

NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, MUMBAI

TRANSFERRED COMPANY SCHEME PETITION NO. 37 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 336 OF 2016.  
LALIT CORPORATE ADVISORY SERVICES PRIVATE LIMITED  
...Petitioner Company

AND  
TRANSFERRED COMPANY SCHEME PETITION NO. 38 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 337 OF 2016.  
BRINDA REALTY VENTURERS PRIVATE LIMITED  
...Petitioner Company

AND  
TRANSFERRED COMPANY SCHEME PETITION NO. 39 OF 2017  
CONNECTED WITH  
COMPANY SUMMONS FOR DIRECTION NO. 338 OF 2016.  
JAY BHARAT LUBRICANTS (INDIA) 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 LALIT  
CORPORATE ADVISORY SERVICES PRIVATE  
LIMITED, the First Transferor Company, BRINDA  
REALTY VENTURERS PRIVATE LIMITED, the Second  
Transferor Company with JAY BHARAT LUBRICANTS  
(INDIA) PRIVATE LIMITED, the Transferee Company.

CALLED FOR HEARING

Mr. Chandrakant Mhadeshwar, Advocates for the Petitioner Company.

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

Mr. Vinod Sharma, Official Liquidator.

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

Shri V. Nallasenapathy, Member (T)

Date: 05th April, 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 LALIT CORPORATE ADVISORY SERVICES PRIVATE LIMITED, the First Transferor Company, BRINDA REALTY VENTURERS PRIVATE LIMITED, the Second Transferor Company with JAY BHARAT LUBRICANTS (INDIA) PRIVATE LIMITED, the Transferee Company.
3. The Petitioner Company 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 amalgamation will enable the Transferee Company to consolidate the businesses and lead to synergies in operation and create a stronger financial base and it would be advantageous to combine the activities and operations of the three companies into a single Company for synergistic linkages and the benefit of combined financial resources. This will be reflected in the profitability of the Transferee Company. The Scheme of amalgamation would result in merger and thus consolidation of business of all the transferor companies and Transferee Company in one entity, all the shareholders of the merged entity will be benefited by result of the amalgamation of Business.
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 they have filed necessary Affidavits of compliance in the Hon'ble Bombay High Court. 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 17<sup>th</sup> January 2017, inter alia, stating therein that save and except as stated in paragraphs IV (1) to (10) 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:-

1. *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.*
2. *The office of the IT Department vide its letter no.ITO-10(2)(2)/ Scheme of amalgamation/2016-17 dated 25/07/2016 inter alia has mentioned that the definition of term remaining business is not defined as the Petitioner not provided statement of Assets and liabilities of the undertaking etc.*
3. *According to the provisions of section 233(10) of the act, 2013 the Transferee company shall not, as a result of the compromise or arrangement, hold any shares in its own name or in the name of any trust whether on its behalf or on behalf of any of its subsidiary or associate companies and any such shares shall be cancelled or extinguished, whereas the petitioner company has not mentioned.*

*In view of above, petitioner may be asked to amend the Scheme accordingly.*

4. *Petitioner in clause 14 of the Scheme has inter alia mentioned about accounting treatment, however, the Scheme does not mention the Accounting Standards that would be adopted for all sub clauses under the heading accounting treatment*

*In view of above, petitioner may be asked to amend the Scheme accordingly.*

5. *Petitioner in clause 12 of the Scheme has inter alia mentioned about combination of authorized capital, consequent upon the amalgamation , Authorized share capital of the Transferee Company will be Rs. 8,65,00,000/- (8,65,000 equity shares of Rs. 100 each) and not Rs.1,00,00,000/- (1,00,000 Equity Shares of Rs.100 each)*

*In view of above, petitioner may be asked to amend the Scheme accordingly.*

6. *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 as required under Section 232(3) proviso of the Companies Act, 2013*

*Petitioner may be asked to submit the certificate.*

7. *A notice of the proposed scheme inviting objections or suggestions, if any, from the Registrar, official Liquidators issued by the transferor companies or by the transferee company is not available as required under section 233(1)(a) of the Companies Act, 2013.*

8. *Objections or suggestions considered by the Companies in their respective general meetings, not available as required*



*under the provisions of section 233(1) (b) of the Companies Act, 2013.*

9. *Declarations of solvency filed by each of the companies involved in the merger, in the prescribed Form in accordance with the provisions of section 233(1)(c) of the companies Act, 2013, before the concerned Authority is not available.*

10. *As per the Scheme Appointed date is 01/04/2015. Petitioner submitted Audited balance Sheet and Profit and Loss Account as on 31<sup>st</sup> march, 2015. Statement if the last annual accounts as on 31<sup>st</sup> march, 2015. According to provisions of Section 232(2)(e) a supplementary accounting statement if the last annual accounts of any of the merging company relate to a financial year ending more than six months before the first meeting of the company summoned for the purpose of approving the scheme is to be circulated for the meeting Details of approval by the General meeting is not available in the company in the file. Latest audited financial statements, latest Auditors Report are not available.”*

7. In response to the above observations the Transferee Company filed its affidavit in reply dated 08<sup>th</sup> March, 2017 to the report of Regional Director.
8. In response to the Affidavit in reply filed by the Petitioner companies the Regional Director has filed his counter Report on dated 26<sup>th</sup> March, 2017.
9. As far as the observation of the Regional Director stated in paragraph IV (1) 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 (2) of his report is concerned, the counsel for the Petitioner Companies states that the proposed Scheme is for Amalgamation of LALIT CORPORATE ADVISORY SERVICES PRIVATE LIMITED (the First Transferor Company), BRINDA REALTY VENTURERS PRIVATE LIMITED (the Second Transferor Company) with JAY BHARAT LUBRICANTS (INDIA) PRIVATE LIMITED (the Transferee Company). The objection raised by the Income Tax Authority is in respect of a Scheme of Demerger and is therefore not applicable. However, Petitioner Companies 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.
11. As far as the observations of the Regional Director, Western Region, Mumbai as stated in paragraph IV (3) to (10) of his Report are concerned, the Counsel for the Petitioner Companies states the Regional Director has filed his counter Report on the said observations interalia stating that as the Petitioner Companies have clarified the observations in the affidavit in reply. In view thereof, they have no further observation in the matter.
12. The Official Liquidator has filed his report in the Company Scheme Petition Nos. 37 of 2017 and 38 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 No.37 of 2017 to 39 of 2017 are made absolute in terms of prayer clause (a) of the Petition.



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.
20. Any person interested shall be at liberty to apply to the Tribunal in the above matter for any direction that may be necessary.

Sd/-

V. Nallasenapathy, Member (T)

Sd/-

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