

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,

MUMBAI BENCH, MUMBAI

T. COMPANY SCHEME PETITION NO. 240 OF 2017

DHARAMTAR INFRASTRUCTURE PRIVATE LIMITED

...Petitioner Company

In the matter of the Company Act, 1956 (1 of 1956);

AND

In the matter of Sections 391 to 394 of the Company Act, 1956 AND Sections 230 to 232 of the Company Act, 2013;

AND

In the matter of Scheme of Amalgamation

OF

Dharamtar Infrastructure Private Limited ('the Transferor Company')

WITH

PNP Maritime Services Private Limited ('the Transferee Company')

AND

their respective shareholders

CALLED FOR HEARING:

Mr. Hemant Sethi i/b M/s. Hemant Sethi & Co., Advocates for the Petitioner Company.

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

Coram: B.S.V. Prakash Kumar, Member (Judicial)

V. Nallasenapathy, Member (Technical)

Date: 20th April, 2017

1. Heard learned counsel for parties. No objector has come before this Hon'ble Tribunal to oppose the Scheme nor has any party controverted any averments made in the Petition.
2. The present Scheme of Amalgamation pertains to merger of Dharamtar Infrastructure Private Limited (Transferor Company) with PNP Maritime Services Private Limited (Transferee Company) and their respective shareholders with effect from the Appointed Date in terms of the Scheme. Petitioner Company is engaged in the business of infrastructure projects and manpower recruiting services. Amalgamation of the company will provide (i) An opportunity to leverage combined assets and build a stronger sustainable business. Specifically,

the merger will enable optimal utilization of existing resources and provide an opportunity to fully leverage assets, capabilities, experience and infrastructure of both the company, (ii) Reduce the managerial overlaps involved in operating multiple entities; ease and increase operational and management efficiency; integrate business functions; eliminate duplication and rationalization of administrative expenses, (iii) Greater efficiency in cash management of the Transferee Company and unfettered access to cash flow generated by the combined businesses which can be deployed more efficiently to fund organic and inorganic growth opportunities to maximize shareholder value, (iv) Improved organizational capability and leadership arising from the pooling of human capital that has diverse skills, talent and vast experience to compete successfully in an increasingly competitive industry, (v) Cost savings are expected to flow from more focused operational efforts, rationalization, standardization and simplification of business processes, productivity improvements, improved procurement; and (vi) Synchronizing of efforts to achieve uniform corporate policy.

3. The Petitioner Company have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to the Company Scheme Petition.
4. By order dated 5th August, 2016 passed by the Hon'ble Bombay High Court in Company Summons for Direction Nos. 687 of 2016, convening of meetings of equity shareholders of the petitioner company was dispensed with in view of consents given by the equity shareholders of the petitioner company. Also, convening of meetings of unsecured creditors of the petitioner company was dispensed with in view of the undertaking given by the petitioner company that they would issue individual notice of hearing of the petition to all its unsecured creditors.
5. The Learned Advocate appearing on behalf of the Petitioner states that the Petition have been filed in consonance with the order passed in Company Summons for Direction Nos. 687 of 2016.
6. By order dated 27th October, 2016 passed by the Hon'ble Bombay High Court, Petition filed by the petitioner company was admitted and fixed for final hearing on 15th December, 2016. By the said order, the Petitioner were also directed to issue notices etc.
7. The Learned Advocate appearing on behalf of the Petitioner states that the Petitioner Company have complied with all requirements as per directions of the

Hon'ble Bombay High Court and they have filed necessary Affidavits of compliance in the Hon'ble Bombay High Court. Moreover, Petitioner Company undertake to comply with all statutory requirements if any, as required under the Company Act, 1956/2013 and the Rules made there under whichever is applicable. The said undertaking is accepted.

8. Pursuant to transfer of the Company Scheme Petition to this Hon'ble Tribunal, the Regional Director has filed his Report on 13th April, 2017 stating therein that save and except as stated in paragraph IV of the said Report, it appears that the Scheme is not prejudicial to the interest of shareholders and public.

Paragraph IV, of the said Report reads as follows:

- (a) *In addition to compliance of AS-14 (IND AS-103) the Transferee Company shall pass such accounting entries which are necessary in connections with the scheme to comply with other applicable Accounting Standards such as AS-5 (IND AS-8) etc.,*
- (b) *As per Clause 1.2, Definitions of the scheme. "The Appointed Date" 1st day of April 2016 or such other date as may be fixed or approved by the High Court or National Company Law Tribunal, as and when applicable. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013 it should be 1st April, 2016.*
- (c) *As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department for their comments. It appears that the company vide letter dated 27th October 2016 has served a copy company scheme petition No. 753/2016 along with relevant orders etc., further the Regional Director has also issued a reminder 04/04/2017 to IT Department.*
- (d) *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.*
- (e) *In view of the objection raised by the ROC Mumbai, mentioned at para 11 above Hon'ble NCLT may pass appropriate orders/ orders/ as deem fit.*

" The Transferor Company in Note 7 of the Balance Sheet as at 31.03.2015 has shown provisions for expenses Rs 1,09,32,172/-. However, the explanation has not been given as to the nature of provisions. Hence, the company has violated the provisions of Section 134 r/w/ Schedule -III of the Companies Act, 2013."

9. As far as observation of the Regional Director, as stated in paragraph IV (a) of his Report is concerned, the Petitioner Company through their Counsel undertakes that it will comply with applicable Accounting standards 14 (Ind AS 103). Further, in addition to compliance with the applicable Accounting standards (Ind AS), the Petitioner Company shall pass such accounting entries which may be necessary in connection with the Scheme to comply with all applicable Accounting standards (Ind AS).
10. As far as observation of the Regional Director, as stated in paragraph IV (b) of his Report is concerned, the Petitioner Company through their Counsel undertakes to comply that the Appointed date for the Scheme would be 1st April, 2016.
11. As far as observation of the Regional Director, as stated in paragraph IV (c) & (d) of his Report is concerned, the Petitioner Company through their Counsel undertakes to comply with all applicable provisions of the Income Tax Act and all tax issues (if any) arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
12. As far as observation of the Registrar of Companies as stated in paragraph IV (e) of the Regional Director Report, the Petitioner Company states that the provisions for expenses mentioned in Note 7 of the Audited Financial statement as on 31.03.2015 of Rs 1,09,32,172/- pertains to aggregate provisions for various kind of routine business expenditure. Accordingly, there has been no violation of Section 134 r/w/ Schedule - III of the Companies Act, 2013.
13. The Official Liquidator has filed his report on 23rd February, 2017 in Company Scheme Petition No.753 of 2016 inter alia, stating therein that the affairs of the Transferor Company have been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved without winding up by this Court.
14. From the material on record, the Scheme appears to be fair, reasonable and is not violative of any provisions of law nor is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, the Company Scheme Petition No. 753 of 2016 are made absolute in terms of prayer clauses (a) to (f).
16. Petitioner Company are directed to file a copy of this order along with a copy of the Scheme of Amalgamation with the concerned Registrar of Company, electronically, along with e-Form INC-28, in addition to 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 certified 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 applicable.
18. The Petitioner Company and the Transferee Company to pay costs of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai and the petitioner company mentioned in Transferred Company Scheme Petition No. 240 of 2017 to pay costs of Rs. 25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from the date of the receipt of the order.
19. All authorities concerned to act on a copy of this order along with the Scheme duly certified by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member
(Technical)

Sd/-

B.S.V. PrakashKumar, Member
(Judicial)