

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL BENCH,
AT MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO.329 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.854 OF 2016)

CONNECTED WITH

MISCELLANEOUS APPLICATION NO. 101 OF 2017

ESSAR CONCESSIONS INDIA LIMITED

...PETITIONER/ FIRST TRANSFEROR COMPANY

AND

TRANSFERRED COMPANY SCHEME PETITION NO.330 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.855 OF 2016)

CONNECTED WITH

MISCELLANEOUS APPLICATION NO. 102 OF 2017

ESSAR INFRASTRUCTURE SERVICES PRIVATE LIMITED

...PETITIONER/ SECOND TRANSFEROR COMPANY

AND

TRANSFERRED COMPANY SCHEME PETITION NO.331 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.856 OF 2016)

CONNECTED WITH

MISCELLANEOUS APPLICATION NO. 103 OF 2017

GLOBAL COMMODITIES TRADING LIMITED

..PETITIONER/ THIRD TRANSFEROR COMPANY

AND

TRANSFERRED COMPANY SCHEME PETITION NO.332 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.857 OF 2016)

CONNECTED WITH
MISCELLANEOUS APPLICATION NO. 104 OF 2017

KIRTI REALTIES AND FARMS PRIVATE LIMITED

..PETITIONER/ FIFTH TRANSFEROR COMPANY

AND

TRANSFERRED COMPANY SCHEME PETITION NO.333 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.858 OF 2016)

CONNECTED WITH
MISCELLANEOUS APPLICATION NO. 105 OF 2017

PAPRIKA MEDIA PRIVATE LIMITED

...PETITIONER/ SIXTH TRANSFEROR COMPANY

AND

TRANSFERRED COMPANY SCHEME PETITION NO.334 OF 2017
(HIGH COURT COMPANY SCHEME PETITION NO.859 OF 2016)

CONNECTED WITH
MISCELLANEOUS APPLICATION NO. 106 OF 2017

WELLMAN HINDUSTAN PRIVATE LIMITED

...PETITIONER/ EIGHTH TRANSFEROR COMPANY

In the matter of the Companies Act,
1956;

And

In the matter of Sections 391 to 394 of the Companies Act, 1956 and Section 230 to 232 of the Companies Act, 2013;

And

In the matter of Scheme of Amalgamation of Essar Concessions India Limited ("ECIL" or "First Transferor Company") and Essar Infrastructure Services Private Limited ("EISPL" or "Second Transferor Company") and Global Commodities Trading Limited ("GCTL" or "Third Transferor Company") and Golsil Exim Private Limited ("GEPL" or "Fourth Transferor Company") and Kirti Realities and Farms Private Limited ("KRFPL" or "Fifth Transferor Company") and Paprika Media Private Limited ("PMPL" or "Sixth Transferor Company") and Shining Star Traders Private Limited ("SSTPL" or "Seventh Transferor Company") and Wellman Hindustan Private Limited ("WHPL" or "Eighth Transferor Company") collectively referred to as "Amalgamating Companies"

With

Imperial Consultants and Securities Private Limited ("ICSPL" or

"Amalgamated Company" or
"Transferee Company")

And

their respective shareholders and
creditors.

Called for Hearing

Mr. Ashish Parwani, i/b Rajani associates, Advocate for the Petitioner
Company

Mr. S. Ramakantha, Joint Director, from the office of Regional Director

Corum:

Shri. M. K. Shrawat, Member (Judicial)

Shri. V. Nallasenapathy, Member (Technical)

Date: 13th April, 2017

MINUTES OF THE ORDER

1. Heard learned counsel for parties. None appears before the Tribunal to oppose the Scheme and nor any party has controverted any averments made in the Company Scheme Petitions.
2. The sanction of the Tribunal is sought under Sections 391 to 394 of Companies Act, 1956 and Section 230 to 232 of Companies Act, 2013 to a Scheme of Amalgamation of Essar Concessions India Limited (Petitioner Company/ First Transferor Company) and Essar Infrastructure Services Private Limited (Petitioner Company/ Second Transferor Company) and Global

