

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH

TRANSFERRED COMPANY SCHEME PETITION NO. 312 OF 2017
(COMPANY SCHEME PETITION NO. 837 OF 2016)

KALTINT LOGISTICS PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 313 OF 2017
(COMPANY SCHEME PETITION NO. 838 OF 2016)

ASCENT CONSTRUCTION PRIVATE LIMITED

...Petitioner/ Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 314 OF 2017
(COMPANY SCHEME PETITION NO. 839 OF 2016)

ACME HOUSING INDIA PRIVATE LIMITED

...Petitioner/ Transferee Company

In the matter of the Companies Act, 2013 (18 of 2013);

AND

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

AND

In the matter of Scheme of Amalgamation ('Scheme') of Kaltint Logistics Private Limited and Ascent Construction Private Limited with Acme Housing India Private Limited and their respective shareholders and creditors

Called for hearing

Mr. Hemant Sethi, M/s Hemant Sethi & Co., Advocate for the Petitioners in both Petitions.

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

V. Nallasenapathy, Member (Technical).

DATED: 30th March, 2017

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner Companies. None appears before this Tribunal either to oppose the Scheme or to contravene averments made in the Petition.
2. The sanction of this Tribunal is sought under section 230 to 232 of the Companies Act, 2013, to the Scheme of Amalgamation of Kaltint Logistics Private Limited and Ascent Construction Private Limited with Acme Housing India Private Limited and their respective shareholders and creditors.
3. Learned Counsel for the Petitioner Companies states that the First Transferor Company is currently not engaged in any business activities but the Second Transferor Company has been engaged in real estate related activities. Also, the Transferee Company is engaged into real estate activities.
4. The proposed Scheme will have the benefit of better business including economies of scale, cash flow management, synergistic benefits and unfettered access to cash flow generated by the combined business. The merged company would have a large net-worth base, consolidation of operations, and optimal utilization of resources.
5. The Petitioner Companies have approved the said Scheme by passing the Board Resolutions which are annexed to the respective Company Scheme Petitions.
6. The learned Counsel for the Petitioner Companies further states that, the Petitioner Companies have complied with all the directions passed in Company Summons for Direction and that the Company Scheme Petition have been filed in consonance with the orders passed in respective Company Summons for Directions.
7. The learned Counsel for the Petitioner Companies further states that the Petitioner Companies have complied with all requirements as per the directions of this Court/Tribunal and they have filed necessary Affidavits of compliance in the Court/Tribunal. Moreover, the Petitioner Companies through their Counsel undertakes to comply with all statutory requirements, if any, as required under the Companies Act, 1956 / 2013 and the rules made there under whichever is applicable. The said undertaking is accepted.
8. The Regional Director has filed his Report dated 21st March, 2017 stating therein that save and except as stated in paragraph IV of the said Affidavit, it appears that the Scheme is not prejudicial to the interest of shareholders and

public. In paragraph IV of the said Affidavit, the Regional Director has stated 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 Standard such as AS-5 (IND AS – 8) etc.;*
 - b) *As per Part – I Definitions of the Scheme, clause 1.2 of the Scheme “The Appointed Date” means 1st April 2015 or such other date as may be fixed or approved by the High Court or the Tribunal as the case may be. In this regard, it is submitted in terms of provisions of section 232(6) of the Companies Act, 2013, it should be 1st April 2015;*
 - 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 9th December, 2016 has served a copy of company petition No. 837 to 839/2016 along with relevant orders etc., Income Tax department vide Letters Dated 26.12.2016 & 28.12.2016 has sought 2 weeks for submission of their reply. Further, this Directorate has also issued a reminder letter dated 20.03.2017, to IT Department. However, as on date there is no response from Income Tax Department. Copies of the letters Dated 26.12.2016 & 28.12.2016 are annexed herewith and marked as Annexure ‘D-1 & D-2’.*
 - d) *The tax implication if any arising out of this 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.*
9. In so far as observations made in paragraph IV (a) of the Report of Regional Director is concerned, the Transferee Company through its Counsel 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 Standard such as AS-5 (IND AS – 8) etc.
10. As far as the observation made in paragraph IV (b) of the Affidavit of Regional Director are concerned, the Petitioner Companies through its Counsel undertakes

that in terms of provision of section 232(6) of the Companies Act, 2013, the appointed date of the Scheme would be 1st April, 2015.

11. In so far as the observation made in paragraph IV (c) and (d) of the Affidavit of Regional Director is concerned, the Petitioner Companies submits that the Petitioner Companies undertakes to comply with all applicable provision of the Income Tax Act, 1961 and all tax issues arising out of the Scheme will be met and answered in accordance with law.
12. The observations made by the Regional Director have been explained by the Petitioner Companies in paragraphs 9 to 11 above. The clarifications and undertakings given by the Petitioner Companies are hereby accepted.
13. The Official Liquidator has filed his report on 22nd March, 2017 stating therein that the Affairs of the Transferor Companies have been conducted in a proper manner and that the Transferor Companies may be ordered to be dissolved by this Court/Tribunal.
14. 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. None of the parties concerned have come forward to oppose the Scheme.
15. Since all the requisite statutory compliances have been fulfilled, Transferred Company Scheme Petition No. 312, 313 and 314 of 2017, filed by the Petitioner Companies are made absolute in terms of prayer clause (a) of the respective Petitions.
16. The Petitioner Companies 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. Petitioner Companies are directed to file a certified copy of this order along with a copy of the Scheme 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.
18. The Petitioner Companies to pay costs of Rs.25,000/- each to the Regional Director, Western Region, Mumbai. The Petitioner Companies in Transferred Company Scheme Petition No 312 and 313 of 2017 to pay sum of Rs.25,000/- each to the Official Liquidator, High Court, Bombay. The costs to be paid within four weeks from the date of Order.

19. All authorities concerned to act on a certified copy of this order along with Scheme duly certified 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/-

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

Sd/-

V. Nallasenapathy, Member (Technical)