

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

T. COMPANY SCHEME PETITION NO 218 OF 2017

Poinsettia Investment Private Limited....Petitioner/First Transferor Company
AND

T. COMPANY SCHEME PETITION NO 219 OF 2017

Sprekelia Investment Private Limited.....Petitioner/Second Transferor Company
AND

T. COMPANY SCHEME PETITION NO 220 OF 2017

Acorus Investment Private Limited ...Petitioner/Third Transferor Company
AND

T. COMPANY SCHEME PETITION NO 221 OF 2017

Alocasia Investment Private Limited...Petitioner/Fourth Transferor Company
AND

T. COMPANY SCHEME PETITION NO 222 OF 2017

Kniphofia Investment Private Limited ...Petitioner/Sixth Transferor Company
AND

T. COMPANY SCHEME PETITION NO 223 OF 2017

Oleander Investment Private Limited...Petition/Transferee Company

In the matter of Companies Act, 1956 (1 of 1956)
AND

In the matter of the Companies Act, 1956 (1 of 1956)
and Companies Act, 2013;

AND

In the matter of Scheme of Amalgamation of Poinsettia
Investment Private Limited and Sprekelia Investment
Private Limited and Acorus Investment Private
Limited and Alocasia Investment Private Limited and
Kniphofia Investment Private Limited (Collectively,
the 'Transferor Companies') with Oleander Investment

Private Limited (the 'Transferee Company') and their
respective shareholders

Called for Hearing

Mr. Hemant Sethi i/b. Hemant Sethi & Co., Advocates for the Petitioner Companies

Mr. Ramesh Golap, Assistant Director in the office of Regional Director

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

V. Nallasenapthy, Member (Technical)

DATE: 19th April 2017

MINUTES OF THE ORDER

1. Heard the learned counsel for the Petitioner Company. 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 Counsel for the Petitioners submit that the Transferor and Transferee Company are engaged in the business of Investments.
3. The Counsel for the Petitioners further submit that the rational for the scheme is that With a view to maintain a simple corporate structure and eliminate duplicate corporate procedures it is desirable to merge and amalgamate all the undertakings of Transferor Companies with the Transferee Company. The amalgamation of all undertaking of Transferor Companies into the Transferee Company shall facilitate consolidation of all the undertakings in order to enable effective management and unified control of operations. Further, the amalgamation would create economies in administrative and managerial costs by consolidating operations and would substantially reduce duplication of administrative responsibilities and multiplicity of records and legal and regulatory compliances.
4. The Board of Directors of the Petitioner Company and the Transferee Company have approved the said Scheme of Amalgamation by passing necessary Board Resolution which are annexed to the Company Scheme Petition.

5. The Learned Counsel appearing on behalf of the Petitioner Company states that the Petitions have been filed in consonance with the Orders passed in their respective Company Summons for Direction by the Bombay High Court.
6. The Learned Counsel appearing on behalf of the Petitioner Company further states that the Petitioner Company have complied with all requirements as per directions of the High Court / Tribunal and the necessary affidavits of compliances has been filed in the High Court / Tribunal. Moreover, the Petitioner Company through their Counsel undertake to comply with all statutory requirements, if any, as required under the Companies Act, 2013 and the Rules made there under. The said undertaking given by the Petitioner Companies are accepted.
7. The Official Liquidator has filed his report dated 22nd March, 2017 stating that the affairs of the Transferor Companies have been conducted in a proper manner and that Petitioner Company may be ordered to be dissolved.
8. The Regional Director has filed his report dated 31st March, 2017 stating therein that, save and except as stated in paragraphs IV(a), (b) and (c) below, it appears that the Scheme is not prejudicial to the interest of shareholders and public. In paragraph IV of the said Report, it is stated that:
 - (a) *In addition 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.*
 - (b) *As per the existing practice , the petitioner companies are required to serve notice for the Scheme of Arrangements to the Income tax Department for their comments. It appears that the company vide letter dated 14.11.2016 has served a copy of company petition No 729 to 734 of 2016 along with relevant orders etc. to IT department . Further this directorate has also issued reminder letter to the Income Tax Department dated on 24.03.2017 . However as on date, there is no response from Income Tax Department.*
 - (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 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 their Counsel undertakes that in addition to compliance of AS-14, the Transferee Company shall pass such

accounting entries as may be necessary in connection with the Scheme to comply with any other accounting standards.

10. In so far as observations made in paragraph IV (c) of the Report of Regional Director is concerned, the Transferee Company through their counsel undertakes that the Transferee Company shall 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. The observation made by the Regional Director have been explained by this Petitioner/Transferee Company in paragraph 9 and 10 above. The clarifications and undertakings given by the Petitioner/Transferee Company are hereby accepted.
12. 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.
13. Since all the requisite statutory compliances have been fulfilled, Company Scheme Petition Nos 218 to 223 of 2017 filed by the Petitioner Company are made absolute in terms of prayer clause (a) of CSP Nos 218 to 223 of 2017 of the Petition.
14. Petitioner Company 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 the physical copy within 30 days from the date of issuance of the order by the Registry.
15. The Petitioner Company to lodge a copy of this order and the Scheme duly certified 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.
16. The Petitioners to pay cost of Rs. 25,000/- each to the Regional Director, Western Region, Mumbai. Petitioners in Company Scheme Petition Nos. 218 to 222 of 2017 to pay costs of Rs.25,000/- each to the Official Liquidator, High Court, Bombay.
17. Costs to be paid within four weeks from the date of receipt of the order.

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

(Technical)

Sd/-

B.S.V. Prakash Kumar, Member

(Judicial)