

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

BENCH, AT MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 275 OF 2017

CONNECTED WITH

COMPANY SCHEME PETITION NO. 795 OF 2016

(HIGH COURT TRANSFERRED PETITION)

Bhoir Offshore Private Limited, ...Petitioner Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 276 OF 2017

CONNECTED WITH

COMPANY SCHEME PETITION NO. 796 OF 2016

(HIGH COURT TRANSFERRED PETITION)

Bhoir Dredging Company Private Limited,Petitioner Company

In the matter of Companies Act, 2013;

AND

In the matter of Sections 230 to 232 read with
Rule 15(1) of Companies (Compromises,
Arrangements and Amalgamations) Rules,
2016 and other applicable provisions of
Companies Act, 2013;

AND

In the matter of Sections 391 to 394 of the
Companies Act, 1956;

AND

In the matter of Scheme of Amalgamation
between Bhoir Offshore Private Limited,
("Transferor Company") AND Bhoir Dredging
Company Private Limited ("Transferee

Company”)AND Their respective shareholders
and creditors

Called for Hearing

Mr. Rahul Oak, Advocate for the Petitioner Companies.

Mr. S. Ramakantha, Joint Director for the Regional Director.

CORAM: M.K.Shrawat, Member (Judicial)

V. Nallasenapathy, Member (Technical)

DATE: 13thApril, 2017

1. Heard learned Counsel for the parties. No objector has come before the court to oppose the Scheme and nor any party has controverted any averments made in the Petitions to the scheme of Amalgamation of Bhoir Offshore Private Limited, the Transferor Company with Bhoir Dredging Company 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 read with Rule 15(1) of Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 and other applicable provisions of Companies Act, 2013, to a Scheme of Amalgamation between Bhoir Offshore Private Limited, (“Transferor Company”) AND Bhoir Dredging Company Private Limited (“Transferee Company”) AND Their respective Shareholders and creditors.
3. The Learned Counsel for the Petitioners state that, The Transferor Company is engaged in business of hiring cranes, tugs and barges. The Transferee Company is also engaged in the business of hiring cranes, tugs and barges.

4. The proposed Scheme of Amalgamation will lead to consolidation of companies within the group, reduction of intra-group transactions and compliance requirements under various laws, reduction of operating and compliance costs and achievement of administrative, operative and management efficiencies.
5. Learned Counsel for the Petitioners further states that the Board of Directors of the Petitioner Companies have approved the said Scheme of Amalgamation by passing Resolutions which are annexed to the respective Company Scheme Petitions.
6. Learned Counsel for the Petitioners further states the petition has been filed in consonance with the order passed in their Company Summons for Direction No. 713 of 2016, and 714 of 2016 of Hon'ble Bombay High Court.
7. The Learned Counsel for the Petitioner further states that the Petitioner Companies have complied with all requirements as per directions of the Hon'ble Bombay High Court and Hon'ble NCLT, Mumbai Bench and they have filed necessary affidavits of compliance with the Hon'ble NCLT, Mumbai Bench. Moreover, the Petitioner Companies undertake to comply with all statutory requirements, if any, as required under the Companies Act, 1956 and Companies Act, 2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.
8. The Official Liquidator filed his report on 24th day of March, 2017 stating that the affairs of the Transferor Company have been conducted in proper manner and that the Transferor Company may be ordered to be dissolved.
9. The Regional Director has filed his report dated 24th day of March, 2017 and has stated that save and except as stated in Paragraph IV (a) and (f)

of the said Report, 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:-

(a) The Tax implication if any arising out of scheme is subject to final decision of Income Tax Authorities. The approval of the scheme by this Hon'ble Court/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.

(b) 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 may be asked to submit the certificate.

(c) Authorized share capital of the transferee company is 2,00,000 equity shares of Rs. 100/- each and of Transferor Company is 2,00,000 equity shares of Rs 100/- each. In the transferee company balance sheet as at 31.3.2015 issued and subscribed capital is shown as 1,99,987 equity shares of Rs. 100/- each. Paid up capital is shown as nil In the transferor company balance sheet as at 31.3.2015 issued and subscribed capital is 1, 89,890 equity shares of Rs 100/- each Paid up capital is shown 15, 40,000 equity shares of Rs 100/- each but amount is shown as Nil. Whereas in the balance sheet as at 31.03.2016 of the Transferor company issued, subscribed and fully paid up share capital is 1,89,890 equity shares of Rs.100/- each In the matter of Transferee company issued,

subscribed and fully paid up share capital as at 31.03.2016 is 19,9,987 equity shares of Rs. 100/- each.

