheme of Amalgamation of
M/s. Duke Publishers Private Limited, The First
Transferor Company, M/s. Modern Trading
Business Private Limited, The Second Transferor
Company, M/s. Wayforward Traders Limited,
The Third Transferor Company With M/s.
Carron Investments Private Limited, the
Transferee Company.

CALLED FOR HEARING

Mr. Chandrakant Mhadeshwar, Advocates for the Petitioner Company.

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

Mr. Santosh Dalvi, Representative Official Liquidator

Coram: SH. B.S.V. Prakash Kumar Member (J)
and Shri V. Nallasenapathy, Member (T)

Date: 19th July, 2017

MINUTES OF 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.
2. The sanction of this Tribunal is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation of M/s. Duke Publishers Private Limited, The First Transferor Company, M/s. Modern Trading Business Private Limited, The Second Transferor Company, M/s. Wayforward Traders Limited, The Third Transferor Company With M/s. Carron Investments Private Limited, the Transferee Company.
3. The Transferor Companies and the Transferee Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
4. The Learned Advocate appearing on behalf of the Petitioner has stated that the Petitioner Company has complied with all requirements as per directions of the Hon'ble Bombay High Court and this Tribunal and they have filed necessary Affidavits of compliance in this Tribunal. Moreover, the Petitioner Company undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

5. The Regional Director has filed his Report, inter alia, stating therein that save and except as stated in paragraphs IV (3) to (7) of the said Report, it appears that the Scheme is not prejudicial to the interest of the shareholders and public. In paragraph IV of the said Affidavit, the Regional Director has stated that 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. *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 it is requested that Petitioner may be asked to submit the certificate.*
3. *It may be submitted that the Petitioner Companies have not submitted the proof of serving notice upon the Income Tax Authorities.*
4. *Petitioner Companies have not submitted the Affidavits as called for by the Regional Director.*
5. *Petitioner Companies have not provided recommendation by the Chartered Accountant/auditor regarding share exchange ratio.*
6. *Petitioner Companies have not submitted minutes of order of the Hon’ble NCLT with regards to Affidavit for summons filed by the Companies Petitioner Companies seeking directions for convening meeting of shareholders secured and unsecured creditors.*
7. *Petitioner Companies not replied for the information as called for by the Regional Director. In regard to observations in para 3 to 7, it is submitted that the Petitioner company undertake to provide all documents/ information as mentioned there in.”*

6. As far as the observation of the Regional Director stated in paragraph IV (1) of his report is concerned, the Petitioners are undertakes to comply with all applicable provisions of the Income

Tax Act and all tax issues arising out of the Scheme will be met and answered in accordance with law.

7. As far as the observation of the Regional Director stated in paragraph IV (2) of his report is concerned, the counsel for the Petitioner Companies states that the Petitioner Companies has already obtained the said certificate of Chartered Accountant and annexed the same with the Petitions.
8. As far as the observation of the Regional Director stated in paragraph IV (3) of his report is concerned, the counsel for the Petitioner Companies states that the all the Companies have already served copy of the Scheme to the concerned Income Tax Officer and filed Affidavit of service in the Registry and copy of the affidavit is also served upon the Regional Director.
9. As far as the observation of the Regional Director stated in paragraph IV (4) of his report is concerned, the counsel for the Petitioner Companies states that Petitioner Companies have submitted the Affidavits as required by the Regional Director.
10. As far as the observation of the Regional Director stated in paragraph IV (5) of his report is concerned, the counsel for the Petitioner Companies states that all Transferor Companies are wholly owned subsidiaries of the Transferee Company hence no share will be issued to the shareholders of the Transferor Companies. Therefore, recommendation by the Chartered Accountant/auditor regarding share exchange ratio is not required.
11. As far as the observation of the Regional Director stated in paragraph IV (6) of his report is concerned, counsel for the

Petitioner Companies states that the Petitioner Companies have has submitted minutes of order with Regional Director.

12. As far as the observation of the Regional Director stated in paragraph IV (7) of his report is concerned, counsel for the Petitioner Companies states that the Petitioner Companies has submitted all documents as required by the Regional Director.
13. The Official Liquidator has filed his report in the Nos. 230 of 2017, 217 of 2017 to 233 of 2017 and official Liquidator states that they have no objection to the Present Scheme.
14. From the material on record, the Scheme of Amalgamation appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos. 230 of 2017, 217 of 2017 to 233 of 2017 are made absolute in terms of prayer clauses (a) and (b) of the respective Petitions.
16. Petitioner Company is directed to file a copy of this Order along with a copy of the Scheme of Amalgamation 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.
17. The Petitioner Company 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.

18. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and in Company Scheme Petition Nos. 230 of 2017, 217 of 2017 to 233 of 2017 to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of Order.
19. Costs to be paid within four weeks from today.
20. All authorities concerned to act on a copy of this Order along with Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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