

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 288 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 774 OF 2016.  
EPSON TRADING PRIVATE LIMITED

...Petitioner Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 289 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 775 OF 2016.  
HAREKRISHNA SECURITIES PRIVATE LIMITED

...Petitioner Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 290 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 776 OF 2016.  
RANA ADVERTISING AND MARKETING PRIVATE LIMITED

...Petitioner Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 291 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 778 OF 2016.  
TAC TECHNOLOGICAL 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. Epson Trading Private Limited and M/s.  
Harekrishna Securities Private Limited and M/s.  
Rana Advertising And Marketing Pvt. Ltd and  
M/s. Tac Technosoft Private Limited with M/s.  
Novus Trade star Private Limited And Their  
Respective Shareholders and Creditors.

CALLED FOR HEARING

Mr. Chandrakant Mhadeshwar and Mr. Madan Gupta, Advocates for the  
Petitioner Company.

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

Mr. Santosh Dalvi, Representantative of the Official Liquidator.

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

Date: 03<sup>rd</sup> May, 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 Epson Trading Private Limited, the First Transferor Company and Harekrishna Securities Private Limited, the Second Transferor Company and Rana Advertising And Marketing, the Third Transferor Company and Tac Technosoft Private Limited, the Fourth Transferor Company with Novus Trade star Private Limited, 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 for the Petitioner Companies further states that the Scheme of Amalgamation will have the benefit That the merger will make available assets, financial, managerial and technical resources, personnel, capabilities, skills, and expertise of both the Transferor Companies and the Transferee Company leading to enhancement of future business potential, increased competitiveness, cost reduction and better efficiencies, productivity

gains and logistical advantages, thereby contributing to significant future growth and enhancement of shareholder value. Consolidation of the business operations of the Transferor Companies and the Transferee Company for optimizing the control over the operations more efficiently, conveniently, economically and advantageously under single management and Greater efficiency in cash management of the combined entity, unfettered access to cash flow generated by the combined business which can be deployed more efficiently to fund organic and inorganic growth opportunities.

5. 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.
6. The Regional Director has filed his Report on 1<sup>st</sup> May, 2017, inter alia, stating therein that save and except as stated in paragraphs IV (a) to (f) 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:

“IV. The observations of the Regional directors on the proposed Scheme to be considered by the Hon'ble NCLT are as under:-

- (a) *In addition to compliance of AS-14 (IND AS – 103 ) 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 (IND AS-8)etc.*

- (b) Regarding Clause 14 of the Scheme it is submitted that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the same shall be debited to Goodwill Account and will not be adjusted against Profit & Loss Account of the Transferee Company*
- (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 23<sup>rd</sup> November 2016 has served a copy company petition No.811 to 814 /2016 along with relevant orders etc. further the Regional Director has also issued a reminder 24/04/2017.*
- (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) As per Clause 1.2, Definitions of the scheme. "The Appointed Date" means opening business of 1<sup>st</sup> day of April 2016 or such other date as may be fixed or approved by the High Court of Judicature at Bombay in this regard, it is submitted in terms of Provisions of section 232(6) of the Companies Act, 2013 it should be 1<sup>st</sup> April, 2016;*
- (f) As on date ROC Mumbai has not submitted his report. Hon'ble Tribunal may pass appropriate order(s) as deem fit.."*

7. As far as the observation of the Regional Director stated in paragraph IV (a) of his report is concerned, the Petitioners are undertakes that in addition to compliance of AS-14 (IND AS – 103 ) 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 (IND AS – 8) etc.
8. As far as the observation of the Regional Director stated in paragraph IV (b) of his report is concerned, the Petitioners undertakes that the surplus if any arising out of the scheme shall be credited to Capital Reserve and deficit if any arising out of the

same shall be debited to Goodwill Account and will not be adjusted against Profit & Loss Account of the Transferee Company.

9. As far as the observation of the Regional Director stated in paragraph IV (c) and (d) 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.
10. As far as the observation of the Regional Director stated in paragraph IV (e) of his report is concerned, the Petitioners are undertakes that the Appointed Date for the Scheme shall be 1<sup>st</sup> April, 2016.
11. As far as the observation of the Regional Director stated in paragraph IV (f) of his report is concerned, counsel for the Petitioner Companies states that the Registrar of Companies has submitted his report to this Tribunal and they have no objection to the Scheme.
12. The Official Liquidator has filed his report in the Company Scheme Petition Nos. 288 of 2017 and 291 of 2017 and official Liquidator states that they have no objection to the Present Scheme.
13. 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.
14. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition Nos.288 of 2017 to 291 of 2017 are made absolute in terms of prayer clauses (a) to (d) of the respective Petitions.

15. 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.
16. 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.
17. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai and to the Official Liquidator, High Court, Bombay to be paid within four weeks from the date of Order.
18. Costs to be paid within four weeks from today.
19. 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)