Commodities Trading Limited (Petitioner Company/ Third Transferor Company) and Golsil Exim Private Limited (Fourth Transferor Company) and Kirti Realities and Farms Private Limited (Petitioner Company/ Fifth Transferor Company) and Paprika Media Private Limited (Petitioner Company/ Sixth Transferor Company) and Shining Star Traders Private Limited (Seventh Transferor Company) and Wellman Hindustan Private Limited (Petitioner Company/ Eighth Transferor Company) collectively referred to as "Amalgamating Companies") with Imperial Consultants and Securities Private Limited ("Amalgamated Company" or "Transferee Company").

3. The Learned Advocate for the Petitioner Companies states that the registered office of the Fourth Transferor Company and the Seventh Transferor Company is in Ahmedabad, Gujarat. The Fourth Transferor Company and the Seventh Transferor Company had filed necessary proceedings with the Hon'ble High Court of Gujarat and the Hon'ble Court of Gujarat was pleased to sanction the Scheme of Amalgamation vide Order dated 16th December, 2016.
4. The Learned Advocate for the Petitioner Companies states that the registered office of the Amalgamated Company is in Chennai, Tamil Nadu. The Amalgamated Company have filed necessary proceedings in the High Court of Judicature at Madras and National Company Law Tribunal, Chennai Bench for the sanction of the Scheme of Amalgamation.
5. The Learned Advocate for the Petitioner Companies states that the First Transferor Company carries on the business activities in terms of its Memorandum of Association. The Second Transferor Company is engaged in the business of providing infrastructure

services. The Third Transferor Company is engaged in the business activities in terms of its Memorandum of Association. The Fourth Transferor Company is engaged in the business of trading in securities of property companies. The Fifth Transferor Company is engaged in the business of trading in securities of Real Estate Companies. The Sixth Transferor Company is engaged in the business as proprietors and publishers of newspapers, journals, magazines, books and other literary works and undertakings. The Seventh Transferor Company is engaged in the business of trading in securities of property companies. The Eighth Transferor Company is engaged *inter alia* in the business of investment in properties. The Amalgamated Company is *inter-alia* engaged in the business of providing advisory services.

6. The Learned Advocate for the Petitioner Companies state that the First Transferor Company, the Second Transferor Company, the Third Transferor Company, the Fifth Transferor Company and the Sixth Transferor Company are the wholly owned subsidiaries of the Amalgamated Company. The Amalgamated Company holds majority of the shares in the Fourth Transferor Company and indirectly holds majority of shares in the Eighth Transferor Company.
7. The Learned Advocate for Petitioner Companies states that the entire business and undertaking of the Amalgamating Companies shall stand transferred to and vested in, as a going concern, in the Amalgamated Company. The proposed amalgamation would result in consolidation of shareholding of the Amalgamated Company. The amalgamation shall reduce the number of entities thereby reducing managerial overlaps, which are necessarily involved in running multiple entities thereby creating synergy in terms of administration costs, as well as simplification and

flexibility of operations. It shall result in value creation for shareholders of the Amalgamated Company and shall result in creation of an entity with substantial asset base and net worth and thus increased ability for promotion of business activities for enhancement of future business.

8. The Petitioner Companies have approved the said Scheme of Amalgamation by passing the Board Resolutions which are annexed to their respective Company Scheme Petitions.
9. The Learned Advocate for the Petitioner Companies states that the Petitioner Companies have complied with all the respective directions passed in Company Summons for Direction and that the Company Scheme Petitions have been filed in consonance with the orders passed in respective Company Summons for Direction.
10. The Learned Advocate appearing on behalf of the Petitioner Companies has stated that they have complied with all the requirements as per the directions of the Hon'ble High Court at Bombay and they have respectively filed necessary Affidavits of compliance in all the proceedings. Moreover, the Petitioner Companies undertake to comply with all the statutory requirements, if any, as required under the Companies Act, 1956/2013 and the Rules made thereunder whichever is applicable. The said undertaking is accepted.
11. The Petitioner Companies had filed Company Applications being Miscellaneous Application No. 101 to 106 of 2017 for the amendment of Appointed Date in the Scheme of Amalgamation from 1st day of January, 2016 to 1st day of April, 2016 and this Hon'ble Tribunal has granted the Petitioner Companies leave to

amend by an Order dated 29th March, 2017. The Petitioner Companies have carried out the amendments in the Company Scheme Petition in accordance with the aforesaid Order.

