

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
TRANSFER COMPANY SCHEME PETITION NO.68 OF 2017
CONNECTED WITH
HIGH COURT COMPANY SUMMONS FOR DIRECTION NO. 514 OF 2016**

Parentech Healthcare Limited

...Petitioner Company /
Transferor Company

In the matter of the Companies Act, 1956 (1 of 1956) (or re-enactment thereof upon effectiveness of Companies Act, 2013);

AND

In the matter of Sections 391 to 394 of the Companies Act, 1956 (or any corresponding provision of Companies act, 2013 as may be notified);

AND

In the matter Scheme of amalgamation of Parentech Healthcare Limited with Anitas Exports Private Limited and their respective shareholders and creditors

Called for Hearing

Ms. Shruti Kelji a/w. Ms. Sunila Chavan and Ameya Lambhate, Advocates
for the Petitioner

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

Mr. Vinod Sharma, Official Liquidator

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

DATE: 15th February, 2017

1. Heard Advocate for the parties. Neither any objector has come before the Hon'ble Tribunal to oppose the Scheme of Amalgamation nor has any party controverted any averments made in the Petitions.
2. The sanction of the Hon'ble Tribunal is sought under Section 230 to 232 of the Companies Act, 2013 to the scheme of Amalgamation of Parentech Healthcare Limited with Anitas Exports Private Limited and their respective shareholders and creditors.
3. The Learned Advocate for the Petitioner states that the Petitioner Company is engaged in the business of drugs and pharmaceutical products and the Transferee Company is engaged in the business of manufacturing of form fill seal machines.
4. The Learned Advocate for the Petitioner states that the proposed scheme will have the benefit of bringing entire business of two companies into one umbrella and consolidation of business would lead to more efficient utilization of capital and create stronger financial strength, benefit of operational synergies to the combined entity and greater leverage in operations planning and process optimization and cost savings are expected to flow from more operational efforts, rationalization and standardization of administrative expenses and amalgamated company more profitable entity.
5. The Learned Advocate for the Petitioner Company states that the Petitioner Company is a wholly owned subsidiary of Transferee Company viz. Anitas Exports Private Limited and no new shares are being issued and there will be no change in capital structure of the Transferee Company and the Scheme does not affect the rights of the members and interest of the creditors of the Transferee Company and does not involve any re-organization of the paid up Share Capital of the Transferee Company and in view of the judgement of the Hon'ble Bombay High Court in Mahaamba Investment Limited vs. IDI Limited (2001) Company Cases 105 filing of a separate Company Summons for Direction and Company Scheme Petition for sanction of the Scheme by Anitas Exports

Private Limited, Transferee Company was dispensed with vide order dated 1st July, 2016 passed in High Court Company Summons for Direction No. 514 of 2016.

6. The Learned Advocate for the Petitioner states that the Board of Directors of the Petitioner Company and Transferee Company have approved the said Scheme of Amalgamation by passing Board Resolutions which are annexed to the Company Scheme Petition.
7. The Learned Advocate for the Petitioner further states that the Petitioner Company has complied with all the directions passed in the Company Summons for Direction and that the Company Scheme Petition has been filed in consonance with the Orders passed in Company Summons for Direction.
8. 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 affidavit 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, 1956/ 2013 and the Rules made there under whichever is applicable. The said undertakings given by the Petitioner Company are accepted.
9. The Official Liquidator has filed his report on 7th December, 2016 in the Hon'ble Bombay High Court Company Scheme Petition No. 503of 2016 stating therein that the affairs of the Transferor Company has been conducted in a proper manner and that the Transferor Company may be ordered to be dissolved.
10. The Regional Director has filed an Affidavit on 24th October, 2016 stating therein save and except as stated in para 6(i) to (ii) it appears that the Scheme is not prejudicial to the interest of shareholders and public. In Paragraph 6 of the said Affidavit, the Regional Director has stated that :

6. That the Deponent further submits that :
- (i) That the Petitioner Companies had accepted the pooling of interest method as set out in AS 14 however the Petitioner Companies should also shall pass accounting entries as mentioned in AS-5 of the Accounting Standards. Therefore, Deponent prays that the Hon'ble Court may pass such orders as deem fit.
- (ii) The Deponent submits that the Office of the Dy. Commissioner of Income Tax 9(1)(2) sent letter to this Directorate vide Letter No. Dy.CIT-9(1)(2)/Anitas/2016-17 dated 22/08/2016, they have mentioned in the respective letter "that the assessee company named M/s. Anitas Exports Private Limited is being assessed to tax in this charge under PAN AAFCA5386H. The impact of the aforesaid scheme of amalgamation between the Transferor Company is not known ascertainable at this stage. As per his records, Arrear Demand in the Anitas Exports Private Limited is outstanding at Rs. 6388.51/-lakhs. The breakup of the demand is as follows :-

A.Y.	Amounts in lakhs
2008-09	304.89
2009-10	313.76
2010-11	2299.76
2011-12	2437.82
2012-13	1027.93
2014-15	4.35
Total	6388.51/-

In view of the above mentioned facts, the Income Tax Department submitted that the right of the Department to ascertain /assess correct income in the correct hands as per provisions of the Income Tax Act, 1961 especially with respect to the observations made in para no.3 of the letter for the period involving the appointment date and effective date and thereafter, may be kept reserved."

That the Deponent further submits that the Tax issue if any arising out of this scheme shall be subject to final decision of Income Tax Authority and approval of scrutinize the tax returns filed by the Petitioner Companies after giving effect to the amalgamation. The decision of the Income Tax Authority is binding on the Petitioner Companies.

11. As far as the observations made in paragraph 6(i) of the Affidavit of the Regional Director is concerned, the Petitioner Company undertakes that in addition to compliance of Accounting Standards 14, 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 standards including Accounting Standard-5.
12. As far as the observations made in paragraph 6(ii) of the Affidavit of the Regional Director is concerned, the Petitioner Company is bound to comply with all applicable provisions of the Income Tax Act, and all tax issues arising out of scheme will be met and answered in accordance with law.
13. Mr. S. Ramakantha, Joint Director, in the office of the Regional Director, Ministry of Corporate Affairs, Western Region, Mumbai, states that they are satisfied with the undertakings given by the Petitioner Company. The said undertakings given by the Petitioner Company is accepted.
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, the Transfer Company Scheme Petition No.68 of 2017 filed by the Transferor Company is made absolute in terms of prayer clauses (a) to (c).

16. The Petitioner Company is directed to lodge a copy of this order and the Scheme duly certified by the Assistant Registrar, 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 receipt of the order.
17. The Petitioner Company is further directed to file a 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 physical copy, as per the relevant provisions of the Companies Act, 2013.
18. The Petitioner Company to pay costs of Rs.25,000/- each to the Regional Director, Western Region Mumbai and the Official Liquidator, High Court, Bombay in Transfer Company Scheme Petition No.68 of 2017. Costs to be paid within four weeks from the date of the Order.
19. Filing and issuance of the drawn up order is dispensed with.
20. All concerned regulatory authorities to act on a copy of this order along with the Scheme duly certified by the Assistant Registrar, National Company Law Tribunal, Mumbai.

Sd/-

B.S.V. Prakāsh Kumar
Member (Judicial)

Sd/-

V. Nallasenapathy
Member (Technical)