

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH AT MUMBAI**

**TRANSFER COMPANY SCHEME PETITION NO. 131/MAH/2017**

[HIGH COURT COMPANY SCHEME PETITION NO. 630 OF 2016  
CONNECTED WITH  
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO.603 OF 2016]

**Aditya Findings Private Limited** .....Petitioner/ Transferee Company

In the matter of the Companies Act, 1956/2013

AND

In the matter of Petition under Sections 391 to 394 [read with  
Section 100 to 104 of the Companies Act, 1956 [now  
corresponding to section 230 to 232 read with Section 66 of  
the Companies Act 2013].

AND

In the matter of Aditya Findings Private Limited, a company  
incorporated under the provisions of the Act, 1956

AND

In the matter of SCHEME OF AMALGAMATION OF  
UDAYAN DEVELOPERS PRIVATE LIMITED

WITH

ADITYA FINDINGS PRIVATE LIMITED

**Called for Hearing**

Mr. NaserAli Rizvi i/b Thakore Jariwala & Associates, Advocates for Petitioner.

Ms. Sheela, Joint Director for Regional Director in the Petition.

Mr. R. Paula, Deputy Registrar of Companies in the Petition.

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

: V. Nallasenapathy, Member (T)

Date : 23rd March, 2017

1. Heard learned counsel for parties. No objector has come to oppose the Scheme nor has any party controverted any averments made in the Petitions.
2. The sanction of the Court is sought under Sections 391 to 394 read with Section 100 to 104 of the Companies Act, 1956 [now section 230 to 232 read with

Section 66 of the Companies Act 2013] to an arrangement embodied in the proposed Scheme of Amalgamation of M/s. Udayan Developers Private Limited, the Transferor Company with M/s. Aditya Findings Private Limited, the Transferee Company.

3. The learned Advocate for the Petitioner Company states that the Transferor Company and Transferee Company are closely held companies and the Petitioner / Transferee Company is doing the business of manufacturing of Gold/Silver articles and the Transferor Company has not carried any business in the recent past.
4. The Learned Advocate for the Petitioner Company further states that the Transferor Company also holds majority stake in the transferee Company and thus the major objective of the Scheme is to reorganize and consolidate the operations of both the companies to ensure maximum benefits from the existing resources of both the Companies and overall expenditure to maintain a healthy growth and enable the group to expand as a larger entity. The benefits of the scheme are that the Scheme of Amalgamation would enable the management of the Transferor company and the Transferee Company to combine and pool the resources of both the Companies for their common advantage and further the growth and diversification of their business and to rationalize and streamline their management, businesses and finances and to eliminate duplication of work and achieve synergies to their common advantage and also to rationalize the existing inter Company transactions, eliminate avoidable administration costs, thereby enhancing shareholders value, investors' and lenders' confidence.
5. Both the Transferor and Transferee Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which is annexed to the Company Scheme Petition.

6. The Learned Advocate for the Petitioner Company states that Petitioner Company passed a Special Resolution dated 20th June 2016 annexed hereto Exhibit "L" to the Company Scheme Petition, in pursuance of Clause 5 of the Scheme inter alia that upon the scheme getting sanctioned there shall be consequent reduction by cancellation of Equity and Preference share Capital of the Petitioner / Transferee Company to the extent of 14,15,000 equity shares of Rs. 10/- each aggregating to Rs. 1,41,50,000/-, and 14,14,733 preference shares of Rs.10/- each aggregating to Rs.1,41,47,330/- which are held by Transferor Company in Transferee Company in pursuance of the Scheme, which shall be effected as an integral part of the Scheme. Accordingly, in view of the averments made in paragraph No. 25 of the Company Scheme Petition inter-alia stating that the proposed reduction neither involves diminution of liability in respect of unpaid share capital of the Petitioner Company nor payment to any shareholder of any paid-up capital nor is any call being waived and that rights of the creditors of the Petitioner Company are not adversely affected as there is no reduction in the amount payable to any of the creditors, no compromise or arrangement is contemplated with the creditors, the Hon'ble Bombay High Court by Order dated 8<sup>th</sup> September 2016 was pleased to dispense with procedure prescribed under Section 101 of the Companies Act, 1956 is dispensed with.
7. The Learned Advocate for the Petitioner Company submits that board of Directors of both the Transferor and Transferee Company at its respective Board Meeting dated 31<sup>st</sup> December 2016 has mutually resolved and extended the date for obtaining orders of sanction to the scheme, referred in Clause 17 of the scheme, till 30<sup>th</sup> June 2017. Copies of Board resolution dated 31<sup>st</sup> December 2016 passed by the Board of Directors of the Transferor and the

Transferee Company are annexed as Annexure-‘1’ & ‘2’ to the Affidavit dated 20<sup>th</sup> March 2017 filed by Mr. Parag Navinbhai Shah, Director of the Petitioner.