In this regard it is submitted the petitioner companies has to clarify regarding the amount received as paid up share capital and why it is not disclosed in the balance sheet as at 31.03.2015 Similarly Transferor Company has to clarify as to how paid up capital is more than the issued and subscribed capital in the balance sheet as at 31.03.2015. it is required because the appointed date is 01.04.2015.

(d) Petitioner in clause 9 has inter alia mentioned that the in the event of retrenchment of such staff, workmen, or other employees, or other employees, the transferee company shall be liable to Pay compensation in accordance with the law on the basis that the services of the staff, workmen, or other employees shall not have been interrupted by reason of such transfer.

In this regard it is submitted that Petitioner Company has to undertake to Protect In this regard it is submitted that Petitioner Company has to undertake to protect the interest of employees of the Transferor Company

(e) It is submitted as per the minutes of order meeting of secured creditor of both the companies have been dispensed with in view of undertaking given by the company to serve individual notice to the creditors.

In this regard the Petitioner companies has to confirm whether notice has been served to the creditors as per the directions of the Hon'ble High Court.

(f) It may be submitted that the Petitioner Companies has submitted the proof of serving notice upon the Income Tax Authorities for comments as on 07 12'2016. This office issued notice to Income Tax Authorities seeking comments vide letter no. RD: TSCP No. 275-276/ 230-232/ NCLT/ MB/ MAH/ 2017, CSP NO 795 -796 OF 2016/ (391-394) BHC/10598 dated 22.03.2017.

10. As far as the observations made in paragraph IV (a) of the Report of Regional Director is concerned, the PetitionerCompanies submits that the Petitioner Companies undertakes to comply with all applicable provisions of the Income Tax Act and all tax implications, if any, arising out of the Scheme will be subject to the decision of the Income Tax Authority.

11. As far as the observations made in paragraph IV (b) of the Report of Regional Director is concerned, the petitioner companies submits the certificate regarding the accounting treatment proposed in the scheme of Compromise or arrangement is in conformity with the accounting standards prescribed under section 133 of the Companies Act, 2013.

12. As far as the observations made in paragraph IV (C) of the Report of Regional Director is concerned, the Petitioner Companies submits that the statement of assets and liabilities which were submitted with Regional Director's office reflects the correct figures. Petitioners states that there has been typographical error in the notes to accounts of the respective balance sheets as at 31.03.2015 of the petitioner companies. The said typographical errors were unintentional and therefore required to be ignored. As per the financial records available there has been no allotment made since last five financial years in the petitioner

companies. Further the Paid up Share capital of the Transferor Company is not more than issued and subscribed capital in the balance sheet as per the Statement of Asset and Liabilities submitted with Regional Director's Office.

13. As far as the observations made in paragraph IV (d) of the Report of Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertakes to protect the interest of employees of the transferor Company.
14. As far as the observations made in paragraph IV (e) of the Report of Regional Director is concerned, the Petitioner Companies undertakes and confirm that the notices has been served to the creditors as per the directions of the Hon'ble High Court.
15. As far as the observations made in paragraph IV (f) of the Report of Regional Director is concerned, the Petitioner Companies have noted comments in this regards and have already served notices to the Income Tax Authorities.
16. The Observation made by the Regional Director have been explained by the petitioner Companies in Paragraph 10 to 15 above. The clarifications and undertakings given by the Petitioner Companies are accepted.
17. From the material on record, the scheme appears to be fair and reasonable and is not in violation of any provisions of Law and is not contrary to public policy.
18. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 275, and 276 of 2017 are made absolute in terms of prayers mentioned in the respective petitions.

19. The Petitioner Companies are directed to file a certified / authenticated copy of this order and the scheme with the concerned Superintendent of Stamps, within 60 days from the date of the receipt of Order, for the purpose of adjudication of stamp duty payable, if any, on the same.
20. The Petitioner Companies are directed to file a certified / authenticated copy of order and the scheme 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, 2013.
21. The Petitioner Companies to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Costs to be paid within four weeks from the date of the Order.
22. The Transferor Company to pay costs of Rs. 25,000/- to the Official Liquidator, High Court, Bombay, Mumbai. Costs to be paid within four weeks from the date of the Order.
23. All concerned regulatory authorities to act on a copy of this order along with Scheme duly certified by the Registrar, National Company Law Tribunal, Mumbai Bench.

Sd/-
V. Nallasenapathy, Member (T)

Sd/- 13/11/12
M. K. Shrawat, Member (J)