

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBA I BENCH
TRANSFERRED COMPANY SCHEME PETITION NO. 101 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SCHEME PETITION NO. 589 OF 2016
Navbharat Archive Xpress Private Limited

...Petitioner/First Transferor Company

AND

TRANSFERRED COMPANY SCHEME PETITION NO. 102 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SCHEME PETITION NO. 590 OF 2016
Safe House Information Management Solutions Private Limited

...Petitioner/Second Transferor Company

In the matter of the Companies Act, 1956 and other relevant provisions of the Companies Act, 2013;

AND

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

AND

In the matter of Scheme of Amalgamation between Navbharat Archive Xpress Private Limited and Safe House Information Management Solutions Private Limited and Iron Mountain India Limited and their respective shareholders and creditors.

CALLED FOR HEARING

Mr. Rajesh Shah with Mr. Ahmed M Chunawala i/b. M/s Rajesh Shah & Co.,
for Petitioners in both Petitions.

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

Shri V. Nallasenapathy, Member (Technical)

DATE: 8th March, 2017

MINUTES OF ORDER

1. Heard the learned counsel for the Petitioner Companies. No objector has come before the court to oppose the Petition and nor any party has controverted any averments made in the Petition.
2. The sanction of the Court is sought under Sections 230 to 232 of the Companies Act, 2013, to a Scheme of Amalgamation between Navbharat Archive Xpress Private Limited ('First Transferor Company') and Safe House Information Management Solutions Private Limited ('Second Transferor Company') and Iron Mountain India Private Limited ('Transferee Company') and their respective shareholders and creditors.
3. Learned Counsel for the Petitioners states that the Petitioner Companies are engaged in providing storage related services.
4. The rationale for the scheme is that amalgamation of the Petitioner Companies into the Transferee Company would provide significant impetus to the development and growth of the consolidated business in one entity. The consolidation by way of this Scheme will lead to synergies of operation and stronger and wider financial base for future growth/expansion – more specifically the following advantages:-
 - Reducing the multiple layer inefficiencies;
 - Consolidation and synergies of operations;
 - Administrative convenience; and
 - Reduction in administrative cost and overheads.The achievement of synergies in the operations and considerable savings would result in improvement in the future profitability.
5. The Petitioner Company is wholly owned subsidiary of the Transferee Company and there is no re-organization of share capital of the Transferee

Company and no new shares are required to be issued by the Transferee Company and rights of creditors of Transferee Company are not affected as observed by the Hon'ble Bombay High Court in Mahaamba Investment Ltd verses IDI Limited (2001) 105 Co cases page 16 to 18. In view of the above the filing of separate Company Summons for Direction and Company Scheme Petition under section 391 and 394 of the Companies Act, 1956 by Iron Mountain India Private Limited, the Transferee Company is dispensed with vide order dated 22nd July, 2016 passed in CSD No. 615 of 2016 and 616 of 2016.

6. The Petitioner 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.
7. The Learned Counsel appearing on behalf of the Petitioners states that the Petitions have been filed in consonance with the orders passed in their respective Company Summons for Directions Nos. 615 of 2016 and 616 of 2016.
8. The learned Counsel appearing on behalf of the Petitioners has stated that the Petitioner Companies have complied with all requirements as per directions of this Court and they have filed necessary affidavits of compliance in the Court. Moreover, the Petitioner Companies undertake 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.
9. The Official Liquidator has filed his report on 5th December, 2016 inter alia, stating therein that the affairs of the Petitioner Companies have been conducted in a proper manner and that the Petitioner Companies may be ordered to be dissolved.

10. The Regional Director has filed his report on 28th February, 2017, *inter alia*, 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. In paragraph IV of the said report, the Regional Director has stated that:-

“

- a) *The submission made by the Company in para No. 6.5 of the Scheme is found contrary to the AS-14. It is stated amongst other in the said Para that the difference between value of assets and value of liabilities including reserves of the Transferor Companies transferred to the Transferee Company after providing for adjustments, shall be adjusted against reserves of the Transferee Company. Whereas amongst others as per Para No. 17 of AS-14 “on deduction of Consideration from Net Assets of the Transferor Company by the Transferee Company, if the result of computation is negative, the difference is debited to Goodwill arising on amalgamation and dealt with in the manner stated in paragraphs 19-20 of the said AS and if the result of the computation is Positive, the difference is credited to Capital Reserve.” The Transferee Company may be directed to make above compliance of AS-14 in the matter.*
- b) *In additional to compliance of AS-14, 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 etc., and ensure that the Financial Statement of the Transferee Company does not impair the true and fair view of the Financial Statements of the Transferee Company after post-amalgamation*
- c) *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 Returns filed by the Transferee Company after giving effect to the Scheme. The decision of the Income Tax Authority is binding on the Petitioner Companies.”*

11. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV(a) and (b) of his report is concerned, the Transferee Company undertakes that it will comply with all applicable Accounting Standards. Further, in addition to compliance with the applicable Accounting Standards, the Transferee Company shall pass such accounting entries as may be necessary in connection with the Scheme of Amalgamation to comply with any other applicable Accounting Standard.
12. As far as the observation of the Regional Director, Western Region, Mumbai, as stated in paragraph IV (c) of his report is concerned, the Petitioner Company submits that the Petitioner Company is bound to comply with all applicable provisions of the Income-tax Act and all tax issues arising out of the Scheme of Amalgamation will be met and answered in accordance with law.
13. The Counsel for the Regional Director on instructions of Mr. Kamal Harjani, Deputy Director in the office of Regional Director, Ministry of Corporate Affairs, Western Region Mumbai states that they are satisfied with the explanations and undertakings given by the Petitioner Companies.
14. From the material on record, the Scheme appears to be fair and reasonable and is not violative of any provisions of law and is not contrary to public policy.
15. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition No. 589 of 2016 and 590 of 2016 (Now TCSP No. 101 of 2017 and 102 of 2017 respectively) filed by the Petitioner Companies are made absolute in terms of prayer clause (a) to (g) of the respective Petitions.
16. Petitioners are directed to file a copy of this order along with a copy of the Scheme of Arrangement 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 order by the Registry.

17. The Petitioner Companies to lodge a copy of this order and the Scheme duly authenticated by 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.

18. 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. Costs to be paid within four weeks from the date of the order.

19. All authorities concerned to act on a copy of this order along with the Scheme duly authenticated by the Deputy Director, National Company Law Tribunal, Mumbai Bench.

Sd/-

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

Sd/-

V. Nallasenapathy, Member (T)