8. The Learned Advocate for the Petitioner states that the Petitioner Company has 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 Company Summons for Direction and seeks sanction to the said proposed Scheme of Amalgamation.
9. The Learned Advocate appearing on behalf of the Petitioner has stated that they have complied with all requirements as per directions of this Court and they have filed necessary Affidavits of compliance in the Court. Moreover, Petitioner Company undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made there under. The said undertaking is accepted.
10. The Regional Director has filed his Report dated 8<sup>th</sup> March 2017, *inter alia*, stating therein that save and except as stated in paragraphs IV (a) to (g) of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In the paragraphs of the said Affidavit, 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 as under. -*

- (a) *”The main Objects of the Transferor Company are totally different from the main objects of the Transferee Company. The Transferee Company needs amendment by inclusion of objects of the Transferor Company, for carrying out its activities after amalgamation. Therefore, the Transferee Company may be directed to amend its objectives by following the procedure as prescribed under Section 13 of the Companies Act, 2013;*

- (b) *The Authorized Share Capital of the Transferee Company is found insufficient by 3,76,728 Equity Shares for implementation of the Scheme. Therefore, the Company may be directed to increase its Authorized Share Capital as per provisions of Section 61 read with 64 of the Companies Act, 2013, after approval of the Scheme by the Hon'ble Court.*
- (c) *The ROC reported that two different dates were prescribed for Accounting (i) in respect of Accounting of Assets & Liabilities, the date of Accounting is the date of amalgamation, which is not defined in the Scheme, refer Para No. 6.1 of the Scheme and (ii) in respect of Accounting of Reserves & Surpluses, the date of Accounting is Appointed Date i.e. 01.04.2015 in Para 6.2 of the Scheme. The date of such Accountings should be same.*
- (d) *The ROC reported by referring to the Para No. 1(f) and 5.1 of the Scheme that the Record Date has not been decided and found uncertain. Therefore, it is submitted that the Record date needs to be spelt out specifically in the Scheme.*
- (e) *It is stated in Para No. 8.1 of the Scheme that the position, rank and designation of the employees would be decided by the Transferee Company. In this regard, the Transferee Company may be specifically directed that such position, rank and designation shall not less favorable than those subsisting with reference to the Transferor Company.*
- (f) *In addition to compliance of AS – 14, 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 AS – 5 etc. and ensure that the Financial Statement of the Transferee Company does not impair the true and fair view of the Financial Statements of the Transferee Company after post- amalgamation.*
- (g) *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 Companies.”*

11. With respect to observations contained in Clause IV(a) of the Report filed by Regional Director, the Petitioner Company, in the aforesaid Affidavit dated 20<sup>th</sup> March 2017 through its Director Mr. Parag Navinbhai Shah, undertakes to amend its main Object clause in its Memorandum of Association by inclusion of objects of the Transferor Company, by separately following the procedure as prescribed under Section 13 of the Companies Act, 2013 as may be necessary for the effective implementation of the Scheme of Amalgamation.
12. With respect to observation contained in Clause IV(b) of the Report filed by Regional Director, the Transferee Company undertakes to separately adopt necessary procedure under provisions of Section 61 read with Section 64 of the Companies Act, 2013 to sufficiently increasing its Authorized share capital for allotment of share to shareholder of Transferor Company as required for the purpose of effective implementation of Clause 5 of the scheme.
13. With respect to observation contained in Clause IV(c) of the Report filed by Regional Director, the Petitioner Company vide its aforesaid Affidavit dated 20<sup>th</sup> March 2017 clarified and recorded that in clause 6.1 of the scheme, the date of Amalgamation means the Appointed date under the scheme and accordingly effect of accounting of assets and liabilities will be given from Appointed dated i.e. 1<sup>st</sup> April, 2015 and the date of accounting for purposes of Clause 6.1 & 6.2 is the appointed date as defined under the Scheme.
14. With respect to observation contained in Clause IV(d) of the Report filed by Regional Director, the Petitioner Company vide its aforesaid Affidavit dated 20<sup>th</sup> March 2017 states and submits that the Record Date mentioned in Para. 1(f) and 5.1 of the scheme is for the allotment of shares to the shareholders of Transferor Company which can only be decided only after scheme is approved

and therefore it is not possible to envisage such date specifically in advance at the time of drafting the scheme. The Learned Advocate for the Petitioner on instructions submits and clarifies that the Record date under clause 5.1 of the Scheme will be the Appointed date and further that only such shareholders of the Transferor Company whose names are recorded in its Register of Members as on the Appointed date, or such of their heirs, executors, administrators or other legal representatives or their transferee or successors in title, as the case may be, existing on the effective date will be considered for the purpose of allotment of shares under clause 5.1 of the Scheme.

15. With respect to paragraph IV(e) of the report filed by the Regional Director, the Petitioner Company vide its aforesaid Affidavit dated 20<sup>th</sup> March 2017 clarified and confirmed that the position, rank and designation of the employees in the transferee Company shall not be less favorable than those subsisting in the Transferor Company.
16. With respect to paragraph IV(f) of the report filed by the Regional Director, the Petitioner Company undertakes to pass such accounting entries, which are necessary in connection with the scheme to comply with other applicable Accounting Standard such as AS-5, etc.
17. With respect to paragraph IV(g) of the report filed by the Regional Director, the Advocate for the Petitioner 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 will be met and answered in accordance with law.
18. The observations made by the Regional Director have been explained by the Petitioner in paragraphs 10 to 17. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.

19. 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.
20. Since all the requisite statutory compliances have been fulfilled, the Transfer Company Scheme Petition filed by the Petitioner Company is made absolute in terms of prayer clauses (a) to (c).
21. The Petitioner Company to lodge a copy of this order and the Scheme along with Form of Minutes (Exhibit-‘N’ to Transfer Company Scheme Petition No.131/Mah/2017) duly certified by the Deputy Director, National Company Law Board, Mumbai Bench with the concerned Superintendent of Stamps, for the purpose of adjudication of stamp duty payable, if any, on the same within 60 (sixty) days from the date of this order.
22. Petitioner is directed to file/lodge a copy of this order and Scheme along with Form of Minutes (Exhibit-‘N’ to Company Scheme Petition No. 131/Mah/2017), 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, whichever is applicable.
23. The Petitioner to pay costs of Rs.25,000/- to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the order.
24. All concerned regulatory authorities to act on copy of this order along with the Scheme and Form of Minutes duly certified by the Deputy Director, National Company Law Board, Mumbai Bench.

.Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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