12. The Learned Advocate for the Petitioner further states that, the Fourth Transferor Company, the Seventh Transferor Company and the Amalgamated Company will similarly seek permission from the Hon'ble Court of Ahmedabad/ National Company Law Tribunal, Ahmedabad Bench and National Company Law Tribunal, Chennai Bench for such change/amendment in the Appointed Date in the Scheme and shall file necessary application/affidavit or any other form of documents required to be filed with the Hon'ble High Court of Ahmedabad/ National Company Law Tribunal, Ahmedabad Bench and National Company Law Tribunal, Chennai Bench, to seek their permission for change in Appointed Date.
13. The Regional Director has filed his affidavit dated March 31, 2017 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 paragraphs 6 (a) to (g) of the said Affidavit the Regional Director has stated that
 - (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) *As per balance sheet as 31.03.2016 the "The paid up capital of M/s Wellam Hindustan Private Limited the 8th Transferor Company is more than Rs.5 Crs however, the company has not appointed Key Managerial Personnel (KMP) in compliance of*

section 203 of the Companies Act, 2013 r/w rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel), Rules, 2014" the Transferor/ Transferee Company be directed to comply with the same.

(c) With reference to para 13.2.2 and 2.10 of the Scheme, the ROC, has reported that the record date is fixed as effective date instead of appointed date, transferee company be directed to fix effective date.

(d) As per existing practice, the Petitioner Companies are required to serve Notice for Scheme of Arrangements to the Income Tax Department of their comments. It appears that the company vide letter dated 06.12.2016 has served a copy company petition No. 854-859/2016 alongwith relevant orders etc., to IT Department. However, as on date, there is no response from Income Tax Department. Further, this Directorate has also issued a reminder letter dated 29.03.2017, to IT Department.

(e) 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

(f) The Transferor Company M/s Golstil Exim Private Limited No. 4 & M/s Shining Star Traders Private Limited 7 are in the State of Gujarat and falls within the jurisdiction of Hon'ble NCLT, Ahmedabad.

M/s Imperial Consultants and Securities Private Limited, the Transferee Company (ICSPL) the Transferee Company, is an the State of Tamilnadu, and falls within the jurisdiction of Hon'ble NCLT, Chennai

(g) *Two Transferor Companies (No.4&7) and M/s Imperial Consultants and Securities Private Limited, the Transferee Company falls outside the jurisdiction of this Hon'ble Tribunal and falls within the jurisdiction of the Hon'ble Tribunal at Ahmedabad and Chennai respectively. Accordingly, similar approval be obtained by two Transferor Companies and a Transferee Company from Hon'ble Tribunal at Ahmedabad and Chennai respectively.*

14. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (a) of his Affidavit is concerned, in relation to the accounting entries, the Learned Advocate for the Petitioner Companies submits that the Amalgamated Company undertakes that, in addition to compliance of AS-14 corresponding (IND AS-103) accounting treatment, the Amalgamated Company undertakes to pass such accounting entries as may be necessary in connection with the Scheme to comply with other applicable accounting standards such as AS-5 (IND AS-8) etc.
15. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (b) of his Affidavit is concerned, in relation to the appointment of Key Managerial Personnel (KMP) in the Eighth Transferor Company, the Learned Advocate for the Petitioner Companies submits that the Eighth Transferor Company/ Petitioner Company has already taken sufficient efforts to appoint a Key Managerial Personnel (KMP) in the Eighth Transferor Company. However, the Eighth Transferor Company/ Petitioner Company could not find a suitable candidate for the post of KMP, as the potential candidates were reluctant in taking up a temporary position in a soon to be dissolved company, in view of this Scheme. The Eighth

Transferor Company/ Petitioner Company submits that it shall endeavor to appoint a KMP till the Effective Date.

16. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (c) of his Affidavit is concerned, in relation to the record date of the Scheme, the Learned Advocate for the Petitioner Companies submit that the Amalgamating Company shall allot the shares as per the Scheme to the shareholders of the Fourth Transferor Company and the Eighth Transferor Company listed in their respective the Register of Members as on the Effective Date.
17. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (d) and (e) of his Affidavit is concerned, in relation to the in relation to any tax issue arising out of the Scheme of Amalgamation, the Learned Advocate for the Petitioner Companies submits that Scheme shall be subject to the final decision of the Income Tax Authority and the approval of the same by this Tribunal, the National Company Law Tribunal Ahmedabad Bench and the National Company Law Tribunal, Chennai Bench, may not deter the Income Tax Authority to scrutinize the tax returns filed by the Amalgamated Company after giving effect to the arrangement. However, the Amalgamated Company shall have liberty to exercise all its legal rights under applicable laws including, under Income Tax Act, 1961 and/or under equity in the event the Amalgamated Company is not satisfied with the order/adjudication done by the Income Tax Authority (ies) in the aforesaid matter. The Petitioner Companies through their Advocate undertakes to comply with all the provisions of the Income Tax Act, 1961.

18. So far as the observation of the Regional Director, Western Region, Mumbai in paragraph IV (f) and (g) of his Affidavit is concerned in relation to the jurisdiction of the Fourth Transferor Company, the Seventh Transferor Company and the Amalgamated Company, the Learned Advocate for the Petitioner Companies submits that the Fourth Transferor Company and the Seventh Transferor Company had filed necessary proceedings with the Hon'ble High Court of Gujarat and the Hon'ble Court of Gujarat was pleased to sanction the Scheme of Amalgamation vide Order dated 16th December, 2016. The Amalgamated Company has filed necessary proceedings in the High Court of Judicature at Madras and National Company Law Tribunal, Chennai Bench for the sanction of the Scheme of Amalgamation. The Scheme shall be subject to the approval by this Tribunal, Hon'ble Court of Gujarat /the National Company Law Tribunal, Ahmedabad Bench and the National Company Law Tribunal, Chennai Bench.
19. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 14 to 18 above. The representative of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings and submissions made by the Petitioner Companies through their advocate. In view thereof, the said undertakings given by the Petitioner Companies are accepted.
20. The Official Liquidator has filed his affidavit dated March 27, 2017 wherein he has stated that the affairs of the Petitioner Companies have been conducted in a proper manner. Therefore, the Petitioner Companies may kindly be ordered to be dissolved by this Tribunal.

21. 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.
22. Since all the requisite statutory compliances have been fulfilled, the Transferred Company Scheme Petition No.329 of 2017 filed by the First Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Transferred Company Scheme Petition No.330 of 2017 filed by the Second Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Transferred Company Scheme Petition No.331 of 2017 filed by the Third Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Transferred Company Scheme Petition No.332 of 2017 filed by the Fifth Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Transferred Company Scheme Petition No.333 of 2017 filed by the Sixth Transferor Company are made absolute in terms of prayer clauses (a) to (g) and the Transferred Company Scheme Petition No.334 of 2017 filed by the Eighth Transferor Company are made absolute in terms of prayer clauses (a) to (h).
23. The Petitioners Companies are 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 physical copy, within 30 days from the date of issuance of the certified Order by the Registry.
24. The Petitioner Companies to lodge a copy of this Order along with the Scheme of Amalgamation 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 authenticated Order along with the Scheme of Amalgamation from the Registry.

25. The Petitioner Companies in both Company Scheme Petitions to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. Costs to be paid within four weeks from today.
26. All authorities concerned to act on a copy of this Order along with the Scheme of Amalgamation duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

13/04/17
M. K. Shrawat, Member (J)